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J. PATRICK KELLY
EL PASO COUNTY RECORDS & CLERK'S OFFICE

DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS
FOR
NORTHGATE RESIDENTIAL PROPERTIES

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THIS DECLARATION is made this 8th day of July, 1997 by Picolan, Inc., a Colorado corporation ("Declarant"), which is the owner of all of the real property described on the attached Exhibit A and other real property in the City of Colorado Springs, El Paso County, Colorado, which may be hereafter made subject to this Declaration in accordance with its terms.

ARTICLE 1

DEFINITIONS

Unless otherwise expressly provided in this Declaration, the following capitalized words and phrases, whenever used in this Declaration, shall have the meanings set forth in this Article 1.

Section 1.1 Architectural Approval Authority.

"Architectural Approval Authority" shall mean the Person, committee or other entity responsible for architectural approval of Improvements, as described in Section 5.1 of this Declaration.

Section 1.2 Assessment.

"Assessment" shall mean the assessment imposed by the Association to pay the Common Expenses, as provided in Article 4 of this Declaration.

Section 1.3 Association.

"Association" shall mean Northgate Business Owners Association, a Colorado nonprofit corporation, its successors and assigns. The address of the Association shall be 2326 Wood Avenue, Colorado Springs, Colorado 80907; provided, however, that the Association may change its address from time to time by notice to the Owners, and the method of notice may include the recording of a notice of change of address in the real property records of El Paso County, Colorado. The Owners are not members of the Association and shall not participate in the affairs or governance of the Association, except as expressly and specifically set forth in this Declaration, but the Owners are obligated to pay Assessments to the Association.

Section 1.4 Board.

"Board" shall mean the board of directors of the Association.

Section 1.5 Builder.

"Builder" shall mean any Person (other than Declarant) who purchases one or more Lots for the purpose of constructing a Residence or Residences for later sale to consumers or purchases one or more parcels of land within the Northgate Residential Properties for further subdivision, development, improvement and/or resale in the ordinary course of such Person's business. Any Person occupying or leasing a Lot for residential purposes shall cease to be considered a Builder with respect to such Lot immediately upon occupation of the Lot for residential purposes, notwithstanding that such Person originally purchased the Lot for the purpose of constructing a Residence for later sale to consumers.

Section 1.6 Common Elements.

"Common Elements" shall mean any real property, Landscaping and Improvements hereafter designated as Common Elements by Declarant in amendments to this Declaration or other instruments executed by Declarant and recorded in the real property records of El Paso County, Colorado. Generally, the Common Elements will consist of Landscaped areas, street medians, trails, walks and fences along

the public streets within the Northgate Residential Properties known as Voyager Parkway and Middle Creek Road, irrigation equipment and facilities within such areas, and entry monuments, walls and features at the main entrances to some subdivisions within the Northgate Residential Properties. Some of the Common Elements may be owned by the Association, some may be located on real property owned by Owners and some may be within public rights-of-way dedicated to the City of Colorado Springs.

Section 1.7 Common Expenses. "Common Expenses" shall mean any and all of the following costs and expenses:

- (a) the actual and estimated costs of care, management, operation, maintenance, repair, restoration and replacement of Common Elements;
- (b) the costs of insurance carried by the Association to insure the Common Elements;
- (c) the costs of establishing and funding a reasonable reserve for the repair and replacement of Common Elements;
- (d) the costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to employees, managers, accountants, attorneys and other agents;
- (e) the costs of bonding of the members of the Board or officers, employees or agents of the Association;
- (f) the costs incurred by the Association in enforcing the provisions of this Declaration or collecting Assessments, including, but not limited to, court costs and attorneys' fees; and
- (g) any other costs or expenses incurred by the Association in connection with the Common Elements or reasonably related to the purposes of the Association, for the common benefit of the Owners.

Section 1.8 Declarant. "Declarant" shall mean Picolan, Inc., a Colorado corporation, its successors and assigns. A Person shall be deemed a "successor" or "assign" of Picolan, Inc. as Declarant only if specifically designated in a duly recorded instrument as a successor or assign of Declarant under this Declaration, and shall be deemed a successor and assign of Declarant only as to the particular rights or interests of Declarant under this Declaration that are specifically designated in the written instrument. Notwithstanding the foregoing, a successor to Picolan, Inc. by consolidation or merger shall automatically be deemed a successor or assign of Picolan, Inc. as Declarant under this Declaration.

Section 1.9 Declaration. "Declaration" shall mean this Declaration of Covenants, Conditions, Restrictions and Easements for Northgate Residential Properties, in its entirety, including all attached exhibits and all subsequent amendments.

Section 1.10 Design Guidelines. "Design Guidelines" shall mean standards, rules and guidelines applicable to Residences and Improvements that may be promulgated and adopted by the Architectural Approval Authority from time to time, as more particularly described in Section 5.2 of this Declaration. Different areas and types of Residences and Improvements within the Northgate Residential Properties may have different Design Guidelines.

Section 1.11 Expansion Property. "Expansion Property" shall mean the real property described on Exhibit B to this Declaration.

Section 1.12 First Mortgage. "First Mortgage" shall mean and refer to any unpaid and outstanding deed of trust, mortgage or other security instrument recorded in the real property records of El Paso County, Colorado, pertaining to a Lot and having priority of record over all other recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments).

Section 1.13 First Mortgagee. "First Mortgagee" shall mean and refer to any Person named as a mortgagee or beneficiary under any First Mortgage.

Section 1.14 Improvements. "Improvements" shall mean all structures, objects and things and any appurtenances thereto or components thereof of every type or kind, including, but not limited to, buildings, outbuildings, swimming pools, patio covers, awnings, painting or other finish material of any exterior surfaces of any visible structure, additions, walkways, bicycle and/or pedestrian trails, sprinkler pipes, garages, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, fixtures, Landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior tanks, solar equipment, and exterior air conditioning and water softener fixtures. "Improvements" shall also mean an excavation or fill the volume of which exceeds two cubic yards, and any excavation, fill, ditch, diversion dam or other thing or device that affects or alters the natural flow of surface waters upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel upon or across any Lot.

Section 1.15 Landscaping. "Landscaping" shall mean live plants or plant materials, wood chips, crushed stone, decorative rocks, mulch materials or other decorative materials on the ground or surface of any real property within the Northgate Residential Properties. For purposes of this definition, the word "Landscaping" shall include all other forms of the word Landscaping, such as "Landscape" and "Landscaped."

Section 1.16 Lot. "Lot" shall mean a parcel of land subject to this Declaration that is platted as a lot in accordance with the subdivision ordinances of the City of Colorado Springs, which may be independently owned and conveyed and upon which one Residence is or may be constructed.

