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**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
VILLAS AT NORTHGATE**

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR VILLAS AT NORTHGATE

This Declaration of Covenants, Conditions and Restrictions for Villas at Northgate ("Declaration") is made as of _____, 2018, by Villas at Northgate, LLC, a Colorado limited liability company ("Declarant").

BACKGROUND AND PURPOSE

A. Declarant is the owner and developer of real property in Colorado Springs, El Paso County, Colorado, which is legally described in the attached **Exhibit A** and incorporated by this reference (the "Property" or "Villas at Northgate").

B. Villas at Northgate is a multi-family residential community consisting of nineteen (19) Buildings, with each Building containing either three or four separate housing units. Each of the nineteen Lots within the Property will contain one Building.

C. Villas at Northgate is a "common interest community," as defined in the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, *et seq.* (the "Act"). This Declaration is executed and recorded (a) in furtherance of a common and general plan for the Property, as described in **Exhibit A**; (b) to protect and enhance the quality, value, desirability and attractiveness of all property within the Property; (c) to provide for an owners' association (the "Association") to hold, manage and/or maintain common properties and amenities within the Property and to perform certain functions for the benefit of owners of land within Villas at Northgate; and (d) to define duties, powers and rights of the Association, the Declarant, and owners of property within the Property.

DECLARATION

NOW, THEREFORE, Declarant, for itself, its successors and assigns, declares that the Property is and shall be owned and conveyed subject to the following uniform covenants, conditions and restrictions in furtherance of a general plan for the subdivision, ownership, improvement, sale, use and occupancy of the Property, and to enhance the value, desirability and attractiveness of this community. This Declaration is intended to and shall run with the land and shall be binding on all persons having or acquiring any interest in the Property or any part thereof; shall inure to the benefit of and be binding upon every part of the Property and every interest therein; and shall inure to the benefit of, be binding upon and be enforceable by Declarant, its successors in interest, and each Owner and such Owner's successors in interest.

ARTICLE 1 DEFINITIONS

The following words and phrases when used herein shall have the meanings hereinafter specified.

1.01 Act shall mean the Colorado Common Interest Ownership Act, Section 38-33.3-101, *et seq.*, as amended.

1.02 Architectural Committee shall mean the committee created pursuant to Article 5.

1.03 Articles shall mean the Articles of Incorporation of Villas at Northgate Owners Association, which have been filed with the Colorado Secretary of State, as the same may from time to time be amended.

- 1.04 Assessment shall have the meaning set forth in Article 9.
- 1.05 Association shall mean the Villas at Northgate Owners Association, a Colorado nonprofit corporation, its successors and assigns.
- 1.06 Association Documents shall mean the various operating documents of the Association, as they may be amended from time to time, to include, without limitation, the Articles; Bylaws; this Declaration and any amendments; Plats; Design Guidelines; and Rules.
- 1.07 Board shall mean the board of directors of the Association.
- 1.08 Building shall mean the structure constructed on each Lot that contains no more than four separate housing units.
- 1.09 Bylaws shall mean the Bylaws of the Association, as adopted by the Board and as amended from time to time.
- 1.10 Common Area(s) shall mean all real and personal property, together with any and all Improvements now or hereafter owned by the Association or which the Association hereafter maintains, holds or uses for the common use and enjoyment of all of the Owners, subject to any Rules. The Common Areas shall include, without limitation, all private streets (including Thimbleberry Point and Brambleberry Heights), access drives and tracts, including Tracts A, B, C, and D, as shown on the Plat of Villas at Northgate or described in this Declaration, all easements granted to or for the benefit of the Association, all entry features, signage, mailbox facilities, fences, walls, sidewalks, drainage facilities, bicycle racks, trails and all other property that may be conveyed to the Association by Declarant or any other Person with Declarant's permission. Common Areas shall not include any Lot or portion of a Lot.
- 1.11 Declarant shall mean Villas at Northgate, LLC, a Colorado limited liability company, and its successors and assigns. A Person shall be deemed a successor or assign of Declarant only if specifically designated in a recorded instrument as a successor or assign of Declarant under this Declaration, and only as to the particular rights or interests of Declarant under this Declaration that are specifically designated in the recorded instrument. Notwithstanding the foregoing, a successor to Villas at Northgate, LLC by consolidation or merger shall automatically be deemed a successor or assign of Villas at Northgate, LLC as Declarant under this Declaration without the requirement of recording an instrument.
- 1.12 Declaration shall mean this instrument as it may be amended from time to time.
- 1.13 Design Guidelines shall mean the architectural, construction, structural and/or aesthetic criteria, rules or standards, if any, established by the Architectural Committee from time to time that will apply to Improvements within all or specified portions of the Property.
- 1.14 First Mortgage shall mean a deed of trust upon a Lot having priority of record over all other recorded encumbrances and liens thereon, except those governmental liens and other liens made superior by statute. The beneficiary named in such a deed of trust shall be referred to as a "First Mortgagee."
- 1.15 Improvement shall mean anything which alters the previously existing exterior appearance of any land, including but not limited to Buildings, outbuildings, patios, garages, doghouses, mailboxes, aeries, antennas, streets, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks,

sidewalks, landscaping (defined as plant material, vegetation and ground cover but excluding drainage and grading), hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning units, water softener fixtures or equipment, and poles, tanks, pipes, lines, meters, towers and other facilities used in connection with water, sewer, gas, electric, telephone, radio, television (including cable or satellite systems), or other utilities.

1.16 Lot shall mean a parcel of land designated as a lot in a recorded Plat within the Property, together with all appurtenances and Improvements associated therewith, now existing or subsequently created.

1.17 Notice and Opportunity for Hearing shall have the meaning set forth in Section 6.07.

1.18 Owner shall mean the record titleholder, including Declarant, whether one or more Persons, of fee simple title to a Lot.

1.19 Period of Declarant Control shall mean a period of twenty (20) years commencing on the date of recordation of this Declaration, unless earlier terminated by one or more of the following events:

- (i) the passage of sixty (60) days following the conveyance to Owners other than Declarant or builders of fee simple title of seventy-five percent (75%) of the Lots that may be created and included within the scope of this Declaration.
- (ii) The passage of two years after the last conveyance of fee simple title to a Lot by Declarant in the ordinary course of Declarant's business; or
- (iii) The passage of two years after any right to add new Lots was last exercised by Declarant (with the commencement and continuation of planning activities by Declarant constituting the exercise of a right to add new Lots); or,
- (iv) such earlier date as may be designated by Declarant pursuant to a recorded notice terminating the Period of Declarant Control.

1.20 Person shall mean a natural individual, trust or legal entity.

1.21 Plans shall mean any and all documents designed to guide or control an Improvement or other proposal in question, including but not limited to those indicating size, shape, configuration or materials, all site plans, excavation and grading plans, foundation plans, drainage plans, landscaping and fencing plans, elevation drawings, floor plans, specifications on all building products and construction techniques, samples of exterior colors, plans for utilities services and all other documentation or information relevant to the Improvement or proposal in question.

1.22 Plat shall mean a governmentally approved and recorded map of land that is part of the Property. All such Plats are incorporated into this Declaration by this reference and made a part of this Declaration as though attached as an exhibit. Without limitation, the plat of Villas at Northgate recorded with the El Paso County Clerk and Recorder shall be incorporated herein by reference.

1.23 Property shall mean the real property described on the attached **Exhibit A** and all real property that Declarant may make subject to the Declaration in the future pursuant to a recorded document, but excluding any real property that Declarant may withdraw from this Declaration.

1.24 Residence shall mean a separate housing unit within a Building on a Lot that is intended or used for residential occupancy.

1.25 Rules shall mean those rules, policies and regulations, if any, adopted by the Board as provided in Section 6.06 (d) of this Declaration, as the same may be amended from time to time. Rules shall not include any rules, policies and regulations adopted by the Board after the Period of Declarant Control that are applied against Declarant in any capacity other than as an Owner of a Lot.

ARTICLE 2 DEVELOPMENT OF THE PROPERTY

All lands and Improvements contained within the Property shall be subject to this Declaration. Declarant shall, however, have absolute and complete discretion with respect to the designation of Lots and the manner in which the planning and build-out of the Property is to progress.

ARTICLE 3 COVENANTS TO PRESERVE THE CHARACTER OF THE COMMUNITY

All real property within the Property shall be owned, held, conveyed, encumbered, leased, used, occupied and enjoyed subject to the limitations contained in the Declaration. These covenants are adopted in order to preserve the desirability, attractiveness and value of property in the Property, and to assure the continuing quality and maintenance of the Common Areas and facilities that benefit the Owners and residents of Villas at Northgate. The following restrictions and conditions shall apply to all land that is now or may hereafter be subject to this Declaration.

If a Residence is not occupied by the Owner but is occupied by any other Person(s), including a tenant, the Person(s) occupying the Residence shall be responsible for compliance with all of the provisions of this Declaration in the same manner as an Owner. An Owner is ultimately responsible for ensuring that all occupants of the Owner's Building comply with all provisions of this Declaration.

3.01 General. All Residences, Buildings and structures of any kind shall be constructed, installed and maintained in compliance with City of Colorado Springs, Colorado ("City") standards, ordinances, rules and regulations after obtaining all required permits and licenses, and in accordance with any Design Guidelines, as those may be amended from time to time.

3.02 Improvements. All Improvements placed on a Lot shall be subject to prior approval in writing by the Architectural Committee, as further defined in Article 5 of this Declaration. To assure uniformity in the appearance of the Lots, no Owner may modify the exterior of the Owner's Lot, including any landscaping, or any portion of the exterior of the Owner's Building, including without limitation porches, decks, driveways, landscaping and sidewalks, without the prior written approval of the Architectural Committee in accordance with Article 5 of this Declaration.

3.03 Construction.

- (a) Construction Type. All construction shall be new. Any building previously used at another location or any building or Improvement originally constructed as a mobile dwelling may not be moved onto a Lot except as expressly provided in Section 3.06 for temporary construction, sales or administration buildings or as approved by the Architectural Committee.

