

AMENDED AND RESTATED
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
DEER CREEK AT NORTHGATE

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made effective as of March 17, 2001, by Elite Properties of America, Inc., a Colorado corporation (the "Declarant") and will supersede and replace in its entirety the Declaration and Covenants, Conditions and Restrictions for Deer Creek at Northgate recorded on March 17, 2001 at Reception No. 201065114 of the real property records of El Paso County, Colorado.

RECITALS:

A. Declarant is the owner of that certain real property located in the City of Colorado Springs, County of El Paso, State of Colorado, more particularly described on Exhibit A attached hereto and by reference incorporated herein (the "Property").

B. Declarant desires to create a common interest community on the Property pursuant to the Colorado Common Interest Ownership Act, Section 38-33.3-101, C.R.S. et seq., as it may be amended from time to time (the "Act"), in which portions of the real estate will be designated for separate ownership and the remainder will be owned by an association of Lot Owners.

C. Declarant has caused The Deer Creek at Northgate Homeowner's Association, Inc. (the "Association") to be organized as a non-profit corporation under the laws of the State of Colorado for the purpose of performing the functions set forth herein. Those functions will include the ownership, maintenance and operation of the Common Elements and all other duties assigned to the Association by this Declaration or the Act.

ARTICLE 1
SUBMISSION OF PROPERTY

Declarant for itself, its successors and assigns, hereby declares that the Property shall be held, sold, conveyed, transferred, leased, subleased and occupied subject to the following easements, covenants, conditions and restrictions which are for the purpose of protecting the value and desirability of the Property, and which shall run with the land and shall be binding upon and inure to the benefit of all parties having any right, title or interest in the Property or any portion thereof, their heirs, personal representatives, successors and assigns. Additionally, Declarant submits the Property to the provisions of the Act. To the extent this Declaration is silent on a matter covered by the Act, it is intended that the provisions of the Act apply. In the event the Act is repealed, the Act as it was in effect on the effective date of such repeal shall remain applicable to the common interest community created hereby.

ARTICLE 2
DEFINITIONS

The following capitalized terms, as used in this Declaration, have the meanings set forth below. Any other capitalized terms used herein and not defined below or elsewhere in this Declaration shall have the meanings set forth in the Act.

2.1 Act. "Act" means the Colorado Common Interest Ownership Act, Section 38-33.3-101 C.R.S. et seq., as the same may be amended from time to time.

2.2 Agencies. "Agencies" shall mean and collectively refer to the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Department of Housing and Urban Development (HUD), the Veterans Administration (VA) or any other governmental or quasi-governmental agency or



any other public quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by any of such entities.

2.3 Assessments. "Assessments" means all Common Expense Assessments, Special Assessments, Individual Assessments and Fines levied by the Executive Board pursuant to this Declaration, the Bylaws or the Rules and Regulations. The term "Assessments" also includes all additional items permitted to be enforced as assessments pursuant to Section 316(1) of the Act.

2.4 Assessment Lien. "Assessment Lien" means the lien of the Association imposed on each Lot by the Act to secure payment of any Assessments due from a Lot Owner.

2.5 Association. "Association" means Deer Creek at Northgate Homeowners Association, Inc., a Colorado non-profit corporation. The Association shall be the Lot Owners' association pursuant to Section 301 of the Act.

2.6 Board of Directors. "Board of Directors" shall mean the Board of Directors of the Association.

2.7 Bylaws. "Bylaws" means the Bylaws of the Association, and any other instruments, however denominated, which are adopted by the Association for the regulation and management of the Association, including any amendments to those instruments.

2.8 Common Elements. The "Common Elements" consist of "Tracts A, B and C," as designated on the Subdivision Plat, as well as any other "Tracts" or real property designated as property to be owned or leased by the Association subsequent to the date hereof (hereafter, "Tracts") on Subdivision Plats of the Community, or any other real property owned or leased by the Association (other than a Lot) and any personal property owned or leased by the Association or which the Association hereafter maintains, holds or uses for the common use and enjoyment of the Lot Owners. In addition, and without limiting the generality of the foregoing, Common Elements include the entry signage and adjacent landscaping wherever located, as well as any roadway landscaping, including landscaping along Ridgeline Drive or any perimeter fence and/or any perimeter landscaping installed by Declarant as Common Elements, and contiguous to the Property, and any drainage or detention basin within the Community.

2.9 Common Expenses. "Common Expenses" means and includes expenses of administration, operation and management of the Community, the expense of maintenance, repair and replacement of the Common Elements, the expense of maintenance of Tracts A, B and C or any other Tracts or Common Elements as designated on any Subdivision Plat of the Community, as it may be expanded under Article 15, the expense of maintenance of any pedestrian easements created pursuant to the expense of maintenance and repair of any emergency vehicle access easements depicted on the Subdivision Plat, the expense of maintenance and repair of any drainage easements and detention basin depicted on the Subdivision Plat hereof and all other expenses declared to be Common Expenses by the provisions of this Declaration or the Bylaws. Without limiting the generality of the foregoing, Common Expenses shall also include the costs (including any tap fee) incurred by the Association to purchase water required for irrigation of landscaping located on or within the Common Elements as designated on the Subdivision Plat.

2.10 Common Expense Assessments. "Common Expense Assessments" means all Assessments made for Common Expenses. "Annual Common Expenses Assessments" means all Assessments for Common Expenses for an assessment year, as provided in Section 10.1.

2.11 Community. "Community" means Deer Creek at Northgate, the common interest community created hereby.

2.12 Declarant. "Declarant" shall mean Elite Properties of America, Inc., a Colorado corporation ("EPA") and its successors and assigns. A person or entity shall be deemed a successor or assign of EPA as Declarant under this Declaration only if specifically so designated in a duly recorded written instrument and then only as to the particular rights or interests of EPA, as the case may be, under this Declaration which are specifically designated in such written instrument. Notwithstanding the foregoing, a successor to EPA by consolidation or merger or a partnership resulting from the dissolution and reformation of EPA due to the withdrawal of a partner and the admission of a new partner or

the assignment of a partner's interest to another shall automatically be deemed a successor or assign of EPA as Declarant under this Declaration.