Section 1.17 Northgate Residential Properties. "Northgate Residential Properties" shall mean the real property described on Exhibit A to this Declaration, together with any additional real property hereafter made subject to this Declaration pursuant to its provisions.

Section 1.18 Owner. "Owner" shall mean the Person, whether one or more, excluding Declarant and the Association but including Builders, owning fee simple title to a Lot, as shown in the real property records of El Paso County, Colorado from time to time.

Section 1.19 Person. "Person" shall mean a natural person, a corporation, a partnership, a limited liability company, a trust, a fiduciary acting on behalf of another person, and any other legal entity.

Section 1.20 Residence. "Residence" shall mean a building on a Lot used or intended for use as a single-family dwelling.

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Section 1.21 Subdivision Covenants. "Subdivision Covenants" shall mean any declaration of covenants, conditions and restrictions, other than this Declaration, affecting any of the Northgate Residential Properties. Declarant contemplates that Subdivision Covenants will be recorded by Declarant or Builders with respect to all subdivisions platted within the Northgate Residential Properties.

ARTICLE 2

GENERAL PROVISIONS

Section 2.1 Purposes of Declaration. This Declaration is executed and recorded (a) in furtherance of a common and general plan for those parcels of land that are part of the Northgate Residential Properties; (b) to protect and enhance the quality, value, desirability and attractiveness of all property within the Northgate Residential Properties; (c) to provide for the ownership, maintenance and management of the Common Elements; (d) to provide for Assessments to pay the costs of owning, maintaining, managing and insuring the Common Elements; (e) to provide for architectural control; and (f) to define certain duties and rights of the Owners, Builders and Declarant.

Section 2.2 Declaration. Declarant, for itself, its successors and assigns, hereby declares that the Northgate Residential Properties shall be owned, held, transferred, conveyed, sold, leased, rented, encumbered, used, occupied, maintained, altered and improved subject to the covenants, conditions, restrictions, limitations, reservations, exceptions and other provisions set forth in this Declaration, all of which are declared to be a part of and in furtherance of a common and general plan of development, improvement, enhancement and protection of the Northgate Residential Properties. The provisions of this Declaration are intended to and shall run with the land and, until their expiration in accordance with Section 10.1 hereof, shall bind, be a charge upon and inure to the mutual benefit of (a) all of the property within the Northgate Residential Properties and each part or parcel thereof; (b) Declarant and its successors and assigns; (c) the Association and its successors and assigns; and (d) all other Persons having or acquiring any right, title or interest in any property that is or hereafter becomes part of the Northgate Residential Properties or any part or parcel thereof or any Improvement thereon, and their encumbrances, claimants, heirs, personal representatives, successors and assigns.

Section 2.3 Exemption from Colorado Common Interest Ownership Act. The Northgate Residential Properties constitute a "common interest community" in the nature of a "planned community," as those terms are defined in the Colorado Common Interest Ownership Act, Sections 38-33.3-101, et seq., Colorado Revised Statutes (the "Act"). However, as provided in Section 116 of the Act, Section 38-33.3-116, Colorado Revised Statutes, the Northgate Residential Properties are subject only to Sections 38-33.3-105, 38-33.3-106 and 38-33.3-107 of the Act, and not any other provisions of the Act, by virtue of the limitation on Assessments contained in Section 4.3(d) of this Declaration. Except as stated in the foregoing sentence, the Act shall not apply to this Declaration, the Association or the Northgate Residential Properties.

Section 2.4 Release of Prior Covenants. The Northgate Residential Properties described on the attached Exhibit A are subject to that certain Declaration of Covenants made by O.S. Properties and Northgate Development Company, dated March 17, 1987 and recorded April 3, 1987 in Book 5344 at Page 405 of the real property records of El Paso County, Colorado (the "Prior Covenants"). Declarant is the successor in interest

to O.S. Properties and Northgate Development Company and all of their rights, powers and authorities under the Prior Covenants have been assigned to Declarant. Declarant owns more than 20 percent of the "NORTHGATE Development," as defined in the Prior Covenants. Therefore, pursuant to Article III, Section 3 and Article XXV of the Prior Covenants, Declarant has the right, power and authority to amend the Prior Covenants and to release real property from the Prior Covenants. Accordingly, Declarant hereby releases all of the real property described on Exhibit A from the Prior Covenants and hereby states and declares that the Prior Covenants do not apply to the real property described on Exhibit A and shall be of no further force or effect with respect to such real property.

ARTICLE 3

COMMON ELEMENTS

Section 3.1 Use of Common Elements. Although most of the Common Elements will consist of Landscaped areas and appurtenant facilities along streets and are intended to be seen and enjoyed rather than actively used, the Owners shall have the right to use and enjoy the Common Elements owned by the Association or located within public rights-of-way, such as trails and walkways, for the purposes for which they are intended. The Owners (other than the Owners of the Lot in question) shall not have the right to use any Common Elements located on a Lot, unless a separate valid easement for use by Owners exists. The Association may establish rules for the use and enjoyment of the Common Elements and any such rules shall be binding upon the Owners.

Section 3.2 Maintenance of Common Elements. Beginning on April 1, 1998, the Association shall manage, operate, care for, maintain, repair and replace the Common Elements and keep them in good, attractive and desirable condition for the enjoyment of Owners. In connection with its duty to manage and maintain the Common Elements, the Association shall have all rights and powers set forth in this Declaration, or in the Association's articles of incorporation or bylaws, as well as all rights and powers granted to nonprofit corporations by law or otherwise existing, and, in general, shall have all rights and powers to do anything that may be necessary or desirable to manage, maintain and care for the Common Elements and preserve the attractiveness, desirability and safety of the Common Elements. The Association shall obtain and keep in full force and effect at all times such insurance coverage as is reasonable for the Association's business and as required by Colorado law.

Section 3.3 Proportionate Share of Owners. In addition to benefitting the Owners and enhancing the desirability of the Northgate Residential Properties, the Common Elements enhance the desirability of certain property subject to the Northgate Master Plan approved by the City of Colorado Springs, as amended from time to time (the "Master Plan"), which property is designated on the Master Plan for nonresidential or multi-family residential use (the "Northgate Business Properties"). Consequently, the owners of the Northgate Business Properties shall be responsible for paying a portion of the Common Expenses, as more particularly provided in a declaration or declarations of covenants that encumber or will encumber the Northgate Business Properties and that are or hereafter will be recorded in the real property records of El Paso County, Colorado. Notwithstanding any other provision of this Declaration, the Owners of the Northgate Residential Properties collectively shall be obligated to pay only 25 percent of the Common Expenses each year, as determined by the budget discussed in Section 4.5, and the collective Assessments imposed upon the Owners and the Lots shall not exceed the amount necessary to pay 25 percent of the Common

Expenses in any year. The other 75 percent of the Common Expenses shall be paid by the owners of real property not included in the Northgate Residential Properties who are the members of the Association, or other Persons other than the Owners.