- (b) Storage. Building materials may not be stored on any Lot except temporarily during continuous construction of a Building or its alteration or improvement, unless such building materials are stored in an enclosed area and/or fully screened in a manner approved by the Architectural Committee. However, during the Period of Declarant Control, Declarant may store building materials, supplies and equipment on land it owns within the Property.
- (c) Construction Rules and Regulations. During the period of construction of a Building or other Improvement on a Lot, the Owner of the Lot or the contractor shall comply with all construction rules and regulations which Declarant or the Architectural Committee may establish from time to time.
- (d) Construction Completion. All construction work shall be completed diligently and continuously from the time of commencement until fully completed. The exterior of all Buildings or Improvements must be completed within six months after the commencement of construction, or such other time as the Architectural Committee deems reasonable under the circumstances due to the nature of the project or other factors. "Commencement of Construction" for a Building is defined as obtaining necessary building permits and the excavation of earth for a foundation, and for all other Improvements is defined as the undertaking of any visible exterior work. If construction is not completed within the above time periods or such later time as approved by the Architectural Committee, the Architectural Committee may take further action as provided for in this Declaration.
- (e) Occupancy. No Residence or Building on a Lot shall be occupied in the course of original construction until the applicable building authority issues a certificate of occupancy.
- (f) Landscaping. Unless landscaping has been provided as part of the construction and sale of the Building, within four (4) months following the issuance of a certificate of occupancy for a Building on the Lot, all landscaping, as shown on a landscaping plan approved by the Architectural Committee within the 4-month timeframe, must be properly installed. The Board may grant extensions on this deadline if the landscaping cannot be reasonably completed due to winter weather conditions between November 1 and April 30.
- (g) Construction of Sales Offices. Temporary buildings for construction or administration purposes or for sales offices may be erected or maintained by Declarant or with the permission of the Architectural Committee. Model Buildings may be used and exhibited only by Declarant or with the permission of the Architectural Committee. Temporary buildings shall be promptly removed when they cease to be used for these purposes. The real property upon which a temporary building is placed shall not become Common Area unless Declarant so provides in a recorded instrument.
- (h) No fencing of any type may be installed on a Lot.

3.04 Mining and Drilling. No portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring or exploring or for removing oil, gas or other hydrocarbons, water, minerals of any kind, rocks, stones, sand, gravel, aggregate or earth, except that (a) Declarant or the Association may conduct earthmoving, fill, cut, overlot grading, or other site preparation on land owned by them without it being considered a violation of this Section, and (b) Declarant or the Association may utilize sand, rock or other

similar deposits on land owned by them for Improvements within the Property without being considered a violation of this Section.

3.05 Rebuilding or Restoration. If any Improvement is destroyed in whole or in part by fire, windstorm or from any other cause or act of God, it must be rebuilt or all debris must be removed and the Lot restored to a safe and attractive condition. The rebuilding or restoration must be commenced within thirty (30) days after the damage or destruction occurs and thereafter diligently pursued to completion within a reasonable time, not to exceed four (4) months after the date the damage occurred or such longer period of time as may be approved by the Architectural Committee. If restoration or rebuilding is not completed within the above time periods or such later time approved by the Architectural Committee, or if the restoration or rebuilding shall cease for a period of ten (10) days without permission of the Architectural Committee, the Architectural Committee may give written notice to the Owner that unless the restoration is diligently pursued within the ten (10) days following notice, the Improvement will be declared a nuisance and the Association shall have the right to enter on the Lot and remove, rebuild or restore the Improvement at the Owner's expense, or take such other action pursuant to this Declaration or the Association Documents. The Association's entry on the property for such purpose shall not be deemed a trespass. The Association may recover its expenses for removal, rebuilding or restoration in accordance with Section 9.17.

3.06 Declarant Exemption. During the Period of Declarant Control, this Declaration shall not prevent or limit the right of Declarant or a builder approved by Declarant to construct any and all types of Improvements or to construct and maintain model homes, sales offices, management offices and similar facilities; to post signs incidental to construction, sales and leasing within the Property; and to store construction materials, supplies and equipment on land owned by Declarant, or to grant similar rights described in this Section to a builder.

ARTICLE 4 LIVING ENVIRONMENT STANDARDS

4.01 Maintenance and Repair Obligations.

A. Association Maintenance. The Association is responsible for providing maintenance and repair to certain areas of the Lots and the Common Areas to retain them in an attractive and maintained condition, as follows:

(1) All repair, replacement, improvement and maintenance of the Common Areas, including without limitation, all landscaping, irrigation systems, parking spaces, private streets, sidewalks adjacent to the private streets, bicycle racks, light fixtures, mailboxes, trails, and other improvements located on or within the Common Areas.

(2) The Association shall maintain the landscaping, including the irrigation system, on all Lots to the extent the Association has a separate water tap serving the irrigation lines on the Lots. The Association shall use reasonable efforts to prevent Owners from installing landscaping or using water on the Lots in such a way as to endanger the structural integrity or the stability of any of the landscaping, drainage or irrigation system, the Buildings or any other Improvements on the Lots. The Association shall indemnify the Declarant for any breach of this provision.

(3) The Association may also undertake, in its sole discretion, such emergency repairs as the Board believes necessary to prevent imminent danger to life or property.

(4) If the need for the Association's maintenance or repair of a Building, Residence, Lot or the Improvements on a Lot or Improvements within the Common Area is caused through the willful or negligent acts or omissions of an Owner, a tenant of a Residence or the Owner's or tenant's family, guests or invitees, the cost of such maintenance or repair shall be added to and become part of the assessment to which such Lot and Owner is subject.

(5) An easement is granted to the Association, its employees and contractors over and across the Lots as necessary to access, install, operate, maintain and repair those items for which the Association has maintenance responsibility.

B. Owner Maintenance. Each Owner shall be responsible for maintenance and repair of the Building exterior, including without limitation, roofs, gutters, and downspouts, the interior of each Residence, the structural, mechanical, plumbing, electrical, heating and air conditioning system of each Residence, decks, porches, stairs, steps, patios, glass surfaces, screens and windows, exterior light bulbs, exterior doors, utility service lines serving each Residence that are located within the Lot, including interior underground utility service lines and all service lines that are not maintained by a public or private utility company, and all other Improvements on Lots that are not maintained and repaired by the Association. An Owner may not paint or change the appearance of the exterior of a Building or Improvements on a Lot without the prior written approval of the Architectural Committee. An Owner is responsible for snow removal on all driveways and walkways on the Owner's Lot.

4.02 Garage Doors. For security purposes, Owners must keep their garage doors closed except when being used for ingress and egress to or from the garage or when the garage is being actively attended (for cleaning, etc.).

4.03 Outside Storage. No outside storage buildings or storage units are allowed on a Lot. Equipment, tools and other items must be stored in the garage or otherwise adequately screened in a manner approved by the Architectural Committee so as not to be visible from neighboring properties or adjacent streets.

4.04 Patio Covers, Awnings, Permanent Basketball Hoops and Play Structures. These structures or other similar facilities may not be installed on a Lot unless allowed under the Design Guidelines or approved by the Architectural Committee.

4.05 Refuse. Unsightly objects or materials, including but not limited to ashes, trash, garbage, grass or shrub clippings, scrap material or other refuse, or containers for such items, shall not be stored, accumulated or deposited outside or so as to be visible from any neighboring property or adjoining street, except during hours of refuse collection when such refuse shall be stored in containers for collection by the refuse collection service.

4.06 Nuisances or Illegal Activities. Noxious, hazardous, illegal or offensive activity shall not be carried in or upon any Lot, Building, Residence or Improvement on a Lot or Common Areas, nor shall anything be done thereon tending to cause annoyance or nuisance to the neighborhood.

4.07 Annoying Lights, Sounds and Odors. Annoying lights that are unreasonably bright or cause unreasonable glare, and sounds or odors that are noxious or offensive to others, including smoke from any substance that causes odors or secondhand smoke outside of a Lot shall not be permitted to emanate from any Lot.

4.08 Marijuana Cultivation, Use and Distribution. No Owner, tenant or occupant of a Residence may utilize any portion of a Lot, including within a Residence, for the purpose of cultivation

of marijuana, including medical marijuana, for other than their own personal use. If an Owner or tenant cultivates marijuana for their personal use only, odor elimination devices shall be required, and such use must be in full compliance with state and local laws and ordinances. This restriction may be further clarified by the Board through adoption of Rules. No Owner or tenant may use any portion of a Lot for the distribution of marijuana. No marijuana odors may emanate from any Lot. Any violation of this Section will be deemed a nuisance and subject to enforcement action by the Association or any other Person entitled to enforce the Association Documents under Section 12.06 of the Declaration.

4.09 Grading Patterns. Material changes shall not be made in the ground level, slope, pitch or drainage patterns of any Lot as fixed by the original finish grading without the prior approval of the Architectural Committee. An Owner shall be responsible for maintaining the grading and drainage on the Owner's Lot at all times so as to conduct irrigation and surface waters away from each Building and to protect foundations and footings from excess moisture. This Declaration shall not be amended to change or modify this covenant obligating an Owner to maintain the grading and drainage on the Owner's Lot.

4.10 Animals. No animals, except domesticated birds or fish and other small domestic animals permanently confined indoors and those permitted pursuant to this Section, shall be kept within any Lot. No livestock or poultry of any description shall be kept on a Lot. Domesticated dogs and domesticated cats may be kept or maintained in or on a Lot in a reasonable number as determined by the Board and only if kept as pets. Any restriction on the maximum number of animals that may be kept or maintained on a Lot, and/or restrictions based on an animal's weight or size, shall be set forth in the Rules. No animal of any kind shall be permitted which, in the opinion of the Board, makes an unreasonable amount of noise or odor or is otherwise a nuisance. The Owner of a Lot upon which an animal is kept is responsible for payment of any and all damage caused to the property of others, including Common Areas. Owners and occupants of Residences are responsible for cleaning up after their pets.

4.11 Vehicles.

(a) Parking. A boat, trailer, camper (on or off supporting vehicles), tractor, commercial vehicle, mobile home, motor homes, any towed trailer unit, motorcycle, all terrain vehicle, recreational vehicle or truck shall not be parked on any street or within any Lot except in a completely enclosed building such as a garage. Vehicles owned, leased, rented or used by Owners or any other Person shall not be parked on any street within the Property overnight. For purposes of this section 4.11 (a), "overnight" is defined as from 10 p.m. – 6 a.m. It is the intention that the streets within Villas at Northgate will only be used for short-term parking for vehicles that cannot fit in the driveway of the Lot, and the streets will remain clear for safety and aesthetic purposes. Owners and occupants of Residences and their guests must park vehicles in garages or driveways rather than on the streets. A vehicle parked in a driveway may not block any portion of the sidewalk or street. Motor homes, campers and other recreational vehicles (collectively, "Recreational Vehicles") may not be parked on a street. The Board may adopt Rules governing parking within Villas at Northgate.