2.13 Declaration. "Declaration" means this Declaration of Covenants, Conditions and Restrictions for Deer Creek at Northgate, including all exhibits, and any subsequent amendments or supplements.

2.14 Design Review Committee. "Design Review Committee" means the committee appointed pursuant to Article 11 hereof to oversee and enforce the covenants and restrictions regarding architectural control and harmony as set forth in Article 11 hereof, in the Subdivision Plat and in the Design Review Guidelines (as defined in Section 11.6) for the Community.

2.15 Dwelling. "Dwelling" means an individual, single-family residential dwelling constructed on a Lot.

2.16 Executive Board. "Executive Board" means the Association's Board of Directors.

2.17 Expansion Property. "Expansion Property" means the real property described on Exhibit B attached hereto and incorporated herein, which may be annexed into the Community as provided in Article 15 below.

2.18 Fines. "Fines" means any monetary penalty imposed by the Executive Board against a Lot Owner because of a violation of this Declaration, the Bylaws or the Rules and Regulations by such Lot Owner, a member of the Lot Owner's family or a lessee or guest of the Lot Owner or a member of the family of a lessee of a Lot Owner.

2.19 First Mortgage. "First Mortgage" shall mean and refer to any unpaid and outstanding mortgage, deed of trust or other security instrument recorded in the records of the office of the Clerk and Recorder 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).

2.20 First Mortgagee. "First Mortgagee" shall mean and refer to any Person named as a mortgagee or beneficiary under any First Mortgage, or any successor to the interest of any such Person under such First Mortgage.

2.21 Improvement to Property. "Improvement to Property" or "Improvement," requiring approval of the Design Review Committee, shall mean, without limitation, 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 (including 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 Community), 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, including without limitation, change of grade or change of drainage pattern of any Lot; the construction, reconstruction, remodeling, addition to or alteration of the exterior of any Dwelling, or any replacement, alteration or removal of any other structure located upon any Lot within the Property; the demolition or destruction by voluntary action of any building, structure or other improvement located upon any Lot; and any change or alteration of any previously approved Improvement to Property, including any change of exterior appearance, color or texture.

2.22 Individual Assessment. "Individual Assessment" means any assessment other than a Common Expense Assessment or a Special Assessment made against a Lot pursuant to the provisions of this Declaration, the Bylaws or the Rules and Regulations.

2.23 Lot. "Lot" means any individual Lot denominated and shown as such on the Subdivision Plat. A "Lot" also includes any Dwelling or other improvements constructed thereon. Each Lot shall be a "unit", as that term is defined in Section 103(30) of the Act.

2.24 Lot Owner. "Lot Owner" means the Declarant or other Person who owns a Lot, but does not include a person having an interest in a Lot solely as security for an obligation. The Declarant is the owner of any Lot created by the Declaration until that Lot is conveyed to another Person who is not a Declarant under this Article. Each Lot Owner shall be a "unit owner", as that term is defined in Section 103(31) of the Act.

2.25 Northgate Association. "Northgate Association" means Northgate Business Owners Association, a Colorado nonprofit corporation.

2.26 Northgate Declaration. "Northgate Declaration" means the Declaration of Covenants, Conditions, Restrictions and Easements for Northgate Residential Properties, dated July 8, 1997, and recorded July 10, 1997, with the Clerk and Recorder of El Paso County, Colorado, at Reception No. 097079216, as subsequently amended, and as amended hereafter.

2.27 Person. "Person" means a natural person or a firm, corporation, partnership, limited liability company, cooperative association, association or other legal entity, or any combination thereof.

2.28 Property. "Property" shall mean the property described on Exhibit A attached hereto and incorporated herein by this reference, together with any Expansion Property described on Exhibit B annexed hereto as provided in Article 15 below.

2.29 Residential Use. "Residential Use" means use for dwelling and for related residential uses.

2.30 Rules and Regulations. "Rules and Regulations" means the rules and regulations adopted from time to time by the Executive Board for the purpose of promoting the health, safety, and welfare of the Community.

2.31 Security Interest. "Security Interest" shall have the meaning given to such term in the Act.

2.32 Special Assessments. "Special Assessments" means the Assessments for capital improvements described in Section 10.6 of this Declaration.

2.33 Subdivision Plat. "Subdivision Plat" means the Deer Creek at Northgate Filing No. 1 plat of the real property described on Exhibit A attached hereto, to be recorded with the Clerk and Recorder of El Paso County, Colorado, together with the Deer Creek at Northgate Filing No. 2 plat at such time as it is recorded hereafter, and any additional plat or plats of the real property within the Deer Creek at Northgate Community, and of the Expansion Property as described on Exhibit B.

**ARTICLE 3
COMMON INTEREST COMMUNITY**

3.1 General Description. The name of the Community is Deer Creek at Northgate. It is a Planned Community (as defined in the Act), situate entirely in the City of Colorado Springs, El Paso County, Colorado. The real estate included in the Community is the Property.

3.2 Number of Lots. The maximum number of Lots within the Community will be 400 Lots. The boundaries and identifying number of each Lot are as set forth in the Subdivision Plat(s) of the Property.

3.3 Recording Data. Easements and licenses to which the Community is presently subject will be listed on the Subdivision Plat. In addition, the Community may be subject to other easements or licenses granted by the Declarant or by the Association pursuant to the terms of this Declaration.

J. Patrick Kelly El Paso Cty, CO
12/06/2001 09:02 201178537
Doc \$0.00 Page
Rec \$170.00 4 of 34

**ARTICLE 4
ASSOCIATION**

4.1 Name. The name of the Association is The Deer Creek at Northgate Homeowner's Association, Inc.

4.2 Powers. The Association shall own the Common Elements and shall administer the Community and manage its affairs. It shall have all powers provided to a unit owners' association by the Act and this Declaration. These shall include the power to assign its right to future income, including the right to receive Common Expense Assessments, provided the Association determines that such assignment will not impair the ability of the Association to perform the duties required of it under this Declaration or the Act.