ARTICLE 4

ASSESSMENTS

Section 4.1 Obligation for Assessments. Each Owner (including Builders), for each Lot owned within the Northgate Residential Properties, 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, amounts and times prescribed in this Declaration, all Assessments described in this Article 4. The Assessments levied by the Association shall be used to pay Common Expenses incurred in connection with the ownership, management, maintenance, repair, replacement and insurance of the Common Elements, as specifically provided in this Declaration. The Assessments shall be both a personal obligation of the Owner and a lien against his Lot as provided in this Declaration. Each Owner shall be jointly and severally liable to the Association for the payment of all Assessments attributable to him and/or his 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 escape personal liability for the payment of the Assessments provided for herein by non-use of the Common Elements, by abandonment or leasing of his Lot, or by asserting any claims against the Association, Declarant or any other Person. In addition to the Assessments, each Owner shall have the obligation to pay real property ad valorem taxes and special assessments imposed by Colorado governmental subdivisions against his Lot. Notwithstanding any other provision of this Declaration, all property owned by Declarant or the Association or dedicated to and accepted by the City of Colorado Springs or other public or governmental authority shall be exempt from Assessments. Real property owned by Owners that has not been platted into Lots is also exempt from Assessments.

Section 4.2 Declarant's Obligation. Until Assessments are first levied by the Association pursuant to this Article 4, Declarant shall pay all Common Expenses. If during any year ending on or before December 31, 2002 the Assessments levied are not sufficient to pay all Common Expenses, Declarant shall pay to the Association the amount necessary to make up the shortfall.

Section 4.3 Commencement and Rate of Assessments

(a) The obligation for any Owner to pay Assessments shall not commence until January 1, 1998. Assessments shall commence with respect to each Lot on the date that the Lot is created by the recording of a plat in the real property records of El Paso County, Colorado and the Owner of the Lot shall become responsible for payment of Assessments as of that date.

(b) Subject to the limitations contained in Sections 4.4(a), 4.4(b) and 4.4(d), Assessments shall be sufficient to meet the expected Common Expenses. Assessments shall be allocated equally and uniformly among all Lots, so that each Owner is obligated to pay an equal Assessment for each Lot owned, once Assessments have commenced with respect to that Lot.

Section 4.4 Maximum Assessments.

(a) The maximum annual Assessment payable with respect to any one Lot, for calendar year 1998, which shall be the first fiscal year of the Association, shall be no more than \$120.00.

(b) Subject to the limitations set forth in Section 4.4(d), effective with commencement of the second and each subsequent Association fiscal year, the maximum annual Assessment against each Lot may, at the Board's option, be increased for each fiscal year by the greater of: (i) the percentage increase, if any, in the Consumer Price Index published by the U.S. Department of Labor, Washington, D.C., for All Items and Major Group Figures for the Denver, Colorado Metropolitan Area ("Consumer Price Index") for the one year period ending with the last month prior to commencement of the Association's fiscal year for which the Consumer Price Index has been published at the time the Assessment is determined; or (ii) 10 percent. The aforesaid annual increase in the maximum annual Assessment shall occur automatically upon the commencement of each Association fiscal year without the necessity of any action being taken with respect thereto by the Board unless it directs otherwise. In the event that the Consumer Price Index is not published, for whatever reason, then the increase in the maximum annual Assessment, as provided herein, shall be calculated by using a substantially comparable index designated by the Board.

(c) The Board may, at any time and from time to time, after consideration of the projected Common Expenses, fix the actual Assessment against each Lot in an amount less than the maximum; provided, however, that written notice of any change in the amount of the actual Assessment (whether to an amount less than or equal to the maximum) shall be sent to every Owner at least 30 days in advance of the date that payment of the changed amount is due.

(d) Notwithstanding any other provision of this Declaration, the total Assessments payable with respect to any one Lot, exclusive of optional user fees (if any) and any insurance premiums paid by the Association, may not exceed \$300.00 for any one year. Furthermore, the total of all Assessments for any one year may not exceed 25 percent of the total Common Expenses for that year, as provided in Section 3.3.

Section 4.5 Assessment Procedure.

(a) No later than November 1, 1997, the Board shall set the total annual Assessment for 1998 based upon an estimated budget for the Common Expenses for 1998. No later than 60 days before the beginning of each fiscal year beginning after December 31, 1998, the Board shall set the total annual Assessment based upon an estimated budget of the Common Expenses for the following fiscal year. Any expenses of the Association that are not Common Expenses or relate to properties other than the Common Elements and the Northgate Residential Properties shall not be included in the budget used to calculate the Assessments but shall be separately budgeted, accounted for and paid by the Association.

(b) After approval of the budget, the Board shall cause to be prepared, delivered or mailed to each Owner, at least 30 days in advance of the date payment is due, a payment statement setting forth the annual Assessment payable by that Owner for each Lot owned (and stating the total of all annual Assessments payable with respect to all Lots). The annual Assessment shall be payable in advance on the first day of February unless the Board otherwise directs. The Board may

require Assessments to be paid annually, semi-annually, quarterly or monthly. All payments of Assessments shall be due and payable, without any notice or demand, on the due dates declared by the Board. Assessments shall be applicable to all Lots, except as expressly provided in Section 4.1. Assessments shall commence as discussed in Section 4.3(a).

Section 4.6 Fines. The Board may, subject to the provisions hereof, levy a fine against any Owner or Lot if the willful or negligent acts or omissions of the Owner or occupant of a Lot cause any violation of this Declaration or cause any loss or damage to the Association or the Common Elements or cause an expenditure of funds in connection with the enforcement powers of the Association. Except for a default consisting solely of a failure to timely pay any Assessment, which shall not require any notice and hearing, a fine shall be levied only after such notice and hearing as may be required by the bylaws of the Association, if any. The amount of the fine shall be due and payable to the Association upon notice by the Board that the fine is owing. Imposition or non-imposition of a fine shall not preclude the Association from pursuing simultaneously or subsequently all other legal or equitable rights and remedies.

Section 4.7 Costs of Enforcement, Late Charges and Interest. If any Assessment or fine is not paid within 15 days after it is due, the Owner obligated to pay the Assessment may be additionally required to pay all costs of enforcement, including, without limitation, reasonable attorneys' fees, court costs, witness expenses and all related expenses, and to pay a reasonable late charge to be determined by the Board. Any Assessment that is not paid within 10 days after the date of any notice of default given under Section 4.8 shall bear interest from the due date at a rate determined by the Board, not to exceed the lower of 21 percent per annum or the maximum rate permitted by law, from the due date until paid.