(b) Vehicle Repairs. The maintenance, servicing, repair, dismantling, sanding or repainting of any type of vehicle, boat, machine, apparatus, trailer, equipment or device may not be carried on except within a garage attached to a Building.

(c) Abandoned or Inoperable Vehicles and Equipment. Any type of stripped down, partially wrecked or abandoned or other similar vehicle which has not been driven under its own propulsion for a period of 72 hours or longer, boat, machine, apparatus, trailer, equipment or device, or any sizeable part thereof, shall not be permitted to be placed anywhere within the Property except

within a garage attached to a Building or as otherwise approved by the Architectural Committee. Upon prior notice to the Owner, unless in the event of an emergency, the Association has the right to remove the vehicle or equipment at the Owner's expense.

4.12 Signs. Signs other than temporary signs allowed by applicable laws and ordinances shall not be allowed on any Lot within the Property without the approval of the Architectural Committee, except for one sign of not more than six (6) square feet in size advertising the Lot for sale or rent. No signs may be posted on Common Areas.

4.13 Outdoor Burning. Outside burning of leaves, trash, garbage or household refuse shall not be permitted. Fires in barbecue, braziers and outside fireplaces contained within facilities or receptacles intended for such purpose will be allowed, and any outside facilities intended for use as a fireplace or to contain fires shall be in compliance with Design Guidelines or otherwise approved by the Architectural Committee. An Owner shall not permit any condition on a Lot that creates a fire hazard or is in violation of fire prevention regulations adopted by the City or any governmental authority having jurisdiction and control over outside burning. If any ban on outdoor fires is at any time imposed by the City or other governmental authority, such ban shall be observed within the Property.

4.14 Temporary Buildings. A temporary house, trailer, tent, garage or other outbuilding shall not be placed or erected on a Lot or used as for residential occupancy. The Architectural Committee may grant permission for the placement of a temporary structure for storage of materials during construction on a Lot.

4.15 Renewable Energy Generation Devices. Subject to applicable laws and ordinances, all solar energy devices and wind electric generation devices must be aesthetically integrated into the Building or Lot they serve or adequately screened from the view of neighbors and adjacent streets, and must, in all cases, be approved by the Architectural Committee.

4.16 Manufacturing or Commercial Enterprise; Home Occupation. No manufacturing or commercial enterprise or other activity conducted for gain shall be conducted or maintained upon, in front of, or in connection with any Lot. A home business may be maintained within a Residence as long as it is in compliance with all applicable City laws and ordinances, and further provided that all of the following conditions are met: (a) the business conducted is clearly secondary to the residential use of the Building and is conducted entirely within a Residence; (b) the existence or operation of the business is not detectable from outside of a Residence by sight, sound, smell or otherwise, or by the existence of signs indicating that a business is being conducted; (c) the business does not result in an undue volume of traffic or parking within the Property; (d) the business conforms to all applicable zoning requirements and is lawful in nature; and (e) the business conforms to any Rules that may be adopted by the Board from time to time.

4.17 Subdivision of Lots. No Lot may be subdivided or further divided by an Owner other than Declarant.

4.18 Satellite Dishes and Antennas. Except as provided in this Section, no aerial, antenna or other device for reception of radio, television, microwave device or other electronic signals may be maintained on the roof of any Improvement, nor shall such structure be mounted at any location so as to be visible from neighboring properties or adjacent streets. All such structures must comply with any Design Guidelines or if none, must be approved by the Architectural Committee prior to installation. The Association's guidelines and restrictions on satellite dishes and antennas must comply with Federal Communications Commission rules and regulations.

4.19 Leases; No Short-term Rentals. An Owner may lease a Residence for a term of thirty (30) days or more. All leases and the tenant's occupancy of a Residence shall be subject to the Association

Documents, including this Declaration and the Rules. If a tenant violates any provision of the Association Documents, both the tenant and Owner may be subject to enforcement action and/or held liable for damages incurred by the Association. An Owner or tenant must provide a copy of the signed lease to the Association upon request. No short-term leases or rentals of a Residence (i.e., for terms less than thirty (30) days) is permitted in Villas at Northgate.

ARTICLE 5 ARCHITECTURAL REVIEW

5.01 Architectural Committee. During the Period of Declarant Control, or until such earlier time as Declarant elects to assign to the Board the right to appoint the Architectural Committee, the Declarant shall appoint members to the Architectural Committee. The Architectural Committee will initially consist of at least one member. After the right to appoint the Architectural Committee has been transferred to the Board, the Architectural Committee shall consist of at least three and not more than five individuals, all of whom shall be appointed by the Board. In lieu of appointing an Architectural Committee, the Board may act as the Architectural Committee. The Architectural Committee shall exercise the functions assigned to it by the Board, this Declaration and any Design Guidelines.

5.02 Composition of the Architectural Committee. Individuals appointed to serve on the Architectural Committee shall serve for a three-year term and may be removed by a majority vote of the Board. After the right to appoint the Architectural Committee has been transferred to the Board, if a vacancy on the Architectural Committee occurs for any reason, a majority of the Board may appoint a replacement to complete the unexpired term. Architectural Committee members need not be Owners.

5.03 Design Guidelines. The Architectural Committee may from time to time adopt Design Guidelines applicable to Improvements within Villas at Northgate. Such Design Guidelines may regulate, without limitation, the following matters: a) site location; b) architectural design; c) site accessories, (e.g., lights, signs); d) landscape design; e) building size and height; and f) approval processes. The Architectural Committee shall have the right to modify or supplement the Design Guidelines from time to time in its sole discretion and upon approval by the Board; provided, however, that no modification to the Design Guidelines may result in a provision that conflicts with this Declaration. Owners will be notified by the Association in advance of any modification and be given the opportunity to comment, and upon adoption, the Association will make available to Owners a copy of the Design Guidelines as modified. Any modification to the Design Guidelines will be prospectively applied.

5.04 Approval Required. An Improvement shall not be placed, erected, installed or permitted to occur or exist on any Lot, the exterior of any existing Improvements shall not be altered, and construction shall not be commenced on any Improvements, unless and until the Plans for such Improvement have been submitted to and approved in writing by the Architectural Committee. Design Guidelines for the Property may contain additional approval requirements applicable to the area involved. Improvements installed or constructed prior to Architectural Committee written approval, or not installed or constructed in compliance with the approved Plans, shall be deemed to be in non-compliance and may be subject to enforcement action in accordance with Section 6.06 (g).

5.05 Submittal of Plans. Any applicant desiring to build or install any Improvement, or to alter, remove, add to or change any previously approved or existing Improvement on any Lot or other portion of the Property, shall submit two sets of Plans to the Architectural Committee. The Plans must show the shape, dimensions, materials, floor plans, location, exterior elevations, alterations, grading, drainage and color scheme for the Improvement. Incomplete submittals will be returned to the applicant without review. The applicant must provide an address where the Architectural Committee's written decision may be mailed. The Architectural Committee may charge reasonable fees to cover expenses for

the professional review of the Plans, if required.

5.06 Approval Process. The applicant shall submit the Plans on a date sufficiently far in advance of commencement of construction to allow the Architectural Committee to complete its review of the Plans within the time limits set forth in this Section. Following the submittal of the Plans, the Architectural Committee shall have thirty (30) days in which to provide its written decision to the applicant, which decision may be: i) approval; ii) approval subject to certain conditions, or iii) disapproval. If necessary, the Architectural Committee may have an additional twenty (20) days for review of the Plans as long as notice of such extension is provided to the applicant within the original 30-day review period. If the Architectural Committee does not act within thirty (30) days following submission, the Plans shall be deemed disapproved. The Architectural Committee will retain one copy of all approved Plans as part of its records, and written records of all actions taken by it that will be available to Owners for inspection at reasonable business hours. Approval of any Plans will automatically expire one year after approval if construction is not commenced within such one-year period, and if approval so expires, the applicant must submit a new request for approval.

5.07 Approval Standards. In granting or withholding approval of matters submitted to it, the Architectural Committee shall consider the specific standards and specifications set forth in any Design Guidelines then in effect and any other matter, whether objective or subjective, that the Architectural Committee feels is relevant to the issue presented. The Architectural Committee shall have the right to disapprove any Plans or details submitted to it if it determines, in its sole discretion, that the proposed Improvement is not consistent with the Design Guidelines or any provision of this Declaration; if the Plans submitted are incomplete; or if the Architectural Committee deems the Plans or details, or any part thereof, to be contrary to the best interests, welfare or rights of all or any part of the Property, the Association or the Owners. If the Architectural Committee believes there may be questions of structural integrity, it may, as part of the review process, require certification of the final plans and specifications by a professional architect or engineer licensed in Colorado. A majority of the Architectural Committee members attending a meeting at which Plans are approved shall constitute a quorum, and a majority vote of the quorum of the Architectural Committee members present shall constitute action of the Architectural Committee. Owners acknowledge that architectural review is inherently a subjective process and that the Architectural Committee is given wide discretion in carrying out its function. The decisions of the Architectural Committee shall be final and binding.

5.08 Variances. The Architectural Committee shall have the authority to grant for a Lot a variance from any provision of this Declaration (including any provision of the Design Guidelines) that is within the authority of the Architectural Committee. Such variance will only be made upon the Architectural Committee's finding of exceptional and extraordinary circumstances where literal enforcement of the covenant will create a material hardship to the applicant, and that such a variance is not contrary to the interests of the Property, the Association and Owners. A variance may be made subject to terms and conditions approved by the Architectural Committee. If a variance is denied, the applicant may not bring another application for a similar variance for the same Lot for a period of one year after submittal of the original request.