4.3 Membership and Allocation of Votes. The Association shall have one class of voting membership. Each Lot Owner shall be a member of the Association. There shall be a maximum of one vote for each Lot which is encumbered by this Declaration which can be cast on any issue before the Lot Owners of the Association and one such vote shall be allocated to each Lot. The total number of votes which may be cast shall be equal to the total number of Lots then existing within the Association. Membership in the Association shall be appurtenant to and may not be separated from ownership of a Lot.

4.4 Declarant Control. Subject to the limitations of Sections 303(5) and (6) of the Act and Section 5.2 below, the Declarant, or Persons designated by the Declarant, may appoint and remove the officers of the Association and members of the Executive Board appointed by the Declarant for a period of twenty years after this Declaration is recorded in the office of the Clerk and Recorder of El Paso County, Colorado (the "Period of Declarant Control"). The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before termination of the Period of Declarant Control; but, in that event, the Declarant may require for the duration of the Period of Declarant Control that specified actions of the Association or Executive Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

**ARTICLE 5
EXECUTIVE BOARD MEMBERS AND OFFICERS**

5.1 Authority of Executive Board. Except as provided in this Declaration, the Bylaws or any other provisions of this Declaration, the Executive Board shall act in all instances on behalf of the Association.

5.2 Election of Board Members During Period of Declarant Control. Declarant shall initially appoint the Executive Board, subject to the following: No later than sixty (60) days after conveyance to Lot Owners other than Declarant of twenty-five percent (25%) of the Lots which may be created as part of the Community Area, at least one member and not less than twenty percent (20%) of the members of the Executive Board must be elected by Lot Owners other than the Declarant. Not later than sixty (60) days after conveyance to Lot Owners other than Declarant of fifty percent (50%) of the Lots which may be created as part of the Community Area, not less than thirty three and one-third percent (33 1/3%) of the members of the Executive Board must be elected by Lot Owners other than the Declarant.

5.3 Termination of Period of Declarant Control. Not later than the termination of the Period of Declarant Control, the Lot Owners shall elect an Executive Board of at least three members, at least a majority of whom must be Lot Owners other than the Declarant or designated representatives of Lot Owners other than the Declarant. The Executive Board shall elect the officers. The Executive Board members and officers shall take office upon election.

**ARTICLE 6
MAINTENANCE**

6.1 Common Elements. The Association shall maintain the Common Elements. The Association shall maintain all landscaping and other facilities owned by the Association that are installed in or on the Common Elements and shall make repairs and replacements thereto as needed to (a) comply with the requirements of the Subdivision Plat and any agreements affecting the Community entered into by Declarant with any governmental entity, and (b) permit such Common Elements to serve the purposes for which they were created and installed in the Community. All facilities that

are owned by the Association and any additional facilities that are owned by the Association which may be installed within any easements or Common Elements are Common Elements hereunder, and shall be maintained, repaired and replaced by the Association as necessary so that such Common Elements (a) comply with the requirements of the Subdivision Plat and any agreements affecting the Community entered into by Declarant with any governmental entity, and (b) present an aesthetically attractive appearance and serve the purposes for which such facilities were installed.

6.2 Tracts A, B and C. Upon recordation of the Subdivision Plat, Declarant shall convey Tracts A, B and C, as designated on the Subdivision Plat, to the Association. The Association shall maintain Tracts A, B and C, and such maintenance shall be performed in compliance with the requirements of the Subdivision Plat or any governmental entity. The Association and the Lot Owners hereby acknowledge that Tract A is designated as a non-buildable tract on the Subdivision Plat. Upon annexation of the Expansion Property, Declarant shall convey any Tracts therein, which are Common Elements to the Association as provided above.

6.3 Easements and Landscaping. Lot Owners shall maintain the landscaping in any easements located on their Lots and the Association shall maintain the landscaping in any easements located on property owned by the Association, in each case in accordance with the requirements therefor set forth in the Subdivision Plat and any agreements entered into by Declarant with any governmental entity. In addition, the Association shall be responsible for any repairs to any easements owned by the Association, or of any landscaping or any improvements located on Common Elements within the Community necessitated by wear and tear, accident, vandalism or other willful act or natural occurrences, such maintenance and repair to be performed in compliance with the requirements of the Subdivision Plat and any agreements entered into by Declarant with any governmental entity.

6.4 Individual Lots. The Association shall have the right, but not the obligation, to maintain, repair and replace portions of the Lots as provided below.

6.4.1 Lot Owner Maintenance Responsibility. Lot Owners shall maintain, replace and keep in good repair the interior and exterior of their Dwellings and all improvements on their Lots. Without limiting the generality of the foregoing, Lot Owners shall maintain, replace and keep in good repair, in accordance with the requirements of the Subdivision Plat and any agreements entered into by Declarant with any governmental entity, this Declaration and the Design Review Guidelines all drainage swales, retaining walls, slopes, trees, shrubs, grass and other landscaping on their Lots.

6.4.2 Association's Right to Perform Work. In the event any Lot Owner shall fail to satisfactorily perform any maintenance, repair or replacement obligations of such Lot Owner, the Association may give written notice to the Lot Owner of the work required to be performed, and if such failure to perform the work continues for a period of thirty (30) days after such notice has been given, the Association may enter upon the Lot and perform the necessary maintenance, repairs or replacements. The cost of any such maintenance, repair or replacement, together with any administrative, legal, financing or collection costs thereof, as provided in Section 10.2, shall be assessed to such Lot Owner as an Individual Assessment, and the Association shall have a lien to secure payment of such Individual Assessment as provided in the Act and this Declaration.