Section 4.8 Notice of Default and Acceleration of Assessments. If any Assessment or fine is not paid within 30 days after its due date, the Association may mail a notice of default to the Owner and to each First Mortgagee of the Lot who 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 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 the foreclosure of the lien for the Assessment or fine against the Lot of the Owner. A default shall not be considered cured unless the past due sums, collection expenses, and all sums coming due through the date of payment are paid to the Association. If the delinquent Assessment and any collection expenses (including attorneys' fees), late charges or interest thereon, plus any other sums due as of the date of payment, are not paid in full on or before the date specified in the notice, the Association, at its option, may enforce the collection of the Assessment or fine and all charges and interest thereon in any manner authorized by law or in this Declaration.

Section 4.9 Remedies to Enforce Assessments. Each Assessment or fine 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 any Assessment, the Association may, in addition to any other remedies provided under this Declaration or by law, enforce such obligation by suit or by filing and foreclosure of a lien as provided in Section 4.10. 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 expenses of collection or enforcement, including reasonable attorneys' fees, 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 4.10. Any judgment rendered in any action to enforce this Declaration or collect any amounts payable under this Declaration shall include any late charge, interest and other costs of enforcement against the defaulting Owner, including, without limitation, reasonable attorneys' fees.

Section 4.10 Lien to Enforce Assessments. The Association shall have a lien for any Assessments or fine (the "Lien") levied against a Lot from the time the Assessment or fine becomes due. In addition to or in lieu of bringing suit to collect Assessments or fines, the Association may foreclose its Lien in the manner provided by law for the foreclosure of real estate mortgages and as provided in this section. The Association may elect (but is not required to) 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 that have accrued thereon, (c) the legal description and street address of the Lot against which the Lien is claimed, and (d) the name of the record Owner of such Lot. 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 priority over all other liens except liens recorded prior to the recording of this Declaration and except First Mortgages, and shall also be prior to any declaration of homestead rights recorded after the time that the Lot becomes part of the Northgate Residential Properties. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver by the Owner of the homestead exemption as against said Lien. 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 court costs, recording costs, filing fees and attorneys' fees, have been fully paid or satisfied, the Association shall execute and record a notice releasing the Notice of Lien, if recorded, 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 foreclosure of real estate mortgages (not including 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. The Association shall be entitled to recover from the defaulting Owner all of the Association's costs and attorneys' fees incurred in foreclosing a Lien.

Section 4.11 Estoppel Certificates. Upon the payment of such reasonable fee as may be determined from time to time by the Board, and upon the written request of any Owner or any Person which has, or intends to acquire, any right, title or interest in a Lot, the Association shall furnish a written statement setting forth the amount of any Assessments or other amounts, if any, due and then unpaid with respect to a Lot and the amount of any Assessment levied against such Lot that is not yet due and payable. Such statement shall, with respect to the Person to whom it is issued, if relied thereupon in good faith and without actual knowledge to the contrary, be conclusive against the Association.

Section 4.12 No Offsets. All Assessments shall be payable in the amounts specified in the levy thereof, and no offset, abatement or reduction thereof shall be permitted for any reason whatsoever, including, without limitation, any claim that

the Association or the Board is not properly exercising its duties and powers under this Declaration, or for inconvenience or discomfort arising from any activity of the Association, including the making of repairs or Improvements to the Common Elements, or because an Owner claims that a particular function funded by the Assessment does not benefit that Owner, or for any other reason.

ARTICLE 5

ARCHITECTURAL CONTROL

Section 5.1 Approval Rights. Declarant shall act as the Architectural Approval Authority for all of the Northgate Residential Properties until (i) Declarant no longer owns any real property within the Northgate Residential Properties or the Expansion Property, and (ii) a Residence has been completed on every Lot within the Northgate Residential Properties and sold to an Owner, or until such earlier time as Declarant assigns its rights and powers under this Article 5 to a successor, which successor shall then become the Architectural Approval Authority with respect to the particular rights and powers assigned. Declarant may assign any or all of its architectural approval rights to the Board, to one or more committees appointed by Declarant, each of which may have authority with respect to only certain designated subdivisions, or to one or more individuals designated by Declarant, or to the Person or committee designated in the applicable Subdivision Covenants. Each Architectural Approval Authority shall exercise the functions set forth in this Declaration or in the applicable Design Guidelines, including reviewing and approving plans for Improvements as provided in this Declaration.

Section 5.2 Design Guidelines. The Architectural Approval Authority may, but is not obligated to, promulgate and adopt Design Guidelines for Improvements within the Northgate Residential Properties. There may be separate Design Guidelines for different areas within the Northgate Residential Properties. During the period that it has any architectural approval rights, Declarant shall have the right to modify, supplement, rescind or replace any Design Guidelines at any time, in its sole discretion. Notwithstanding the foregoing, no modification to the Design Guidelines made by Declarant may result in a provision that contradicts or conflicts with any express provision of this Declaration, that is contrary to the general intent or purposes of this Declaration or that makes a change effective with respect to Improvements that have already been approved by the Architectural Approval Authority pursuant to this Article 5 or applicable Design Guidelines. Design Guidelines may regulate, among other things, the following matters:

(a) Site Location:

- (i) location of a Residence on a Lot;
- (ii) orientation of a Residence to lot lines;
- (iii) site coverage;
- (iv) setbacks; and
- (v) disturbance of on-site vegetation.

(b) Architectural Design:

- (i) building heights;
- (ii) exterior materials and colors;

- (iii) elevations;
- (iv) roof lines; and
- (v) exterior lighting.

(c) Site Accessories:

- (i) entrances to Lots and driveway layout;
- (ii) sidewalks on Lots;
- (iii) parking areas within Lots;
- (iv) fences;
- (v) placement and screening of satellite dishes;
- (vi) patios, accessory buildings or other Improvements;
- (vii) swimming pools and tennis courts; and
- (viii) basketball backboards and other play equipment.

(d) Landscaping:

- (i) plant materials;
- (ii) amount of Landscaping required;
- (iii) preservation of vegetation;
- (iv) maintenance guidelines; and
- (v) irrigation systems.

(e) Approval Processes:

- (i) documentation required for review and approval; and
- (ii) time periods for review and approval.

All Improvements, including those within the Common Elements, shall be constructed or installed in compliance with the requirements of this Declaration and with any applicable Design Guidelines as they exist at the time of approval of plans pursuant to this Article 5.