5.09 No Liability. The Declarant, the Board and the Architectural Committee, and any member, agent or representative thereof, shall not be liable in damages or otherwise to anyone submitting Plans for approval or requesting a variance, or to any Owner or other Person, by reason of mistake in judgment, negligence, nonfeasance or any act or omission in connection with the approval, disapproval or failure to approve the Plans or variance. Approval by the Architectural Committee shall not mean that Plans are in compliance with the requirements of any local building codes, zoning ordinances, or other governmental regulations, and it shall be the responsibility of the Owner or applicant to comply with all codes, ordinances and regulations. It is the intent of this Declaration that the Architectural Committee shall be recognized as

a nonprofit organization for purposes of Sections 13-21-115.5, 13-21-115.7 and 13-21-116, Colorado Revised Statutes (and any successor statutes), and that individuals serving on the Architectural Committee shall, to the fullest extent permitted by such statutes, be protected from personal liability.

ARTICLE 6
VILLAS AT NORTHGATE OWNERS ASSOCIATION

Villas at Northgate Owners Association is a Colorado nonprofit corporation organized to promote the common interests of the Owners. The Association shall have the power to do anything that may be necessary or desirable to further the common interests of the Owners, to maintain, improve and enhance Common Areas, and to improve and enhance the attractiveness and desirability of the Property.

6.01 Association Structure. The Association shall have the duties, powers and rights set forth in this Declaration, Rules, and in the Articles and Bylaws. In case of conflict between this Declaration and the Bylaws, the Declaration shall control, and in case of conflict between the Articles and Bylaws, the Articles shall control. As more specifically set forth hereinafter, the Association shall have a Board of Directors to manage its affairs.

6.02 Board of Directors. The Association will be managed by its Board of Directors. The initial Board shall consist of two (2) members. Thereafter, the Board will consist of not less than three (3) nor more than five (5) members. All members of the Board must be either Owners or representatives of Declarant. The terms and qualification of the members of the Board will be fixed in the Bylaws. The Board may, by resolution, delegate portions of its authority to other committees, to officers of the Association or to agents and employees of the Association, but such delegation of authority shall not relieve the Board of the ultimate responsibility for the management of the Association. Action by or on behalf of the Association may be taken by the Board or any duly authorized committee, officer, agent or employee without a vote of Owners, except as otherwise specifically provided in this Declaration or required by Colorado law. All lawful decisions, agreements and undertakings by the Board, or its authorized representatives, shall be binding upon the Association and all Owners and other Persons.

6.03 Appointment of the Board. Declarant reserves the right to appoint and remove officers and members of the Board during the Period of Declarant Control, subject to the following:

(a) Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots that may be created to Owners other than Declarant, at least one member and not less than twenty-five percent (25%) of the Board must be elected by Owners other than Declarant; and

(b) Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots that may be created to Owners other than Declarant, at least one-third of the Board must be elected by Owners other than Declarant.

(c) The Declarant's right to appoint members to the Board terminates sixty (60) days after conveyance to Owners other than Declarant of seventy-five percent (75%) of all Lots that may be conveyed to Owners other than Declarant.

Declarant may voluntarily surrender the right to appoint and remove directors from the Board before termination of the Period of Declarant Control. However, 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 Declarant, be approved by the Declarant before they become effective.

6.04 Membership in the Association. Each Owner shall be a member of the Association. Membership shall automatically pass with fee simple title to the Lot and is not severable from the Lot. Declarant shall hold one membership interest in the Association for each Lot owned by Declarant. Membership in the Association shall not be assignable separate and apart from fee simple title to a Lot, except that an Owner may assign some or all of the Owner's rights as an Owner and as a member to a contract purchaser, tenant or First Mortgagee, and may arrange for such Person to perform some or all of such Owner's obligations as provided in this Declaration, but no such delegation or assignment shall relieve an Owner from the responsibility for fulfillment of the obligations of the Owner under the Association Documents. The rights acquired by any such contract purchaser, tenant or First Mortgagee shall be extinguished automatically upon termination of the sales contract, tenancy or First Mortgage. All rights and privileges of Association membership shall be subject to the Association Documents.

6.05 Voting Rights of Owners.

(a) Entitlement. There shall be one vote for each Lot existing within the Property. Each Owner of a Lot shall have one vote for each such Lot. Declarant shall be entitled to the number of votes equal to the number of Lots owned by Declarant.

(b) Joint or Common Ownership. If any Lot is owned by more than one Person, the vote to which such Lot is entitled shall also be held jointly or in common in the same manner as title to the Lot. However, the vote for such Lot shall be cast, if at all, as an undivided unit, and neither fractional votes nor split votes shall be allowed. If the common or joint Owners are unable to agree among themselves as to how their vote shall be cast as an undivided unit, they shall lose their right to cast their vote on the matter in question. If only one of the joint or common Owners is present at an Association meeting, that Owner shall be entitled to cast the vote belonging to the joint or common Owners, unless another joint or common Owner shall have delivered to the secretary of the Association prior to the meeting a written statement to the effect that the Owner wishing to cast the vote has not been authorized to do so by the other joint or common Owner or Owners.

(c) Proxies. Any Owner, including Declarant, may give a dated, revocable written proxy to any Person authorizing the latter to cast the Owner's votes on any matter or a particular matter. Such written proxy shall be executed by the Owner or a duly authorized attorney-in-fact. A proxy may be revoked by giving notice to the Board or by the Owner's physical presence at the meeting. Proxies shall expire no later than eleven (11) months after the date of the proxy.

6.06 General Duties and Powers of the Association.

(a) Acceptance of Property and Facilities Transferred by Declarant. The Association shall accept title to any real or personal property transferred to the Association by Declarant or by any Person with Declarant's permission, together with the responsibility to perform any and all Association functions associated therewith, provided that such property and functions are not inconsistent with the terms of this Declaration or other Association documents. Property interests transferred to the Association by Declarant may include fee simple title, easements, leasehold interests and contractual rights or licenses to use property. No representation, express or implied, is made that the Declarant will transfer property to the Association, except as may be specifically provided in this Declaration. Without limitation, the Association will accept title to Tract A, B, C, and D as shown on the Plat of Villas at Northgate.

(b) Acquisition, Encumbrance and Conveyance of Property and Improvements. The Association may acquire real or personal property or interests in such property for the common benefit of Owners. The Association may encumber or convey Common Areas, provided Owners holding sixty-seven

percent (67%) of the votes in the Association and Declarant, during the Period of Declarant Control, agree to such conveyance or encumbrance.

(c) Management and Care of Common Areas, and other Property. The Association will maintain, operate and repair all Common Areas and keep the same in an attractive and desirable condition for the use and enjoyment of Owners, tenants and other occupants of the Buildings; provided, however, maintenance responsibilities for any Common Area will not commence until Assessments commence. The Association will maintain and repair those items described in Section 4.01 (A) above. The Association may construct or reconstruct Improvements on Common Areas and other properties it has the responsibility to maintain, and may demolish existing Improvements. The Association has the power to maintain public or private rights of way and to perform maintenance on any portion of the Property or outside of the Property, whether or not owned by the Association, provided at least some of the Owners will benefit thereby or in a circumstance where such maintenance is required pursuant to a Plat, ordinance or other governmental obligation affecting some or all of the Property. Without limitation, the Association will maintain the private streets, entry features, sidewalks, signs, mailbox facilities, bicycle racks and landscaping located on or within the Common Areas and/or on any Tract shown on a Plat. The Association will ensure that all Lots have access to public streets.

(d) Adoption of Rules. The Association may adopt, amend, repeal and enforce such Rules as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration and related matters, the operation of the Association, the use and enjoyment of Common Areas, and the use of any other property within the Property, including Lots. Any such Rules will be reasonable and uniformly applied as determined by the Board in its sole discretion. Written notice of the adoption, amendment or repeal of any Rule will be provided to all Owners by the Association, and copies of the currently effective Rules will be made available to each Owner upon request. Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration. In the event of conflict between the Rules and the provisions of this Declaration, the provisions of the Declaration shall control.

(e) Grant of Easements. The Association shall have the power to grant access, utility, drainage, water facility and any other easements in, on, over or under the Common Areas for any lawful purpose, including, without limitation, the provision of emergency services, utilities, telephone, television, data transmission or other uses or services to some or all of the Owners or to facilitate the development of the Property.

(f) Power to Employ Managers, Consultants, and Employees or to Contract for Management Services. The Association shall have the power to employ employees or contract with a manager or management company and delegate to them the performance of any functions for which the Association has responsibility under this Declaration, or to contract with an owners association to perform any of the Association's functions including, without limitation, the administration and enforcement of: 1) the covenants, conditions and restrictions contained in this Declaration; 2) the Rules adopted by the Board, and 3) the Design Guidelines. Notwithstanding such delegation, the Association and the Board shall remain ultimately responsible for the performance and exercise of such duties, powers and functions. The Association may also employ or contract with one or more consultants to assist in operating and managing the Association.

(g) Enforcement of Declaration and the Rules. The Association shall have the power to enforce the provisions of the Association Documents and shall take such action as the Board deems necessary to cause compliance by Owner, tenants and occupants of Residences and other Persons. Without limiting the generality of the foregoing, the Association shall have the power to enforce the provisions of the Association Documents by any one or more of the following means: (i) by entry upon any property within the Property after Notice and Opportunity for Hearing (unless an emergency exists), without liability

to the Owner or occupants thereof, for the purpose of enforcement of or causing compliance with the Association Documents; (ii) by commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of the provisions of the Association Documents, by mandatory injunction or otherwise; (iii) subject to compliance with the requirements of engaging in alternative dispute resolution set forth in Section 12.17, by commencing and maintaining actions and suits to recover damages for breach of any of the provisions of the Association Documents; (iv) by suspension, after Notice and Opportunity for Hearing, of the voting rights of an Owner during and for up to sixty (60) days following any breach by such Owner of the Association Documents, unless the breach is a continuing breach, in which case such suspension shall continue for so long as such breach continues; (v) by levying and collecting, after Notice and Opportunity for Hearing, reasonable and uniformly applied fines and penalties, established in advance in the Rules of the Association, from any Owner or other Person for a violation by such Owner or other Person of the Association Documents; and (vi) by exercising any right or remedy permitted by law or in equity.

(h) Provision of Special Services. The Association will have the power to provide special services to an Owner or group of Owners. Without limiting the foregoing, the Association shall have the power to select and enter into a contract with one service provider to provide trash removal services for all Lots within the Property. Any services provided under this Section shall be provided pursuant to a written agreement, which will provide for payment to the Association by such Owner or group of Owners of the expenses which the Association estimates it will incur in providing such services. Such payment may be collected in any manner permitted by law or by the Association Documents.