6.5 Damage by Lot Owner. Notwithstanding anything to the contrary contained herein, in the event that the need for the Association to maintain, repair or replace a Common Element, any improvement thereon, or an improvement located on a Lot caused by the willful act or misconduct or gross negligence of a Lot Owner or a member of such Lot Owner's family or a guest, invitee or lessee of a Lot Owner or a member of such lessee's family, the cost of such repair, replacement or maintenance, shall be the personal obligation of such Lot Owner, and any costs, expenses and fees incurred by the Association for the same, together with any administrative, legal, financing or collection costs thereof as provided in Section 10.2, shall be assessed to such Lot Owner as an Individual Assessment. The Association shall have a lien to secure payment of such Individual Assessment as provided in the Act and this Declaration.

6.6 Association's Easement to Perform Work. The Association shall have an easement across each Lot permitting the Association, its agents, employees and independent contractors to enter upon the Lot as reasonably necessary in order to perform any work on the Lot by the Association pursuant to this Declaration. All persons

performing such work shall use reasonable efforts to minimize interference with the Lot Owners' use and enjoyment of the Lot when performing such work.

**ARTICLE 7
EASEMENTS AND LIMITED ACCESS**

7.1 Access. For the purposes of performing the repair and maintenance referred to in this Article, the Association, through its authorized agents or employees, shall have an easement and the irrevocable right and power to enter upon any Lot at any reasonable hour; provided, however, the Executive Board shall provide reasonable prior notice to a Lot Owner before performing any such repair or maintenance upon any portion of a Dwelling.

7.2 Easements for Drainage and Utilities. Easements for the installation and maintenance of utilities, drainage facilities, public or private improvements and access thereto are reserved as shown on the Subdivision Plats and other documents affecting the Lots and any amendments to such Subdivision Plats and documents or as established by any other instrument of record. Declarant hereby reserves, to itself and to the Association, easements for utilities, storm drainage, sanitary sewer lines and facilities as noted on the recorded Subdivision Plats. No Improvements shall be placed or permitted to remain on any Lot nor shall any change in grading be permitted to exist which may change the direction of flow or obstruct or retard the flow of water through swales within such front, rear and side yard drainage easements. Declarant reserves to itself and to the Association the right to enter in and upon each front, rear and side yard drainage easement and at any time to perform such grading, drainage or corrective work as Declarant or the Association may deem necessary or desirable in their sole discretion from time to time.

7.3 Declarant's and Builder's Easements. Anything to the contrary herein notwithstanding, the Declarant hereby reserves for itself, and for builders, agents, employees, business invitees, successors or assigns, reasonable easements and rights-of-ways over all Lots for the sole purpose of constructing improvements to the Community and making repairs pursuant to contracts of sale made with purchasers of Lots, but only if access thereto is otherwise not reasonably available, including the right to erect temporary buildings, and to locate construction buildings or trailers, or to store any and all materials. Such easements and rights-of-way, however, shall not unreasonably inhibit the use of Lots by Lot Owners and guests. The Declarant and any builder shall be fully responsible for any damage to Lots caused by its use of such easements and rights-of-way. Such reservations shall terminate at the option of the Declarant by its written notice to the Secretary of the Board of Directors, but in any event such reservations shall terminate without further act or deed not later than one hundred twenty (120) days after the completion of all of the initial dwelling.

7.4 Emergency Easements. A nonexclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons and any public utility provides, now or hereafter servicing the Property, to enter upon any part of the Community in the performance of their duties.

7.5 No Access from Ridgeline. Access to and from Ridgeline Drive is hereby denied to all Owners of Lots 64, 65, 88, 89, 110, 111, 117, 118, 119, 120, 121, 134, and 135 all in Deer Creek at Northgate, Filing No. 1, and all persons claiming by, through or under them, and the Owners of these Lots are required to and shall arrange and maintain their drives, dwellings and other Improvements so that ingress and egress to and from their Lots is exclusively from an adjoining public street other than Ridgeline Drive.

7.6 Easements Deemed Created. All conveyances of any Lot hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article even though no specific reference to such easements or to this Article appears in the instrument of such conveyance.

7.7 Lot Owners' Easement Rights. The Lot Owners shall have all easement rights in the Common Elements as are provided by the Act.

7.8 Extent of Lot Owners' Easements. The rights and easements created hereby shall be subject to the following:

7.8.1 The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Elements and to mortgage said property as security for any such loan; provided, however, that the Association may not subject any portion of the Common Elements to a Security Interest unless such is approved by Lot Owners casting at least sixty seven-percent (67%) of the votes in the Association, including sixty-seven percent (67%) of the votes allocated to Lots not owned by the Declarant; and

7.8.2 The right of the Association to take such steps as are reasonably necessary to protect the Common Elements against foreclosure; and

7.8.3 The right of the Association to promulgate and publish rules and regulations with which each Lot Owner shall strictly comply, including, but not limited to, the right of the Association to regulate and/or restrict vehicular parking, and to regulate the use of Tracts A, B and C and any other Common Elements, or Tracts designated on Subdivision Plats of the Expansion Property; and

7.8.4 The right of the Association, as provided in its Articles and Bylaws, to suspend the voting rights of a Lot Owner for any period during which any assessment against his Lot remains unpaid and, for any period during which any infraction of the Bylaws or the Rules and Regulation remains outstanding, for any infraction of the Bylaws or the Rules and Regulations; and

7.8.5 The right of the Association to dedicate or transfer all or any part of the Common Elements owned by the Association to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Lot Owners, provided that no such dedication or transfer shall be effective unless first approved by the Lot Owners entitled to cast at least sixty-seven percent (67%) of the votes in the Association, including sixty-seven percent (67%) of the votes allocated to Lots not owned by the Declarant, and unless written notice of the proposed agreement and the proposed dedication or transfer is sent to every Lot Owner at least thirty (30) days in advance of any action taken. Notwithstanding the foregoing, the granting of permits, licenses and easements or right of way deeds for public utilities roads or for other purposes reasonably necessary or useful for the proper maintenance or operation of the Property shall not be deemed a transfer within the meaning of this subsection; and

7.8.6 The right of the Association, through its Executive Board, to enter into, make, perform or enforce any contracts, Leases, agreements, licenses, easements and rights-of-way, for the use of real property or Improvements to Property by Lot Owners, other persons, their family members, guests and invitees, for any purpose(s) the Executive Board may deem to be useful beneficial or otherwise appropriate; and

7.8.7 The right of the Association to close or limit the use of the Common Elements while maintaining, repairing and making replacements to the Common Elements.