Section 5.3 Approval Required. No Improvement shall be placed, erected, installed or permitted to occur or exist on any Lot or on the exterior of any Residence, nor shall any construction be commenced on any Improvements, unless and until the plans and specifications for such Improvements shall have been submitted to and approved in writing by the Architectural Approval Authority. Matters that require the approval of the Architectural Approval Authority include but are not limited to:

- (a) the construction, installation, erection or expansion of any Residence or any building, structure or other Improvements (as defined in Section 1.14);
- (b) the installation of Landscaping;
- (c) the grading, excavation, filling or similar disturbance to the surface of the land; and

(d) any change or alteration of any previously approved Improvements, including but not limited to any change of exterior appearance, finish material, color or texture.

Section 5.4 Plans Submissions. All plans, samples and other materials to be submitted to the Architectural Approval Authority shall be submitted in duplicate. The required scale of various kinds of plans shall be set forth in the applicable Design Guidelines, or, if there are no Design Guidelines, as directed by the Architectural Approval Authority. The plot plan in this required scale shall show the location of all buildings, drives, walks, fences and any other Improvements. Proposed new contours throughout the Lot and abutting street elevations on all sides shall be shown. Structure plans shall show all exterior elevations, and shall indicate and locate on each elevation the materials to be used and designate each exterior color to be used by means of actual color samples.

Section 5.5 Approval Process.

(a) All action required or permitted to be taken by the Architectural Approval Authority shall be in writing, and any such written statement shall establish the action of the Architectural Approval Authority and shall protect any Person relying on the statement. The procedure for submitting requests and obtaining approvals shall be as set forth in the applicable Design Guidelines, provided that if there are no applicable Design Guidelines, the procedure shall be as set forth in Section 5.5(b). The Architectural Approval Authority may charge reasonable fees to cover expenses incurred in review of plans, samples and materials submitted pursuant to this Declaration. The Architectural Approval Authority shall be entitled to retain one copy of all approved plans as part of its files and records.

(b) If there are no applicable Design Guidelines setting forth procedures for review and approval of plans, each Owner (who may act through an architect, contractor or other designated representative) and Builder (referred to as the "Applicant") shall comply with the following process in order to obtain approval from the Architectural Approval Authority for any Improvements:

(i) The Applicant shall request from the Architectural Approval Authority a description of requirements to be included in plans to be submitted for approval, which the Architectural Approval Authority shall promptly provide to the requesting Applicant.

(ii) The Applicant shall submit a set of plans at the beginning of the plan review process to be retained by the Architectural Approval Authority for its permanent record. Plans submitted to the Architectural Approval Authority shall satisfy the requirements provided to the Applicant by the Architectural Approval Authority.

(iii) The Architectural Approval Authority shall respond in writing to the Applicant within 30 calendar days after receiving the complete plans. The response may approve or disapprove the plans, approve the plans with conditions or make recommendations for changes or adjustments deemed necessary or appropriate by the Architectural Approval Authority. If the Architectural Approval Authority does not respond to the Applicant within 45 days after receiving any plans, the plans shall be deemed approved.

(iv) Once the Architectural Approval Authority has approved any submitted plans and construction documents, it shall issue a letter of approval to the Applicant (the "Approval Letter"). The Applicant or the

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Applicant's contractor may apply for building permits only after receiving the Approval Letter. No construction may begin until the required permits have been issued.

(v) Approvals of all plans and specifications for an Improvement will automatically expire one year after the date of the Approval Letter if commencement of construction (as defined in Section 6.4) has not occurred within that time period. If approval so expires, the applicant must resubmit a request for approval of the Improvement in accordance with the foregoing procedures.

(vi) If a Builder obtains approval from the Architectural Approval Authority of the plans for a particular model of Residence, separate approval shall not be required for each Residence constructed in compliance with the approved plans, but any changes in such plans require the approval of the Architectural Approval Authority.

Section 5.6 Approval Standards. All Improvements to be constructed or installed within the Northgate Residential Properties must comply with the applicable Design Guidelines, if any, and this Declaration. In granting or withholding approval of matters submitted to it, the Architectural Approval Authority shall consider the intent and purposes of this Declaration, specific requirements and restrictions set forth in this Declaration and the specific standards and specifications set forth in any applicable Design Guidelines. The Architectural Approval Authority shall have the right to disapprove any plans, specifications or details submitted to it if it determines the proposed Improvement is not consistent with any applicable Design Guidelines or any provision of this Declaration; if the plans and specifications submitted are incomplete; or if the Architectural Approval Authority deems the plans, specifications or details, or any part thereof, to be contrary to the interest, welfare or rights of all or any part of the Northgate Residential Properties, the Association, the Owners or Declarant. If the Architectural Approval Authority believes there may be questions of structural integrity, it may, as part of the approval requirements, require certification of the final plans and specifications by a professional architect or engineer licensed in Colorado. The decisions of the Architectural Approval Authority shall be final and binding.

Section 5.7 Land Use Approvals. Before submitting a request for approval of a subdivision plat or replat, a development plan, zoning or rezoning or any use or non-use variance to the City of Colorado Springs or other governmental agency, an Owner or Builder must submit his request to the Architectural Approval Authority for review and approval in accordance with this Article 5.

Section 5.8 No Liability. The Architectural Approval Authority, whether Declarant or an assignee of Declarant, and persons who are members of the Architectural Approval Authority, shall not be liable for damages or otherwise liable to anyone submitting plans to them for approval, requesting any other approval or requesting a variance, or to any Owner by reason of mistake in judgment, negligence, nonfeasance or any act or omission in connection with the approval, disapproval or failure to approve any plans, specifications or variance. Approval by the Architectural Approval Authority shall not mean that plans and specifications are in compliance with the requirements of any local building codes, zoning ordinances or other governmental regulations, such approval shall not imply that the approved location of Improvements is compatible with the locations of utility lines that may exist on the Lot in question or on neighboring land, and such approval shall not imply any

warranties or representations concerning the soils or other physical conditions on the Property or the suitability of the approved Improvements in relation to soils or other physical conditions. It shall be the responsibility of the Owner or other Person submitting plans to the Architectural Approval Authority to comply with all codes, ordinances and regulations; to verify the locations of all utility lines, easements and property lines; to investigate soils and other physical conditions; and to construct Improvements accordingly.

ARTICLE 6

CONSTRUCTION RESTRICTIONS AND REQUIREMENTS

Section 6.1 Improvements. No Improvement shall be erected within the Northgate Residential Properties except Residences and other Improvements that have been approved by the Architectural Approval Authority or that are permitted under the Subdivision Covenants. No Improvement other than a Residence and no trailer, tent or other similar or dissimilar temporary quarters may be used for living purposes. No other Improvement may be placed on any Lot before completion of the Residence upon such Lot except with the permission of the Architectural Approval Authority.

Section 6.2 Construction Type. All Residences and other buildings constructed or erected on any Lot shall be new. No building previously used at another location nor any building or Improvement originally constructed as a mobile dwelling may be moved onto a Lot except as expressly provided in Section 6.5 for temporary construction, sales or administration buildings.