(i) Borrowing and Pledge of Future Assessments. Upon a majority vote of the Board, the Association may borrow funds for capital or other expenses and grant a security interest in the Association's right to levy and collect assessments as collateral for such borrowing.

(j) Grant of Variance. The Association, through the Board, may grant for an Owner a variance from any provision of this Declaration upon a finding of exceptional and extraordinary circumstances where literal enforcement of the provision will create a material hardship to the Owner, and upon a finding that the variance is not contrary to the interests of the Property, the Association and other Owners. A variance may be made subject to terms and conditions approved by the Board. If a variance is denied, the Owner may not bring another application for a similar variance for a period of one year after submittal of the original request.

(k) Snow Removal, Landscape and Maintenance Services. The Association will provide general landscape maintenance services, including maintenance of irrigation systems and landscaping located on Lots, and snow removal for the private streets and sidewalks. The frequency and scope of such services shall be determined by the Board in its sole discretion.

6.07 Notice and Opportunity for Hearing. Under certain circumstances where the Board determines a hearing is necessary, and as further provided in this Declaration and Rules, an Owner or other Person alleged to be in violation of the Association Documents shall be given written notice of the violation and the opportunity to schedule a hearing before the Board or duly authorized committee or representative or, if a fine may be imposed, before an impartial decision maker, to hear evidence concerning the violation and to render a decision. If a hearing is requested, the Association shall serve a notice on the Owner or other Person stating the day, time and location of the hearing by personal delivery or by U.S. Mail, postage prepaid. The notice shall be delivered to the Owner or Person alleged to be in violation not less than ten (10) days prior to the scheduled hearing date. The Association and the Owner or Person will have the opportunity to present evidence in support of their respective positions. Within ten (10) days after the hearing, the decision maker will issue its decision. The hearing, if requested, will occur whether or not the Owner or other Person attends the hearing, absent extraordinary circumstances as determined by the

decision maker. The decision shall be final and binding. Any hearing where a fine may be imposed will also be subject to Rules adopted by the Board. If the Owner or Person fails to timely submit a written request for hearing by the deadline set forth in the initial written notice of violation, the opportunity for a hearing on the violation shall be waived.

6.08 Transfer of Records. Within sixty (60) days after the expiration of the Period of Declarant Control, Declarant shall deliver to the Association all property of the Owners and the Association held by or controlled by the Declarant, including without limitation, those items as required by the Act.

ARTICLE 7 COMMON AREAS

Declarant shall convey to the Association any land or other property right identified on a Plat or other recorded instrument as Common Area or identified as property intended to serve the needs of the Villas at Northgate community. This may include, but is not limited to, drainage facilities, fences, walls, open space, private streets, gates, trails, mailbox facilities, bicycle racks, sidewalks, entry structures and signs. Declarant may, but is not obligated to, convey any other land or property right within Villas at Northgate, and any associated personal property to the Association for its future use and benefit.

ARTICLE 8 DECLARANT'S DEVELOPMENT RIGHTS, SPECIAL RIGHTS, AND RESERVATIONS

8.01 Period of Declarant's Rights and Reservations. In addition to other rights of Declarant described elsewhere in this Declaration, Declarant shall have, retain and reserve certain rights as hereinafter set forth with respect to the Association and the Common Areas during the Period of Declarant Control. Those rights and reservations shall be deemed excepted and reserved in each conveyance by Declarant. The rights, reservations and easements hereinafter set forth shall be prior and superior to any other provisions of the Association Documents and may not, without Declarant's prior written consent, be modified, amended, rescinded, or affected by any amendment of the Association Documents.

8.02 Declarant's Development Rights. For the Period of Declarant Control, Declarant shall have the following development rights:

(a) Subject to the limitation contained in Section 8.04, Declarant may add land to and create additional Lots within the Property, but only with the consent of the owner of such land to be added; and

(b) Declarant may create additional Common Areas within the Property or convert any of the Declarant-owned Lots within the Property to Common Areas.

No assurances are made by Declarant concerning which portions of the Property may be affected by Declarant's exercise of its development rights or the order in which portions of the Property may be affected. Declarant is not obligated to exercise any of its development rights and may elect not to exercise any or all of them.

8.03 Special Declarant Rights. Declarant has the right, but not the obligation, to perform any of the following Special Declarant Rights:

(a) to complete any improvements shown on a Plat;

- (b) to exercise any development rights set forth in Section 8.02 and elsewhere in this Declaration;
- (c) to maintain anywhere within the Property, sales offices, management offices, signs advertising the Property and model homes;
- (d) to store building materials, supplies and equipment on land within the Property owned by Declarant or on another Person's property with such Person's consent; and
- (e) to use easements benefiting or burdening Common Areas for the purpose of making, maintaining, reconstructing or repairing improvements within the Property.

Declarant may transfer its Special Declarant Rights to another Person upon the recording of an instrument evidencing the transfer. Upon such transfer, the rights and liabilities of Declarant and the successor declarant shall be as set forth in the Act.

8.04 Maximum Number of Lots. Notwithstanding any other provision of this Declaration, the maximum number of Lots that Declarant may create within the Property, in the absence of an amendment to this Declaration, is 19.

8.05 Right to Complete Development. After the Period of Declarant Control has ended, Declarant shall retain the right to complete development of the Property as Declarant may elect. The Association and its Board shall not take any action impairing this continuing right of Declarant.

ARTICLE 9 ASSESSMENTS

9.01 Purpose of Assessments. The Assessments levied by the Association shall be used to pay expenses incurred in connection with the management, ownership, maintenance, repair, replacement, and insurance for the Common Areas and other properties for which the Association owns and/or has maintenance responsibility. Assessments may be General Assessments, Special Assessments or Site Assessments as determined by the Board or as provided in the Association Documents.

9.02 Declarant's Obligation. Until Assessments are first levied by the Association, Declarant shall pay the expenses of the Association.

9.03 Obligation for Assessments. Each Owner, for each Lot owned within the Property, by acceptance of a deed therefor or interest therein, whether or not it shall be so expressed in such deed, shall be deemed to covenant and agree to pay to the Association, in the manner and amounts, and at the times prescribed herein, Assessments as described in this Declaration. Assessments shall be both a personal obligation of the Owner and a lien against the Owner's Lot. Joint or common Owners shall be jointly and severally liable to the Association for the payment of all Assessments attributable to them and/or their Lot. The personal obligation for delinquent Assessments shall not pass to an Owner's successors in title or interest unless expressly assumed by them. No Owner may waive or otherwise avoid personal liability for the payment of the Assessments by non-use of the Common Areas, by non-use of any service provided by the Association for Owners, by abandonment or leasing of such Owner's Lot, or by asserting any claims against the Association, the Declarant or any other Person. Owners of Lots having the exclusive use and benefit of particular Common Areas or having services performed by the Association that are not performed for all Owners will be obligated to pay additional Assessments. In addition to the foregoing Assessments, each Owner shall have the obligation to pay real property ad valorem taxes and special assessments imposed

by Colorado governmental entities against a Lot. All property dedicated to and accepted by a governmental entity and the Common Areas will be exempt from Assessments.

9.04 General Assessments. By way of example but not by way of limitation, General Assessments may be intended to cover the following Association expenses:

- (a) expenses of management of the Association and its activities;
- (b) any taxes and special assessments levied upon the Common Areas;
- (c) premiums for all Association insurance;
- (d) common services to Owners as approved by the Board;
- (e) maintenance of landscaping on Lots, Common Areas, including the private streets and entry features, and any Association facilities or improvements located on and within Common Areas;
- (f) other repairs and maintenance that are the responsibility of the Association;
- (g) wages for Association employees and payments to Association contractors;
- (h) legal, accounting and other professional fees of the Association;
- (i) *any deficit remaining from a previous Assessment year;*
- (j) the creation of reasonable contingency reserves, surpluses, and sinking funds, and adequate reserve funds for maintenance, repairs and replacement of the Common Areas;
- (k) the creation of reasonable contingency reserves for any applicable insurance deductibles and emergencies; and
- (l) any other costs, expenses, and fees which may be incurred or may reasonably be expected to be incurred by the Board, in its sole discretion, for the benefit of the Owners under or by reason of this Declaration.

9.05 General Assessment Procedure.

(a) The obligation for any Owner to pay General Assessments shall not commence until the earlier to occur of i) a certificate of occupancy is issued for a Building on a Lot or ii) if the Owner is a builder, the date when a Building on a Lot is substantially completed and receives the benefit of services provided by the Association (e.g., without limitation, snow removal and landscape maintenance). A model used for sales purposes and not for residential occupancy by the Declarant or a builder approved by Declarant is excluded from the levy of General Assessments.

(b) After this Declaration is recorded, the Board shall set the total annual General Assessment based upon an estimated budget for the Association. In subsequent years, the Board shall set the total annual General Assessment based upon a budget of the Association's financial requirements for the following Assessment year. Within ninety (90) days after the Board adopts a proposed budget, the Board shall deliver a summary of the budget to all Owners and set a date for a meeting of the Owners to consider the budget. The proposed budget shall not require approval from the Owners and will be deemed approved

in the absence of a veto at the noticed meeting by a majority of all Owners, whether or not a quorum is present. If the proposed budget is rejected, the budget last approved by the Owners must be continued until such time as the Owners approve a subsequent budget.

(c) After the budget is approved, the Board shall mail or deliver to each Owner, at least thirty (30) days in advance of the date payment is due, a payment statement setting forth such Owner's annual General Assessment. The General Assessment shall be payable in advance in monthly or quarterly installments, or as otherwise determined by the Board, due and payable on due dates declared by the Board. Subject to Section 9.05 (a), General Assessments shall be applicable to all Lots, including those owned by Declarant. The Board may adopt Rules requiring the Owner, at the time when General Assessments first commence upon that Owner's Lot as provided in this Article, to prepay the General Assessments for the balance of the current period and an additional period which shall not exceed an additional twelve months; provided, however, such prepayment shall not relieve the Owner from any additional requirement to pay working capital pursuant to Section 9.16.