7.9 Delegation of Use. Any Lot Owner may delegate his rights of use of and access over the Common Elements to the members of his family, his lessees, or contract purchasers who reside on his Lot.

7.10 Payment of Taxes or Insurance by First Mortgagees. First Mortgagees shall have the right, jointly or singly, to pay taxes or other charges or assessments which are in default and which may or have become a lien against the Common Elements and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Elements, and any First Mortgagees making any such payments shall be owed immediate reimbursement therefor from the Association.

ARTICLE 8 INSURANCE

8.1 Insurance. Commencing not later than the time of the first conveyance of a Lot to a Person other than a Declarant, the Association shall maintain insurance, to the extent reasonably available, in connection with the Common Elements and with other parcels of real property which the Association has an obligation to maintain, repair and/or

reconstruct. The Association shall maintain the following types of insurance, to the extent that such insurance is reasonably available, considering the availability, cost and risk coverage provided by such insurance, and the cost of said coverage shall be paid by the Association as Common Expenses. Notwithstanding any of the specific insurance requirements specified in this Article, the Association may also consider, in determining the types and amount of insurance it needs to obtain, the then existing requirements of any of the Agencies with respect to their insurance, guaranty, or purchase of Security Interests.

8.1.1 A policy of property insurance covering all parcels of real property for which the Association has the duty to repair and/or reconstruct, including, without limitation, the Common Elements and property which must become Common Elements, except for land, foundations, excavations and other matters normally excluded from coverage, for broad form covered causes of loss in an amount not less than fully insurable replacement cost of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date and not less than necessary to comply with any co-insurance percentage stipulated in the insurance policy.

8.1.2 A policy of commercial general public liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements and covering parcels of real property which the Association has the obligation to maintain, repair and/or reconstruct, insuring the Association in an amount deemed sufficient in the judgment of the Executive Board. Such coverage should include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of all parcels of real property for which the Association has or shall have the obligation to maintain, repair, and/or reconstruct, legal liability arising out of lawsuits related to employment contracts of the Association, and protection against liability for non-owned and hired automobiles. The Declarant shall be included as an additional insured in Declarant's capacity as a Lot Owner and member of the Executive Board. The Lot Owners shall also be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements or other property insured by the Association from time to time. The insurance shall cover claims of one or more insured parties against other insured parties.

8.1.3 In addition, the Association may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate, to the extent that such coverage is reasonably available, including, but not limited to, personal liability insurance to protect directors and officers of the Association from personal liability in relation to their duties and responsibilities in acting as directors and officers on behalf of the Association.

8.2 General Provisions of Insurance Policies. Policies of insurance carried by the Association shall contain deductibles in such amounts as the Association deems appropriate and shall be carried in blanket policy form naming the Association as insured, or its designee as trustee and attorney-in-fact for all Lot Owners, and each Lot Owner shall be on an insured person under such policies with respect to liability arising out of any Lot Owner's interest in the Common Elements or membership in the Association. The policy or policies shall contain a provision that it cannot be canceled, materially altered or not renewed until thirty (30) days' prior written notice thereof is given to the insured and each Lot Owner and each First Mortgagee, insurer or guarantor of a Security Interest. The Association shall furnish a certificate of insurance to any party in interest, including First Mortgagees, upon request. Policies of insurance carried by the Association shall also contain waivers of subrogation by the insurer against any Lot Owner or member of his household. Policies shall contain waivers of any defense based on invalidity arising from any acts or neglect of a Lot Owner where such Lot Owner is not under the control of the Association. No act or omission by any Lot Owner, unless acting within the scope of such Lot Owner's authority on behalf of the Association, will void any policy or be a condition to recovery under the policy.

8.3 Deductibles.

8.3.1 The Association may adopt and establish written non-discriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment.

8.3.2 Any loss to any Lot, to the Common Elements or to any Tracts for which the Association has the duty to maintain, repair and/or reconstruct, which falls within the deductible portion of such policy, shall be borne by the person or entity who is responsible for the repair and maintenance of the property which is damaged or destroyed. In the event of a joint duty of repair and maintenance of the damaged or destroyed property, then the deductible may be apportioned among the parties sharing in such joint duty or may be partly or wholly borne by the Association, at the election of the Executive Board. Notwithstanding the foregoing, the Executive Board may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of a Lot Owner. Upon said determination by the Executive Board, any such loss or portion thereof may be assessed to the Lot Owner in question and the Association may collect the amount from said Lot Owner as an Individual Assessment.

8.4 Payment of Insurance Proceeds. Any loss covered by an insurance policy described in Section 8.1 above 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 Association, Lot Owners and holders of Security Interests, as their interests may appear. Subject to the provisions of Article 9 hereof, the proceeds must be disbursed first for the repair or restoration of the damaged property; and the Association, Lot Owners and holder of Security Interests are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored or the Community is terminated.

8.5 Association Insurance as Primary Coverage. If at the time of any loss under any policy which is in the name of the Association, there is other insurance in the name of any Lot Owner and such Lot Owner's policy covers the same property or loss, or any portion thereof, which is covered by such Association policy, such Association policy shall be primary insurance not contributing with any of such other insurance. A Lot Owner shall be liable to the Association for the amount of any diminution of insurance proceeds to the Association as a result of policies of insurance of a Lot Owner, and the Association may collect the amount from said Lot Owner as an Individual Assessment.