Section 6.3 Completion of Work. A Residence shall not be occupied in the course of original construction until substantially completed. All construction work shall be prosecuted diligently and continuously from the time of commencement until fully completed.

Section 6.4 Construction Completion. All Residences must be substantially completed within one year after the commencement of construction, and Landscaping of a Lot and other Improvements on a Lot outside of a Residence must be completed in accordance with the plans approved by the Architectural Approval Authority within six months after substantial completion of the Residence, except where such completion is impossible or would result in great hardship due to strikes, fires, national emergency or natural calamities and except if the Architectural Approval Authority approves a longer period of construction due to unusual circumstances. For purposes of this Section 6.4, "commencement of construction" for a Residence is defined as the obtaining of necessary building permits, the excavation of earth for a foundation, and the pouring of 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 approved by the Architectural Approval Authority, or if construction shall cease for a period of 60 days without permission of the Architectural Approval Authority, the Architectural Approval Authority will give the Owner of the Improvements involved written notice of such fact, and if construction on such Improvement is not diligently commenced within 30 days after such notice, the unfinished Improvement or unfinished portion thereof shall be deemed a nuisance and shall be removed forthwith by and at the cost of the Owner.

Section 6.5 Construction or Sales Offices. Temporary buildings for construction or administration purposes or for sales offices may be erected or maintained only by Declarant or with the permission of Declarant. Model homes may be used and exhibited only by Declarant or with the permission of

Declarant. Temporary buildings permitted for construction or administration purposes or for sales offices shall be promptly removed when they cease to be used for these purposes.

Section 6.6 Control During Construction. During the period of construction of a Residence or other Improvements on a Lot, the Owner of the Lot or his contractor shall control dirt and dust, keep surrounding streets reasonably clean (which shall include washing them down at least once a week) and keep construction debris confined in a trash receptacle. Trash shall be removed from the Lot at least once a week during the construction period. All construction debris that is blown by the wind shall be collected and placed in the trash receptacle. Construction debris may not be dumped or left on any Lot or on any of the Common Elements. Contractors, subcontractors and construction personnel shall not enter upon any Lot or any of the Common Elements without the permission of the owner of such property. The storage or placing of construction materials on any street within the Northgate Residential Properties is prohibited at all times. No construction equipment, construction trailers or construction vehicles shall be left overnight on any street within the Northgate Residential Properties.

Section 6.7 Natural Vegetation. No trees, surface boulders, scrub oak or other natural vegetation shall be removed from any Lot, except as permitted by any applicable Design Guidelines or with the prior approval of the Architectural Approval Authority. Notwithstanding the foregoing, the Architectural Approval Authority's prior consent is not required for the removal of plants infected with noxious insects or diseases or the removal of dead trees, plants or brush.

Section 6.8 Underground Utilities. All utilities, except lighting standards and customary service devices for access and control, shall be installed underground.

Section 6.9 Setbacks. The setback distances of Residences and other Improvements from lot lines shall be in compliance with the requirements of the zoning code of the City of Colorado Springs and any applicable subdivision plats and development plans approved by the City of Colorado Springs. the Architectural Approval Authority may promulgate setback requirements that are more restrictive than those established by the City of Colorado Springs, either in any applicable Design Guidelines or in connection with the approval of Improvements pursuant to Article 5.

Section 6.10 Dwelling Area Requirements. There shall be no fixed minimum size requirement for Residences. The size of each Residence constructed after recording of this Declaration shall be determined in accordance with any applicable Design Guidelines and the approval process described in Article 5.

Section 6.11 Height Restrictions. The height of Residences and other Improvements shall be in compliance with the zoning code of the City of Colorado Springs and with any applicable subdivision plats and development plans approved by the City of Colorado Springs. The Architectural Approval Authority may promulgate height restrictions that are more restrictive than those established by the City of Colorado Springs, either in Design Guidelines or in connection with the approval of Improvements pursuant to Article 5.

Section 6.12 Exterior Colors and Materials. All exterior colors and materials, including roofing materials, used on Residences and other Improvements must be approved by the Architectural Approval Authority. Acceptable materials and standards for approval may be described in Design Guidelines for a particular area.

Section 6.13 Fences. No fences shall be erected on any Lot or elsewhere within the Northgate Residential Properties except in compliance with any applicable Design Guidelines and in accordance with plans and specifications approved in advance by the Architectural Approval Authority.

ARTICLE 7

DECLARANT'S DEVELOPMENT RIGHTS, SPECIAL RIGHTS AND RESERVATIONS

Section 7.1 Period of Declarant's Rights and Reservations. Declarant shall have, retain and reserve certain rights as set forth in this Declaration with respect to the Northgate Residential Properties and the Common Elements. The rights and reservations of Declarant set forth in this Declaration shall be deemed excepted and reserved in each deed or other instrument, whether or not specifically stated therein, by which any real property within the Northgate Residential Properties is conveyed by Declarant. The rights, reservations and easements of Declarant set forth in this Declaration shall be prior and superior to any other provisions of the Association's articles of incorporation or bylaws and may not, without Declarant's prior written consent, be modified, amended, rescinded or affected by any other document. Declarant's consent to any one such document shall not be construed as a consent to any other document.

Section 7.2 Declarant's Development Rights. Until the date when Declarant ceases to own any real property within the Northgate Residential Properties or the Expansion Property, Declarant shall have the following development rights:

(a) Declarant may add to the Northgate Residential Properties all or any portion of the Expansion Property; provided, however, that Declarant may add portions of the Expansion Property not owned by Declarant only with the consent of the Owner of such Expansion Property;

(b) Declarant may add real property to the Northgate Residential Properties that is not part of the Expansion Property, with the consent of the Owner of such real property to be added, but only if the property to be added is adjacent to or surrounded by the real property included within the Northgate Residential Properties or if the addition is necessary to correct errors or omissions in the legal descriptions attached hereto as Exhibit A and Exhibit B or in the legal descriptions used to add other real property to the Northgate Residential Properties after the date this Declaration is first recorded in the real property records of El Paso County, Colorado;

(c) Declarant may create additional Lots within the Northgate Residential Properties and may subdivide any Lot into two or more Lots; provided, however, that Declarant may subdivide a Lot owned by an Owner only with the consent of such Owner;

(d) Declarant may create additional Common Elements within the Northgate Residential Properties or convert any of the Lots or portions of Lots within the Northgate Residential Properties to Common Elements; provided, however, that Declarant may convert a Lot not owned by Declarant to Common Elements only with the consent of the Owner of such Lot; and

(e) Declarant may withdraw any portion of the real estate, including Lots and Common Elements, now or hereafter contained within the Northgate Residential Properties from the Northgate Residential Properties and release such withdrawn

property from the provisions of this Declaration; provided, however, that Declarant may withdraw real property not owned by Declarant from the Northgate Residential Properties only with the consent of the Owner of such real property.