9.06 Special Assessments. The Board may levy Special Assessments to raise funds to construct or reconstruct, repair or replace improvements upon Common Areas or other property or Improvements which the Association has the responsibility to maintain; to add Common Areas; to provide for necessary facilities and equipment; to offer the services authorized in this Declaration; to correct any deficit or cost overrun; or to repay any loan made to the Association to enable it to perform the duties and functions authorized in this Declaration. No Special Assessment may be assessed until it has been approved by at least sixty-seven percent (67%) of the Owners eligible to vote on the matter. The Association will notify Owners in writing of the amount of any Special Assessment and of the manner in which any Special Assessment is payable. If, in the sole opinion and discretion of the Board, a Special Assessment will benefit less than all of the Lots, the Special Assessment may be limited to the benefited Lots only, and if so limited, only the Owners of these benefited Lots will be entitled to vote. In that circumstance, at least sixty-seven percent (67%) of the Owners of these benefited Lots (and not sixty-seven percent (67%) of all Owners), must approve the Special Assessment.

9.07 Rate of Assessments. Assessments shall be set to meet the expected needs of the Association. The rate for General Assessments and Special Assessments shall generally be determined by dividing the total General Assessments or Special Assessment, as applicable, payable for any Assessment period as determined by the budget, by the number of Lots then subject to this Declaration. The resulting quotient shall be the amount of the General Assessments or Special Assessments, as applicable, payable with respect to each Lot. If, however, in the sole opinion and discretion of the Board, certain Lots impose greater costs on the Association than do other Lots, or receive greater benefit from Association activities, Lots may be placed into different classes and Assessments, both General and Special, in different amounts may be established for each such class, with the intent that each class will pay its reasonable and fair share of the Association's overall expenses. In particular, those Lots in which the Building contains four Residences will pay a proportionately higher rate of Assessments than those Lots in which the Building contains three Residences. Any surplus funds of the Association remaining after payment of the expenses and for the reserves of the Association may be retained by the Association and not returned to the Owners or credited to payment of future Assessments.

9.08 Failure to Fix Assessment. The failure of the Board to levy an Assessment for any period shall not be deemed a waiver or modification with respect to any of the provisions of this Declaration or a release of the liability of any Owner to pay Assessments for that or any subsequent period.

9.09 Attribution of Payments. If any Assessment payment is less than the amount assessed, the sums received by the Association from that Owner shall be credited in such order of priority as the Board determines in its discretion.

9.10 Costs of Enforcement, Late Charges and Interest. If any Assessment is not paid within ten (10) days after it is due, the Owner or other Person obligated to pay the Assessment may be additionally required to pay all costs of enforcement, including without limitation, reasonable attorney's fees, court costs, witness expenses, and all related expenses ("Collection Expenses"), and to pay a reasonable late charge as determined by the Board. Any Assessment not paid within thirty (30) days after the date of a notice of default shall bear interest from the due date at a rate determined by the Board, not to exceed eighteen percent (18%) per annum.

9.11 Notice of Default and Acceleration of Payments. If any Assessment is not paid within thirty (30) days after its due date, the Board will mail a notice of default to the Owner and to each First Mortgagee of the Lot which has requested a copy of such notice. The notice shall substantially set forth (a) the fact that the installment is delinquent; (b) the action required to cure the default; (c) a date not less than twenty (20) days from the date of mailing of the notice by which such default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in foreclosure of the lien for the Assessment against the Owner's Lot. Any default notice and action upon a default will be in compliance with the Rules and C.R.S. §33-33.3-209.5, as may be amended. A default shall not be considered cured unless the past due sums, collection expenses, interest, and all sums coming due through the date of payment are paid to the Association. If the delinquent Assessment and any Collection Expenses, late charges or interest thereon, plus any other sums due as of the date of the payment, are not paid in full on or before the date specified in the notice, the Board, at its option, may enforce the collection of the Assessment and all Collection Expenses, charges and interest thereon in any manner authorized by law or in the Association Documents.

9.12 Remedies to Enforce Assessments. Each Assessment levied hereunder shall be a separate, *distinct and personal debt and obligation of the Owner against whom it is assessed.* In the event of a default in payment of an Assessment, the Board may, in addition to any other remedies provided under the Association Documents or by law, enforce such obligation on behalf of the Association by suit or by filing and foreclosure of a lien as hereinafter provided. Each Owner, by acceptance of a deed to a Lot, whether or not it is expressed in such deed, is deemed to covenant and agree to pay to the Association all Assessments, together with interest, late charges, and Collection Expenses, and this covenant shall be a charge on the land and a continuing lien upon the Lot against which the Assessment is made. The lien created hereby shall exist from the date of each Assessment until all sums are paid, whether or not a Notice of Lien is filed in accordance with Section 9.13.

9.13 Lien to Enforce Assessments. The Association shall have a lien for Assessments (the "Lien") as provided in Section 38-33.3-316, Colorado Revised Statutes, and any successor statute. In addition to or in lieu of bringing suit to collect Assessments, the Association may foreclose its Lien as provided by law and in this Section 9.13. The Board may elect (but is not required) to file a claim of Lien against the Lot of the defaulting Owner by recording a notice ("Notice of Lien") substantially setting forth: (a) the amount of the claimed delinquency, (b) the interest and expenses of collection which have accrued; (c) the legal description and street address of the Lot against which the Lien is claimed, and (d) the name of the record Owner. Such Notice of Lien shall be signed and acknowledged by an officer of the Association or other duly authorized agent of the Association. The Lien shall have the priority provided by the Act, and shall be prior to any homestead rights of an Owner, which rights are, with respect to a Lien, waived by the acceptance of a deed to the Lot upon which the Lien is asserted. The Lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Lien, including, without limitation, all Collection Expenses, court costs, recording costs and filings fees, have been fully paid or satisfied, the Association shall execute and record a notice releasing the Notice of Lien, upon payment by the Owner of a reasonable fee as fixed by the Board to cover the cost of preparing and recording the release of the Notice of Lien. Unless paid or otherwise

satisfied, the lien may be foreclosed through a Colorado court of competent jurisdiction in accordance with the laws of the State of Colorado applicable to foreclosures of real estate mortgages (not including public trustee foreclosures of deeds of trust), or in any other manner permitted by law. The Association shall have the right and power to bid on the Lot at the sale and to acquire and hold, lease, mortgage and convey the same.

9.14 Estoppel Certificates. Upon the payment of a reasonable fee as may be determined from time to time by the Board, and upon the written request of any Owner and any Person having, or intending to acquire, any right, title or interest in the Lot of such Owner, the Association shall furnish a written statement setting forth the amount of any Assessments or other amounts, if any, due and accrued and then unpaid with respect to a Lot and the Owner, and setting forth the amount of any Assessment levied against such Lot which is not yet due and payable.

9.15 No Offsets. All Assessments shall be payable in the amounts specified in the levy, and no offset, abatement or reduction shall be permitted for any reason whatsoever, including, without limitation, any claim that the Association or Board is not properly exercising its duties and powers under this Declaration, or for inconvenience or discomfort arising from any activity of the Association, or the non-use by an Owner of Common Areas or services provided by the Association or because an Owner claims that a particular function funded by the Assessment does not benefit that Owner directly, or for any other reason.

9.16 Working Capital Fund. The Board shall require the first Owner of a Lot at the time General Assessments commence, and thereafter, upon the subsequent conveyance of a Lot to a new Owner, to make a nonrefundable contribution to the Association of an amount not greater than one-half of the annual General Assessment, which contribution shall be held by the Association as and for working capital. Such contribution will be nonrefundable, but if the Association determines that such sums are not required for working capital, they shall be placed in the general revenues of the Association. The working capital contribution shall be in addition to the Assessments, and shall not relieve an Owner from paying all Assessments as they come due.

9.17 Site Assessments. In addition to levying other Assessments authorized herein, the Board may levy a Site Assessment against any Owner and that Owner's Lot if the willful or negligent acts or omissions of the Owner cause any violation of the Association Documents or cause any loss or damage to the Association or Common Areas or cause any expenditure of funds in connection with the enforcement powers of the Association. By way of example, but not by way of limitation, if the Association must perform an act of maintenance or repair which is the obligation of an Owner to perform, the Board may levy a Site Assessment against the Owner and the Owner's Lot in the amount of the reasonable cost incurred by the Association in remedying the Owner's default. Except for a default consisting solely of a failure to timely pay any Assessment, a Site Assessment under this Section shall be levied only after Notice and Opportunity for Hearing. The amount of the Site Assessment shall be due and payable to the Association upon notice by the Board that the Site Assessment is owing. The Site Assessment imposed on an Owner under this Section shall include the cost of such maintenance, repair or replacement performed by the Association, together with any administrative, legal, financing and Collection Expenses, and the Association shall have a lien to secure payment of such Site Assessment as provided in this Article. Imposition or non-imposition of Site Assessments under this Section shall not preclude the Association from pursuing all other legal or equitable rights and remedies against an Owner or other Person responsible for the loss or damage, or otherwise defaulting on an obligation imposed on such Owner by this Declaration.

ARTICLE 10
INSURANCE AND CASUALTY

10.01 Association Insurance. The Association shall maintain, to the extent reasonably available, the following types of insurance:

(a) Property. Property insurance on the Common Areas for broad form covered causes of loss; except the total amount of the insurance must be not less than the full insurable replacement cost of the insured property, less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of items normally excluded from property policies. Such insurance maintained by the Association pursuant to this Section shall afford protection against at least the following:

(i) loss or damage by fire and all other hazards that are normally covered by the standard extended coverage endorsement, and

(ii) such other risks as shall customarily be covered with respect to similar types of projects including those covered by standard "all risk" endorsement including, without limitation, endorsements for vandalism and malicious mischief, and

(iii) any damage which is caused by or originating from the Common Areas and which is the responsibility of the Association to repair or remedy.

(b) General Liability. Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Areas, in an amount deemed sufficient in the judgment of the Board but not less than One Million Dollars (\$1,000,000.00) per occurrence covering claims for personal injury, bodily injury and/or for property damage, insuring the Board, the Association, any management agent, and their respective employees, agents, and all Persons acting as agents. The Declarant shall be included as an additional insured in such Declarant's capacity as an Owner and Board member, as applicable. Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Areas. The insurance shall cover claims of one or more insured parties against other insured parties. Coverage shall include, without limitation, liability for personal injuries and operation of automobiles (whether owned, non-owned or hired) on behalf of the Association.

(c) Other Insurance. The Association may obtain such other insurance as the Board shall determine to be prudent or required by law with respect to the Association's responsibilities and duties such as, without limitation, fidelity, worker's compensation and officers' and directors' liability insurance.