8.6 Acceptable Insurance Companies. Each hazard insurance policy purchased by the Association must be written by a hazard insurance carrier which has a current rating by Best's Insurance Reports of B/VI or better, or a financial rating of Class V provided it has a general policy holder's rating of at least A, and is authorized by law to do business in the State of Colorado. The Association shall not obtain any policy where (a) under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against the mortgagor or mortgagee's designee, or (b) under the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carriers board of directors, policy holders or members, or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent First Mortgagees or any Lot Owner from collecting insurance proceeds.

8.7 Insurance to be Maintained by Lot Owners. Unless otherwise expressly provided in this Declaration, an insurance policy issued to the Association does not obviate the need for Lot Owners to obtain insurance for their own benefit. Insurance coverage on all Improvements located on Lots as well as on all the furnishings and other items of personal property belonging to a Lot Owner, and public liability insurance coverage on each Lot, shall be the responsibility of the Lot Owner of such Lot. Lot Owners shall also be responsible for obtaining any policies of title insurance required in connection with any sale of a Lot other than the purchase by the initial Lot Owner from the Declarant.

8.8 Annual Review of Insurance Policies. All insurance policies carried by the Association shall be reviewed at least annually by the Executive Board to ascertain that the coverage provided by such policies adequately covers those risks insured by the Association. Prior to obtaining any policy of fire insurance or renewal thereof, the Executive Board or the managing agent of the Association may obtain a written appraisal from a duly qualified real estate or insurance appraiser, or other person knowledgeable as to replacement costs, which appraiser shall reasonably estimate the full replacement value of any improvements to be insured for the purpose of determining the amount of insurance required pursuant to the provisions of this Article.

8.9 Notice of Cancellation; Other Insurance. If the insurance described in Section 8.1 hereof is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy therefor having been obtained, the Association shall cause notice of that fact to be given to all Lot Owners. The Association may carry any other insurance it considers appropriate, including insurance on Lots it is not obligated to insure, to protect the Association or the Lot Owners.

ARTICLE 9 DAMAGE OR DESTRUCTION

9.1 Damage or Destruction.

9.1.1 Any portion of the Common Elements which is damaged or destroyed must be repaired or replaced promptly unless:

- (1) The Community is terminated;
- (2) Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;
- (3) Sixty-seven percent (67%) of the Lot Owners vote not to rebuild (unless rebuilding is required pursuant to the Subdivision Plat or any other agreement entered into by Declarant with any governmental entity); or
- (4) Prior to the conveyance of any Lot to a Person other than the Declarant, the First Mortgagee on the damaged portion of the Common Elements rightfully demands all or a substantial part of the insurance proceeds.

9.1.2 The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If the entire Common Elements are not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Community, and except to the extent that other Persons will be distributees, the insurance proceeds attributable to the Common Elements that are not rebuilt must be distributed to the lienholders, as their interests may appear, and the remainder of the proceeds must be distributed to all the Lot Owners or lienholders, as their interests may appear, in proportion to their Allocated Interests (as defined in Section 10.1).

9.2 Use or Distribution of Insurance Proceeds. In the event of damage or destruction to all or a portion of the real property for which the Association has maintenance, repair and/or reconstruction obligations due to fire or other adversity or disaster, the insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such damage or destruction are insufficient to repair and reconstruct the damaged or destroyed area, the Association shall levy a Special Assessment in the aggregate amount of such insufficiency and shall proceed to make such repairs or reconstruction. The Special Assessment provided for herein shall be a debt of each Lot Owner and a lien on his Lot and the Improvements to Property thereon, and may be enforced and collected in the same manner as any other Special Assessment provided for in this Declaration.

ARTICLE 10 ASSESSMENT AND COLLECTION OF COMMON EXPENSES, ASSOCIATION ASSESSMENTS

10.1 Apportionment of Common Expenses. Except as provided in this Declaration, all Common Expenses shall be assessed against all Lots on a uniform and equal basis. All Common Expenses shall be assessed against all Lots in accord with the "Allocated Interests," as hereafter defined. The "Allocated Interests" for each Lot shall be a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots then in the Community. If

additional Lots are added to the Community, then the Common Expense liability shall be reallocated and any Common Expense Assessment not yet due shall be recalculated accordingly.

A. Declarant Payment of Common Expenses. Until the Association makes a Common Expense Assessment, the Declarant shall pay all Common Expenses.

B. Annual Common Expense Assessment. Annual Common Expense Assessments shall be sufficient to meet the expected needs of the Association. The Annual Common Expense Assessments shall include an adequate reserve fund for the maintenance, repair and replacement of those items that must be maintained, repaired or replaced on a periodic basis, and for the payment of insurance deductibles.

C. Levy of Assessments. The Annual Common Expense Assessment shall be levied on an annual basis against all Lots and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such assessment year. Common Expense Assessments may be collected in monthly, quarterly, semi-annual or annual installments, or in any other manner as determined by the Board of Directors. Common Expense Assessments may begin on the first day of the month in which conveyance of the first Lot to a Lot Owner other than the Declarant occurs. The assessments shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Community, and for all of those purposes and activities which may be required of the Association or which the Association may be empowered to pursue pursuant to this Declaration or the Articles of Incorporation, or Bylaws; provided, however, that such assessments levied during the Period of Declarant Control may not be used for the purpose of constructing capital improvements. Special Assessments shall be levied in accordance with Subsection D of this Section 10.1.

The omission or failure of the Board of Directors to levy the Assessment for any period shall not be deemed a waiver, modification or a release of the Lot Owners from their obligation to pay.

Common Expenses attributable to fewer than all Lots may be assessed exclusively against the Lots benefitted and levied at any time, shall be due and payable as established by the Executive Board, and be exempt from any voting requirements by the membership required for Special Assessments called for under the Declaration.