Except as specifically limited in Sections 7.2(a) and 7.2(b) with respect to Declarant's right to add real property to the Northgate Residential Properties, all of the development rights set forth above may be exercised by Declarant with respect to all or any portion of the Northgate Residential Properties. No assurances are made by Declarant concerning which portions of the Northgate Residential Properties may be affected by Declarant's exercise of its development rights or the order in which portions of the Northgate Residential Properties 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. If Declarant does exercise a development right in any portion of the Northgate Residential Properties, Declarant is not obligated to exercise that development right in all or any other portion of the remainder of real estate affected by the exercise of the development right or in all or any other portion of the remainder of the Northgate Residential Properties.

Section 7.3 Special Declarant Rights. For as long as Declarant owns any real property within the Northgate Residential Properties or the Expansion Property, and as more particularly set forth in this Article 7 or elsewhere in this Declaration, Declarant shall have the following special declarant rights:

(a) to complete any Improvements shown on any recorded plat affecting any of the Northgate Residential Properties;

(b) to exercise any development rights set forth in Section 7.2;

(c) to maintain on the Common Elements owned by the Association or on land owned by Declarant anywhere within the Northgate Residential Properties sales offices, management offices, signs advertising the Northgate Residential Properties and model homes; and

(d) to use easements through the Common Elements for the purpose of making improvements within the Northgate Residential Properties.

Section 7.4 Right to Construct Additional Improvements Within Common Elements. Declarant shall have and hereby reserves the right, but shall not be obligated, to construct additional Improvements within the Common Elements owned by the Association or Declarant, at any time and from time to time in accordance with this Declaration for the improvement and enhancement of the Common Elements and for the benefit of the Association, the Owners or Declarant.

Section 7.5 Declarant's Rights to Use Common Elements in Promotion and Marketing. Declarant shall have and hereby reserves the right to use the Common Elements owned by the Association or Declarant and to use services offered by the Association in connection with the promotion and marketing of property within the boundaries of the Northgate Residential Properties or nearby areas. Without limiting the generality of the foregoing, Declarant may erect and maintain on any part of the Common Elements owned by the Association or Declarant such signs, temporary buildings and other structures as Declarant may reasonably deem necessary or proper in connection with the promotion, development and marketing of real property within the Northgate Residential Properties; may use vehicles and equipment on the Common Elements owned by the Association or Declarant for

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promotional purposes; and may permit prospective purchasers of property within the boundaries of the Northgate Residential Properties to use Common Elements owned by the Association or Declarant.

Section 7.6 Declarant's Rights to Complete Development of the Northgate Residential Properties. No provision of this Declaration shall be construed to prevent or limit Declarant's rights to complete the development of property within the boundaries of the Northgate Residential Properties or nearby areas and to subdivide, resubdivide, or rezone any portion of such property; to construct houses, dwellings and other buildings within the Northgate Residential Properties; to grant licenses, easements, reservations and rights-of-way; to construct or alter Improvements on any property owned by Declarant within the Northgate Residential Properties; to maintain model homes, offices for construction, sales or leasing purposes or similar facilities on any property owned by Declarant or owned by the Association within the Northgate Residential Properties; or to post signs incidental to development, construction, promotion, marketing, sales or leasing of property within the boundaries of the Northgate Residential Properties. Nothing contained in this Declaration shall limit the right of Declarant or require Declarant to obtain approvals to excavate, cut, fill or grade any property owned by Declarant; to change any Landscaping, grading, drainage, vegetation or view; to construct, alter, demolish or replace any Improvements on any property owned by Declarant; or to use any structure on any property owned by Declarant as a construction, model home or real estate sales or leasing office in connection with the sale of any property within the boundaries of the Northgate Residential Properties, nor shall anything in this Declaration be deemed to require Declarant to seek or obtain the approval of the Association or any Architectural Approval Authority for any such activity or improvement to property by Declarant on any property owned by Declarant or by the Association. Nothing in this section shall limit or impair the reserved rights of Declarant as may be elsewhere provided in this Declaration.

Section 7.7 Declarant's Approval. Until Declarant no longer owns any real property within either the Northgate Residential Properties or the Expansion Property, the Association shall not, without first obtaining the prior written consent of Declarant, which consent shall not be unreasonably withheld, convey, change or alter the use of Common Elements; mortgage the Common Elements; use Common Elements other than for the benefit of the Owners or the Association; change or repeal any rules of Declarant; or make any amendment to this Declaration.

ARTICLE 8 EASEMENTS

Section 8.1 Easement for Encroachments. If any portion of an Improvement encroaches upon the Common Elements, including any future encroachments arising or resulting from erosion or subsidence, or from the repair or reconstruction of an Improvement subsequent to its damage, destruction or condemnation, Declarant may grant a valid easement on the surface and for subsurface support below such surface, and for the maintenance of same, for so long as such encroachment exists, but subject to any conditions or restrictions imposed by Declarant.

Section 8.2 Association Easement. An easement to perform its maintenance or other rights or obligations pursuant to this Declaration is hereby granted to the Association, its officers, agents, employees and assigns, upon, across, over, in and under the Northgate Residential Properties, together with the right to make such use of the Northgate Residential Properties and to enter upon any and all Common Elements, Lots and

Residences as may be necessary or appropriate in carrying out such maintenance or other rights or obligations.

Section 8.3 Utilities and Drainage. Declarant hereby creates and reserves to itself until Declarant no longer owns any real property within either the Northgate Residential Properties or the Expansion Property, and, thereafter, to the Association:

(a) 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 seven-foot strips along and adjoining each rear lot line of each Lot, and each of the five-foot strips along and adjoining each side lot line of each Lot for use of all or part of such areas for lines for transmission of electric current or impulses or electronic signals, for heat and fuel lines, for water lines, for utility lines, for drainage and for other similar or dissimilar facilities and purposes, and for any one or more of such purposes; and

(b) a blanket easement across, over and under the Common Elements for access, utilities, drainage and the installation, replacement, repair and maintenance of utilities, including but not limited to water, sewer, gas, telephone and electricity.

If any utility or quasi-utility company furnishing a service covered by the easements created herein requests a specific easement by separate recordable document, Declarant reserves and is hereby given the right and authority to grant such easement. The easement provided for in this section shall in no way affect, avoid, extinguish or modify any other recorded easement affecting the Northgate Residential Properties.

Section 8.4 Easements Deemed Created. All conveyance of Lots hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article 8, whether or not specific reference to such easements or to this Article 8 appears in the instrument of such conveyance.