(d) Notice of Unavailability. If any insurance described in this Declaration is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy having been obtained, the Association shall notify all Owners and First Mortgagees of such event as provided in this Declaration.

(e) Annual Review. The Board will review its insurance coverage annually.

(f) Association Insurance Policy Provisions. All insurance shall be carried in blanket form naming the Association as insured, as trustee and attorney-in-fact for all of the Owners and First Mortgagees as their interests may appear, and shall identify the interest of each Owner and the First Mortgagees. Insurance policies carried by the Association shall provide, to the extent reasonably available:

(i) Each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Areas or membership in the Association;

(ii) The insurer waives its rights to subrogation under the policy against the Association, its officers and directors, Declarant and any Owner, guest or tenant;

(iii) No act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and

(iv) If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

(g) Insurer. All insurance shall be procured from a reputable insurance company authorized to do business in Colorado and shall provide that the policy may not be canceled or altered except upon thirty (30) days' prior written notice to the Association (10 days' notice if canceled for non-payment). The insurer issuing a policy for the Association shall issue a certificate of insurance to the Association and, upon request, to any Owner or First Mortgagee.

10.02 Owner's Insurance. Each Owner, at its sole expense, shall provide liability insurance covering the Owner's Lot and property insurance covering the Building, including fixtures, improvements, and personal property, in the amounts and type each Owner deems desirable. Insurance obtained by an Owner shall waive the insurance company's right of subrogation against the Association, its officers, directors, employees and agents, and Declarant, and shall name the Association as an additional insured.

10.03 Association as Attorney-in-Fact. The Association is hereby irrevocably appointed as insurance trustee, pursuant to C.R.S. §§ 38-33.3-313 (5) and (9) of the Act and this Declaration, and as attorney-in-fact to deal with the Property in the event of its destruction or damage including without limitation the repair or replacement of any Common Area or other portion of the Property which has been destroyed or damaged and which is subject to insurance provided by the Association. Acceptance by any grantee of a deed or other instrument of conveyance of a Lot shall constitute appointment of the Association as attorney-in-fact. Any proceeds received from any proceedings, settlements or agreements related to the Property shall be payable to the Association for the benefit of the Owners and their First Mortgagees. As attorney-in-fact, the Association, by its duly authorized officers and agents, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other instrument with respect to the interest of an Owner which may be necessary and appropriate to exercise the powers herein granted. Notwithstanding any contrary provision of this Declaration, no Owner or any other party shall have priority over any rights of the First Mortgagee of the Lot pursuant to its First Mortgage in the case of a distribution to such Owner of insurance proceeds.

Any loss covered by the property insurance policy described in this Article must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Owners and lienholders as their interests may appear. Subject to the provisions of Section 10.04 (a) below, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Owners, and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Property has been completely repaired or restored or the community is terminated.

10.04 Destruction and Damage.

(a) Repair or Reconstruction. Any insurance proceeds payable upon damage or destruction of Common Areas received by the Association shall be applied by the Association to promptly repair or replace the Common Area damaged or destroyed, unless: i) the community is terminated, in which case C.R.S. section 38-33.3-218 of the Colorado Act applies; ii) repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; or iii) sixty-seven percent (67%) of the Owners vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If the entire community is not repaired or replaced, the insurance proceeds attributable to the damaged Common Areas must be used to restore the damaged area to a condition compatible with the remainder of the community and the remainder of the proceeds must be distributed to all the Lot Owners or lienholders, as their interests may appear, in proportion to the common expense liabilities of all the Lots.

(b) Insufficient Insurance Proceeds. If the proceeds from the Association's property insurance are not sufficient to cover the full cost of repair or replacement of the Common Areas, the Board may levy an assessment against the Owners to pay for the repairs or replacement of the Common Areas.

ARTICLE 11 EASEMENTS

11.01 Easement for Encroachments. The Property shall be subject to all recorded licenses and easements including, without limitation, those identified on the attached **Exhibit B** incorporated by this reference, and any shown on a recorded Plat of the Property. If any portion of an Improvement not owned by the Association encroaches upon a Common Area, including any future encroachments arising or resulting from erosion or subsidence, or from the repair or reconstruction of an Improvement, the Board may grant an easement or license for the maintenance of same, for so long as such encroachment exists, but subject to any conditions or restrictions imposed by the Board.

11.02 Association Easement. An easement to perform its maintenance or other rights or obligations pursuant to this Declaration is granted to the Association, its officers, agents, employees and assigns, upon, across, over, in and under all property within the Property, including Lots, together with the right to make such use of the Property as may be necessary or appropriate in carrying out such maintenance or other rights or obligations.

11.03 Declarant Easements. Declarant reserves for itself, its successors and assigns, perpetual and non-exclusive easements for ingress and egress, on, over and across Common Areas within the Property. Declarant further reserves, for itself, its successors and assigns, a perpetual and non-exclusive easement on, over and across all Lots within the Property for the purpose of erecting and maintaining perimeter walls, fencing and any landscaping or other amenities within any easement or public right of way as shown on a Plat or other recorded instrument, or as required by any governmental agency having jurisdiction over the Property. Such easement shall be appurtenant to and shall run with all real property within the Property now or hereafter owned by Declarant, its successors or assigns, and such easements shall automatically be conveyed to any successor of Declarant as the developer of the Property whether or not the easement is expressly conveyed in any deed or conveyance transferring real property within the Property to such successor. Upon the expiration of the Period of Declarant Control, the easements created by this Section shall be automatically transferred to the Association in order to allow the Association to carry out maintenance and repair responsibilities assigned to it by this Declaration or otherwise assumed by the Association.

11.04 Easements for Utilities and Drainage. Declarant creates and reserves to itself until Declarant has sold the last Lot in the Property to an Owner other than Declarant, and thereafter to the Association, perpetual, alienable, divisible and releasable easements and the right from time to time to grant such easements to others over, under, in and across each of the utility easements of each Lot as shown on a Plat for the placement of utilities, drainage structures or other similar purposes, together with a blanket easement across, over and under the Common Areas for access, utilities, drainage and the installation, replacement, repair and maintenance of utilities and drainage facilities.

11.05 Easement for Emergency Vehicles. There is hereby granted an easement for emergency vehicles, including fire, police and ambulance, to enter upon any portion of the Property for emergency and other official purposes.

11.06 Matters of Record. In addition to the easements created in this Article and on any Plat, the Property is subject to all other easements, reservations and restrictions of record in El Paso County, Colorado including, without limitation, those matters identified in the attached **Exhibit B**.

ARTICLE 12 MISCELLANEOUS

12.01 Term of Declaration. Unless amended as herein provided, all provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration shall be effective for twenty (20) years following the date this Declaration was originally recorded, and thereafter shall be automatically extended for successive periods of ten (10) years each unless terminated by agreement of the Owners with at least sixty-seven percent (67%) of the voting power of the Association, in the manner provided in Section 38-33.3-218, Colorado Revised Statutes, and any successor statute.

12.02 Amendment of Declaration by Declarant. Declarant may amend or repeal any provisions, covenants, conditions and restrictions of this Declaration by the recordation of an instrument setting forth such amendment or repeal and upon the satisfaction of one or more of the following conditions:

- a) The conveyance of the first Lot by recorded deed to an Owner other than Declarant has not yet occurred;
- b) A government agency requires an amendment or repeal as a condition to making, purchasing, insuring or guaranteeing mortgages, or an amendment or repeal is required in order to comply with the requirements, standards or guidelines of recognized secondary mortgage markets, HUD, FHA or other government mortgage agency;
- c) An amendment or repeal is necessary or useful for the exercise of Declarant's development rights as set forth in this Declaration, including but not limited to the inclusion of additional land within the scope of this Declaration and the creation of additional Lots.

12.03 Amendment of Declaration by Owners. Except as otherwise provided in this Declaration, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended or repealed upon approval by Owners with at least sixty-seven percent (67%) of the voting power of the Association, in accordance with the requirements of Section 38-33.3-217, Colorado Revised Statutes, and any successor statute. During the Period of Declarant Control, Declarant must also approve in writing any amendment to this Declaration that is approved by the Owners.

12.04 Implied Approval of First Mortgagees. Any First Mortgagee shall be given notice of any proposed action of the Association if the Association has been provided with a written request for notice, stating both the First Mortgagee's name and address and the Lot number or address of the Lot on which it

has the First Mortgage. To the extent any law or provision of this Declaration requires the vote of a First Mortgagee on an issue, approval by a First Mortgagee shall be assumed if the First Mortgagee fails to respond in writing to a written request for a vote within sixty (60) days after receipt of notice from the Association.

12.05 Notices. Any notice permitted or required to be given under this Declaration shall be in writing and may be served either personally or by U.S. Mail. If served by U.S. Mail, each notice shall be sent postage prepaid, addressed to any Person at the address given by such Person to the Association for the purpose of service of such notice, or to the Lot of such Person if no address has been given to the Association, and shall be deemed given, if not actually received earlier, at 5:00 p.m. on the second business day after it is deposited in a regular depository of the United States Postal Service. Such address may be changed from time to time by notice in writing to the Association.

12.06 Persons Entitled to Enforce Declaration. The Declarant, the Association (acting by authority of the Board) or any Owner (acting on such Owner's own behalf), shall have the right but not the obligation to enforce any or all of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration, or other Association Documents. The right of enforcement shall include the right to bring an action for damages, as well as an action to enjoin any violation of any provision of the Association Documents, and all other rights and remedies provided in the Association Documents or available at law or in equity.

12.07 Violations of Law. Except as specifically provided in the next sentence, any violation of any federal, state, county or municipal law, ordinance, rule or regulation, pertaining to the ownership, occupation or use of any property within the Property is declared to be a violation of this Declaration and shall be subject to any and all of the enforcement procedures set forth in this Declaration. Except as may be required under the Act, the Association may not allege a violation of law against Declarant on behalf of Owners for matters not related to Common Areas.

12.08 Remedies Cumulative. Each remedy provided under the Association Documents is cumulative and not exclusive.

12.09 Costs and Attorney's Fees. Except for any action brought by or against the Declarant, in any action or proceeding under the Association Documents, a party seeking to enforce the Association Documents who prevails shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorney's fees.