D. Special Assessments. In addition to the Annual Common Expense Assessments authorized in this Article, but subject to the limitations set forth herein, the Association, with the approval of the votes of sixty-seven percent (67%) of the Lot Owners voting in person or by proxy at a meeting duly called for this purpose, may levy, in any fiscal year, a Special Assessment applicable to that year only for the purpose of: (1) defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement upon any portion of the Common Elements, including fixtures and personal property related thereto; or (2) for repair or reconstruction of any damaged or destroyed improvements located on said Common Elements; or (3) for the funding of any operating deficit incurred by the Association. Any Special Assessment shall be levied against each Lot in a uniform and equal manner. A meeting of the Lot Owners called for the purpose of considering the establishment of a Special Assessment shall be held in conformance with Subsection E of this Section 10.1. Notwithstanding the foregoing, Special Assessments levied during the Period of Declarant Control may not be used for the purpose of constructing capital improvements.

E. Notice and Quorum for any Special Assessments. Written notice of any meeting called for the purpose of taking any action authorized under Subsection D of this Section 10.1 shall be sent to all Lot Owners not less than fifteen (15) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Lot Owners or of proxies entitled to cast sixty percent (60%) of all the Lot Owner votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

10.2 Common Expenses Attributable to Fewer than all Lots.

A. Any insurance premium increase attributable to a particular Lot by virtue of activities in or construction of the Lot shall be assessed against that Lot.

B. If a Common Expense is caused by the misconduct of a Lot Owner or guest, the Association may assess that expense exclusively against that Lot Owner's Lot.

C. Fees, including attorney fees, charges, taxes, impositions, late charges, fines, collection costs and interest charged against a Lot Owner pursuant to the Documents and the Act may be assessed against that Lot as Common Expense assessments.

D. Any Common Expense benefitting fewer than all of the Lots may be assessed exclusively against the Lots benefited.

10.3 Lien.

A. The Association has a lien on a Lot for all assessments and fees levied against the Lot under Section 10.1 and Section 10.2, or fines imposed against its Lot Owner. If a Common Expense Assessment or Special Assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid acceleration of installment obligations.

B. A lien under this Section is prior to all other liens and encumbrances on a Lot except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a Security Interest on the Lot which has priority over all other Security Interests on the Lot and recorded before the date on which the Common Expense Assessment or Special Assessment sought to be enforced became delinquent; and (3) liens for real estate taxes and other governmental assessments or charges against the Lot. A lien under this Section is also prior to all Security Interests described in Subdivision (2) above of this Subsection B to the extent of an amount equal to the Common Expense Assessments based on the periodic budget adopted by the Association pursuant to Section 10.4 which would have become due, in the absence of acceleration, during the six (6) months immediately preceding institution by either the Association or the holder of a First Security Interest of an action or a nonjudicial foreclosure either to enforce or extinguish either the Association's lien or a Security Interest described in Subdivision (2) of this Subsection B. This Subsection B does not affect the priority of mechanics' or materialmen's liens or the priority of a lien for other assessments made by the Association. The Association's lien on a Lot for any assessment shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said assessment lien.

C. Recording of this Declaration constitutes record notice and perfection of the lien. Further recording of a claim, of a lien for a Common Expense Assessment or Special Assessment is not required. However, the Executive Board of the Association may prepare and record in El Paso County, Colorado a written notice setting forth the amount of the unpaid indebtedness, the name of the Lot Owner of the Lot, and a description of the Lot. If a notice of lien is filed, the costs and expenses thereof shall be added to the assessment for the Lot against which it is filed and collected as part and parcel thereof.

D. A lien for an unpaid Common Expense Assessment or Special Assessment is extinguished unless proceedings to enforce the lien are instituted within six (6) years after the full amount of such assessment becomes due.

E. This Section does not prohibit an action to recover sums for which Subsection (A) of this Section creates a lien or to prohibit the Association from taking a deed in lieu of foreclosure.

F. A judgment or decree in any action brought under this Section shall entitle the Association to costs and reasonable attorney fees, which shall be additional Common Expense Assessments; and is enforceable by execution.

G. The Association's lien may be foreclosed by the same procedure by which a mortgage or deed of trust on real estate is foreclosed. The Executive Board shall have the power to bid at the foreclosure sale, and if title is obtained, hold, lease, mortgage, and encumber or convey the same.

H. In any action by the Association to collect Common Expense Assessments or Special Assessments or to foreclose a lien for such unpaid assessments, the court may appoint a receiver for the Lot Owner to collect all sums alleged to be due from that Lot Owner prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's Common Expense Assessments or Special Assessments.

I. If a holder of a first or second Security Interest in a Lot forecloses that Security Interest, the purchaser at the foreclosure sale is not liable for any unpaid Common Expense Assessments or Special Assessments against that Lot which became due before the sale, other than the assessments which were prior to that Security Interest under Subsection B of this Section of the Declaration. Any unpaid Common Expense Assessments or Special Assessments not satisfied from the proceeds of sale become Common Expenses collectible from all the Lot Owners, including the purchased Lot.

J. Any payments received by the Association in the discharge of a Lot Owner's obligation may be applied to attorney fees and costs first, then late fees, penalties and interest, and then the oldest balance due.

K. Sale or transfer of any Lot shall not affect the lien for said assessments or charges except that sale or transfer of any Lot pursuant to foreclosure of any First Mortgage, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture, shall only extinguish the lien of assessment charges as provided by applicable Colorado law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture, shall relieve any Lot from continuing liability for any assessment charges thereafter becoming due, nor from the lien thereof.

10.4 Budget Adoption and Ratification. Within thirty (30) days after adoption of any proposed budget for the Community, the Executive Board shall mail first class or deliver a summary of the budget to each Lot Owner and shall set a date for a meeting of the Lot Owners to consider ratification of the budget. The meeting shall be not less than fourteen (14) or more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting at least sixty-seven percent (67%) of all Lot Owners vote to reject the budget, the budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the Lot Owners continues until the Lot Owners ratify a new budget proposed by the Executive Board.