ARTICLE 9

FIRST MORTGAGEE PROVISIONS

Section 9.1 Special Rights of First Mortgagees. A First Mortgagee who provides a written request to the Association (such request to state the name and address of such First Mortgagee and the street address of the Lot to which its First Mortgage relates), will be entitled to:

(a) written notice from the Association of any delinquency in the payment of Assessments or charges owed with respect to a Lot subject to the First Mortgage of such First Mortgagee, where such delinquency has continued for a period of 60 days;

(b) examine the books and records of the Association during normal business hours;

(c) receive a copy of financial statements of the Association, including any annual financial statements, within 120 days following the end of any fiscal year of the Association;

(d) receive written notice of abandonment or termination of the Association or of this Declaration;

(e) receive notice of any amendment to the Declaration; and

(f) receive written notice of any damage to the Common Elements if the cost of reconstruction exceeds \$10,000.00 and of any condemnation or eminent domain proceedings with respect to any of the Common Elements.

Section 9.2 Priority of First Mortgage Over Assessments. Each First Mortgagee who records its First Mortgage before Assessments have become delinquent and who obtains title to the Lot encumbered by the First Mortgage, whether pursuant to the remedies provided in the First Mortgage, by judicial foreclosure, or by deed or assignment in lieu of foreclosure, shall take title to the Lot free and clear of any claims for unpaid Assessments or charges against such Lot that accrued prior to the time such First Mortgagee acquires title. A First Mortgagee shall be deemed to have acquired title to a Lot on the date of receipt of a deed in lieu of foreclosure, or on the date of receipt of a certificate of purchase from the El Paso County Public Trustee, or on the date of sale pursuant to a judicial foreclosure and receipt of the sheriff's certificate of purchase, as the case may be.

ARTICLE 10

MISCELLANEOUS

Section 10.1 Term of Declaration. Unless amended as herein provided, all provisions, covenants, conditions and restrictions contained in this Declaration shall be effective for 30 years after the date that this Declaration was originally recorded, and, thereafter, shall be automatically extended for successive periods of 10 years each unless, prior to the end of the initial 30-year term or any subsequent extension thereof, a document signed by the Owners of at least 67 percent of the total number of Lots, stating that extension is not desired, is recorded in the real property records of El Paso County, Colorado.

Section 10.2 Amendment of Declaration by Declarant.

(a) Until the first Lot subject to this Declaration has been conveyed to an Owner by recorded deed, any of the provisions, covenants, conditions, restrictions and easements contained in this Declaration may be amended or terminated by Declarant by the recordation of a written instrument, executed by Declarant, setting forth such amendment or termination.

(b) Declarant may, at any time, amend this Declaration to the extent necessary to exercise Declarant's development rights set forth in Section 7.2.

(c) Declarant may, at any time, amend the Declaration with respect to real property owned by Declarant.

(d) Notwithstanding any other provision of this Declaration, if Declarant shall determine that any amendments to this Declaration or any amendments to the articles of incorporation or bylaws of the Association shall be necessary in order for existing or future mortgages, deeds of trust or other security instruments to be acceptable to any of the Agencies (as defined below) then, for as long as Declarant owns any real property within the Northgate Residential Properties, Declarant shall have and hereby specifically reserves the right and power to make and execute any such amendments without obtaining the approval of any Owners or First Mortgagees. As used herein, the term "Agencies" means and collectively refers to the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration of the Department of Housing and Urban Development, the Veterans Administration, and any other

public, quasi-public or private agency or entity which performs (or may in the future perform) functions similar to those currently performed by the entities identified above.

Section 10.3 Amendment of Declaration by Owners.

Except as otherwise provided in this Declaration, and subject to provisions elsewhere contained in this Declaration requiring the consent of Declarant or others, any provision, covenant, condition, restriction or easement contained in this Declaration may be amended or repealed at any time and from time to time by a document signed by the Owners of at least 67 percent of the total number of Lots and recorded in the real property records of El Paso County, Colorado.

Section 10.4 Required Consent of Declarant to Amendment. Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment or repeal of any provision of this Declaration shall not be effective unless Declarant has given its written consent to such amendment or repeal, which consent may be evidenced by the execution by Declarant of a certificate of amendment or repeal. The foregoing requirement for consent of Declarant to any amendment or repeal shall terminate at such time as Declarant no longer owns any real property within either the Northgate Residential Properties or the Expansion Property.

Section 10.5 Notices. Any notice permitted or required to be given under this Declaration shall be in writing and may be given either personally or by mail, telephone, telegraph or fax. If served by 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 Declarant, 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 and Declarant.

Section 10.6 Persons Entitled to Enforce Declaration. Declarant, the Association, acting by authority of the Board, and each Owner shall have the right to enforce any or all of the provisions of this Declaration. 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 this Declaration, and all other rights and remedies provided in this Declaration and at law or in equity.

Section 10.7 Costs and Attorneys' Fees. In any action or proceeding pursuant to this Declaration, the party which seeks to enforce this Declaration and prevails shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorneys' fees and expert witness fees.

Section 10.8 Limitation on Liability. Declarant, the Association, the Board, any Architectural Approval Authority and any member, agent or employee of any of the same shall not be liable to any Person for any action or for any failure to act in connection with this Declaration if the action or failure to act was in good faith and without malice.

Section 10.9 No Representations or Warranties. No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant or its agents or employees in connection with any portion of the Northgate Residential Properties, or any Improvements thereon, as to its or their physical condition, soils conditions, zoning, compliance with applicable laws or fitness for intended use, or

in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof.

Section 10.10 Severability. Each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or unenforceability or partial invalidity or partial enforceability of any provision or portion hereof shall not affect the validity or enforceability of any other provision.

Section 10.11 Number and Gender. Unless the context requires a contrary construction, as used in this Declaration, the singular shall include the plural and the plural the singular, and the use of any gender shall include all genders.

Section 10.12 Captions for Convenience. The titles, headings and captions used in this Declaration are intended solely for convenience of reference and are not intended to affect the meaning of any provisions of this Declaration.

Section 10.13 Mergers or Consolidation. The Association may merge with another incorporated 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, rights 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 Northgate Residential Properties, together with the covenants and restrictions established upon any other property, as one plan.

Section 10.14 Conflicts in Documents. In case of any conflict between this Declaration and the Design Guidelines, the articles of incorporation or the bylaws of the Association, this Declaration shall control.

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first above written.



PICOLAN, INC., a Colorado corporation

By [Signature]
Filippo Pola, Vice-President

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

The foregoing instrument was acknowledged before me this 8th day of July, 1997 by Filippo Pola as Vice-President of Picolan, Inc., a Colorado corporation.

Witness my hand and official seal.

My commission expires 3/26/99



[Signature]
Notary Public