12.10 Limitation on Liability. The Association, the Board, the Architectural Committee and Declarant, and any agent or employee of any of the same, shall not be liable to any Person for any action or for any failure to act if the action or failure to act was in good faith and without malice.

12.11 No Representations or Warranties; Disclaimer; Statute of Limitations. **Except as may be provided in a separate written agreement, and except as expressly prohibited by Colorado law, no representations or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant, its members, managers or agents, in connection with any portion of the Property, the Common Areas, or any Lot, as to their physical condition, construction, environmental condition, soils conditions, zoning, compliance with applicable laws, fitness for intended use, or in connection with the creation of the owners association, or in connection with the lease, subdivision, sale, operation, maintenance, cost of maintenance, assessments, taxes or regulation of the Property. Each Owner, on behalf of itself and its heirs, successors and assigns, by acceptance of a deed to a Lot, accepts the foregoing disclaimer and releases Declarant, its officers, directors, members, managers and agents, from all claims related thereto. Each Owner also waives and releases Declarant, its**

officers, directors, members, managers, and agents, from all claims of personal injury, property damage, and incidental or consequential damages arising out of or in connection with the Property, the Common Areas, or a Lot. The statute of limitations for any claims against Declarant arising out of construction on or within Common Areas shall commence upon the date of substantial completion of the construction.

12.12 Governing Law. The Association Documents shall be construed and governed in accordance with the laws of the State of Colorado.

12.13 Severability. Each of the provisions of the Association Documents shall be deemed independent and severable, and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of any other provision.

12.14 Number and Gender. Unless the context requires a contrary construction, as used in the Association Documents, the singular shall include the plural and the plural, the singular and the use of any gender shall include all genders.

12.15 Captions for Convenience. The titles, headings and captions used in the Association Documents are intended solely for convenience of reference and are not intended to affect the meaning of any provision of this Declaration.

12.16 Merger and Consolidation. The Association may merge with another association to the extent permitted by law. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or alternatively, the properties, right and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the covenants, conditions and restrictions established by this Declaration governing the Property, together with the covenants, conditions and restrictions established upon any other property, as one plan.

12.17 Alternative Dispute Resolution. The use of alternative dispute resolution methods (e.g., mediation, arbitration) rather than court action to resolve disputes arising out of the Association Documents is encouraged. The Board may adopt Rules concerning alternative dispute resolution processes that will be used in resolving disputes involving the Association.

12.18 Assignment by Declarant. At such time as Declarant has conveyed all of its interest in the Property to other Owners, the Association shall automatically succeed to all of the rights, powers, reservations and duties of Declarant contained in this Declaration that have not been assigned by Declarant to another Person. Upon that event, the Association shall be deemed to be an assignee of Declarant and Declarant shall be released from all liabilities, obligations and duties under this Declaration.

12.19 Acknowledgement of Ongoing Construction and Development Activities. By accepting a deed to a Lot, each Owner acknowledges and accepts that construction and development activities will occur on and within the Property and adjacent and surrounding real property. This Declaration shall not be interpreted so as to unreasonably interfere with or prevent normal construction of Improvements on the Property by Declarant, builders or Owners; provided that when an Improvement is completed, it shall conform to this Declaration. Each Owner specifically acknowledges that construction activities shall not be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities.

12.20 Arbitration; Waiver of Jury Trial. In Declarant's sole discretion, any dispute or claim arising from this Declaration or the Association Documents that cannot be informally resolved by the parties will be submitted to binding arbitration and conducted in accordance with Title 9 of the U.S. Code, the Colorado Uniform Arbitration Act, C.R.S. § 13-22-201, et seq., and the Commercial Arbitration Rules of the American Arbitration Association. Should an action be brought against Declarant or a builder by a Person who is not subject to this Declaration, the terms of this Section shall apply to such action. The parties will mutually agree on the selection of one neutral arbitrator with experience in the subject matter of the dispute to preside over the arbitration. If the parties cannot agree, then each party shall select an arbitrator who would otherwise qualify under this Section, and those arbitrators shall together select the single neutral arbitrator to preside over the arbitration.

The parties shall be entitled to conduct discovery as if the dispute were pending in a Colorado court of law, although the Colorado Rules of Civil Procedure concerning discovery may be modified upon the parties' mutual agreement or by the arbitrator's order. The arbitrator shall be empowered to decide pre-hearing motions to dismiss and motions for summary adjudication. Judgment upon the award rendered may be entered in any court having jurisdiction. The arbitrator has the discretion to award reasonable attorney fees and costs to the prevailing party. The arbitration shall be held in El Paso County, Colorado unless the parties agree to a different location. Venue is proper in the District Court for El Paso County, Colorado. **THE ASSOCIATION, EACH OWNER AND DECLARANT WAIVE ANY RIGHT TO JURY TRIAL IN THE EVENT OF ANY LITIGATION.**

12.21 Interpretative Authority Resolves Questions of Construction. If any doubt or question should arise concerning the true intent or meaning of any of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration, the Declarant, during the Period of Declarant Control, and thereafter, the Board (each, the "Interpretive Authority"), shall determine the proper construction of the provisions in question. However, any interpretation of a provision of the Declaration after the Period of Declarant Control that affects or involves the rights, duties and obligations of Declarant shall be determined by the District Court of El Paso County, Colorado. Any interpretation of a provision of the Declaration given by the Interpretive Authority or the court, as applicable, shall set forth the meaning, effect, and application of the provision in a written instrument duly acknowledged by the Interpretive Authority and recorded in the records of El Paso County, Colorado. This determination will thereafter be binding on all parties so long as it is not arbitrary or capricious.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, Declarant and the Association have executed this Declaration to be effective as of the day and year first written above.

Declarant:

VILLAS AT NORTHGATE, LLC
a Colorado limited liability company

By: _____

Peter Martz, Manager

STATE OF COLORADO)
) ss.
COUNTY OF EL PASO)

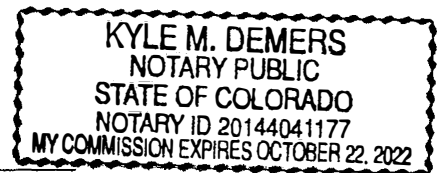
The foregoing instrument was acknowledged before me this 21 day of Dec, 2018, by Peter Martz, Manager of Villas at Northgate, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 10/22/2022

[SEAL]

Notary Public



Association:

VILLAS AT NORTHGATE OWNERS ASSOCIATION
a Colorado nonprofit corporation

By: _____

Peter Martz, President

STATE OF COLORADO)
) ss.
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 21 day of Dec, 2018, by Peter Martz, President of Villas at Northgate Owners Association, a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: 10/22/2022

[SEAL]

Notary Public

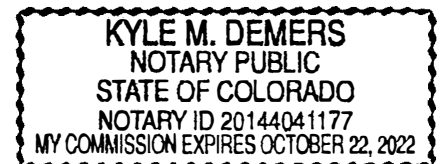


EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

LOTS 1 THROUGH 19, AND TRACTS A, B, C, and D, VILLAS AT NORTHGATE, CITY OF
COLORADO SPRINGS, COUNTY OF EL PASO, STATE OF COLORADO

EXHIBIT B

EASEMENTS AND OTHER RECORDED DOCUMENTS

1. (A) UNPATENTED MINING CLAIMS; (B) RESERVATIONS OR EXCEPTIONS IN PATENTS OR IN ACTS AUTHORIZING THE ISSUANCE THEREOF; (C) WATER RIGHTS, CLAIMS OR TITLE TO WATER.
2. RESTRICTIVE COVENANTS, WHICH DO NOT CONTAIN A FORFEITURE OR REVERTER CLAUSE, BUT OMITTING ANY COVENANTS OR RESTRICTIONS, IF ANY, BASED UPON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, HANDICAP, NATIONAL ORIGIN, ANCESTRY, OR SOURCE OF INCOME, AS SET FORTH IN APPLICABLE STATE OR FEDERAL LAWS, EXCEPT TO THE EXTENT THAT SAID COVENANT OR RESTRICTION IS PERMITTED BY APPLICABLE LAW, AS CONTAINED IN INSTRUMENT RECORDED JUNE 19, 1998, UNDER RECEPTION NO. 98084696.
3. RESTRICTIVE COVENANTS, WHICH DO NOT CONTAIN A FORFEITURE OR REVERTER CLAUSE, BUT OMITTING ANY COVENANTS OR RESTRICTIONS, IF ANY, BASED UPON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, HANDICAP, NATIONAL ORIGIN, ANCESTRY, OR SOURCE OF INCOME, AS SET FORTH IN APPLICABLE STATE OR FEDERAL LAWS, EXCEPT TO THE EXTENT THAT SAID COVENANT OR RESTRICTION IS PERMITTED BY APPLICABLE LAW, AS CONTAINED IN INSTRUMENT RECORDED JULY 24, 1998, UNDER RECEPTION NO. 98103209.
4. TERMS, CONDITIONS, AND PROVISIONS CONTAINED IN NORTHGATE PUMP STATION AGREEMENT RECORDED JULY 15, 1997, UNDER RECEPTION NO. 97081479.
5. TERMS, CONDITIONS, AND PROVISIONS CONTAINED IN AMENDED AND RESTATED NORTHGATE ANNEXATION AGREEMENT RECORDED JUNE 18, 1998 UNDER RECEPTION NO. 98083667.
6. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF N.C. FOUNDATION SUBDIVISION FILING NO. 1 RECORDED OCTOBER 25, 2001 UNDER RECEPTION NO. 201155059.
7. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN PERMANENT EASEMENT AGREEMENT RECORDED JUNE 12, 2002 UNDER RECEPTION NO. 202095205.
8. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN PERMANENT EASEMENT AGREEMENT RECORDED JUNE 18, 2002 UNDER RECEPTION NO. 202098996.
9. ANY FACTS, RIGHTS, INTERESTS OR CLAIMS WHICH MAY EXIST OR ARISE BY REASON OF THE FOLLOWING MATTERS SHOWN ON ALTA/NSPS LAND TITLE SURVEY CERTIFIED MARCH 23, 2018 PREPARED BY EDWARD-JAMES SURVEYING, INC., JOB NO. 1805-00: A: FENCE LINE ALONG PERIMETER OF PROPERTY IS NOT COINCIDENT WITH THE SURVEYED BOUNDARY LINE.