10.5 Certificate of Payment of Assessments. The Association, upon written request, shall furnish a Lot Owner or their designee, or a holder of a Security Interest or its designee, a written statement setting out the amount of unpaid Common Expense Assessments, or Special Assessments against the Lot (the "Statement"). Said request shall be delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the Association's registered agent. The Statement shall be furnished within fourteen (14) calendar days after receipt of the request, delivered personally or by certified mail, first class postage prepaid, return receipt requested, and is binding on the Association, the Executive Board and each Lot Owner, or the Association shall have no right to assert a lien upon the Lot for unpaid assessments which were due as of the date of the request.

10.6 Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within ten (10) days after the due date thereof shall be delinquent, subject to fees authorized by Section 10.2, including interest from the due date at the rate of eighteen percent (18%) per annum, or at such lesser rate as may be set from time to time by the Executive Board. Fees, including attorney fees, charges, late charges, fines and interest may be charged pursuant to the Act and the Declaration, Articles or Bylaws of the Association, due to late payment of assessments under this

Section. The Association may bring an action at law against the Lot Owner personally obligated to pay the same, and/or foreclose the lien against such Lot. If a judgment or decree is obtained, including without limitation in a foreclosure action, such judgment or decree shall include interest on the assessment and attorney fees, together with the costs of the action, and other fees.

10.7 Acceleration of Assessments. If any Lot Owner does not make the payment of any Common Expense Assessment, or Special Assessment levied against their Lot within ten (10) days of the date due, the Board of Directors shall have the right to declare all unpaid Common Expense Assessments or Special Assessments for the pertinent fiscal year immediately due and payable for that Lot.

10.8 No Waiver of Liability for Common Expenses. No Lot Owner may become exempt from liability for payment of the Common Expense Assessments, or Special Assessments by waiver of the use or enjoyment of the Common Elements by abandonment of the Lot against which the Common Expense Assessments, and Special Assessments are made.

10.9 Personal Liability of Lot Owners. Each Lot Owner, including Declarant by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is personally liable for Common Expense Assessments, and Special Assessments made against such Lot Owner's Lot during the period of ownership of such Lot, at the time a Common Expense Assessment, and Special Assessment or portion of the assessment is due and payable. Personal liability for the Common Expense Assessment, or Special Assessment shall not pass to a successor in title to the Lot unless the successor agrees to assume the obligation. All Lot Owners of each Lot shall be jointly and severally liable to the Association for the payment of all assessments, fines, and including fees described in Section 10.2. The obligation for such payments by each Lot Owner to the Association is an independent covenant with all amounts due, from time to time, payable in full when due without notice or demand (except as otherwise expressly provided in this Declaration), and without setoff or deduction.

10.10 Surplus Funds. Any surplus funds of the Association remaining after payment of or provision for Common Expenses and any prepayment of or provision for reserves shall be retained by the Association as unallocated reserves and need not be paid to the Lot Owners in proportion to their Common Expense liability or credited to them to reduce their future Common Expense Assessments.

10.11 Working Capital Fund. The Association shall require the first Lot Owner of any Lot (other than a Declarant or a builder) who purchases that Lot from Declarant or a builder to make a nonrefundable contribution to the Association in the amount equal to two times the total annual assessment at the time of sale (regardless of whether or not assessments have commenced as provided herein). Said contribution shall be collected and transferred to the Association at the time of closing of the sale by Declarant or a builder of each Lot as aforesaid, and shall, until used, be maintained in a segregated account with other such working capital funds for the use and benefit of the Association as the Executive Board deems desirable, including, without limitation, to meet unforeseen expenditures or to purchase additional equipment, property or services. Such contribution to the working capital fund shall not relieve a Lot Owner from making regular payments of assessments as the same become due. Upon the transfer of their Lot, a Lot Owner shall be entitled to a credit from their transferee (but not from the Association) for the aforesaid contribution to working capital fund. The Association may, from time-to-time, increase the amount required for each Lot Owner's share of the working capital fund to an amount equal to two times the then current total annual assessment for each Lot Owner.

10.12 Northgate Residential Properties. The Executive Board shall have the right, but not the obligation, to collect from the Lot Owners, any Assessments (as defined therein) imposed by the Northgate Association under that certain Northgate Declaration related to the Property. Such Assessments may be collected with the Common Expense Assessment hereunder, and if collected by the Association, shall be paid over to the Northgate Association, by the Association, on behalf of the Lot Owners.

**ARTICLE 11
DESIGN REVIEW COMMITTEE**

11.1 Approval of Improvements Required. Other than the original improvements made to the Property by Declarant during Declarant's development of the Community, no Improvements to Property shall be constructed, erected, placed, planted, applied or installed upon any Lot unless complete plans and specifications therefor (said plans and specifications to show exterior design, height, materials, color, and location of the Improvements, plotted horizontally and vertically, location and size of driveways, location, size, and type of landscaping, fencing, walls, windbreaks and grading plan, as well as such other materials and information as may be required by the Design Review Committee), shall have been first submitted to and approved in writing by the Design Review Committee.

11.2 Composition Of Committee.

11.2.1 Until Declarant has sold all of the Lots in the Community (as the Community Area may be expanded from time to time by Declarant as provided herein), or until such earlier time as Declarant elects to assign the right to appoint the Design Review for one (1) or more platted subdivision filings within the Community to the Board, the Design Review Committee for the applicable platted subdivision shall consist of three members appointed by Declarant (the "Committee Members"). After the right to appoint the Design Review Committee for a platted subdivision has been transferred to the Board of Directors, the Committee Members of the Design Review Committee for the applicable platted subdivision shall consist of at least three and not more than five individuals, all of whom shall be appointed by the Board of Directors. The Design Review Committee for all other platted subdivisions within the Community shall remain the three (3) Committee Members appointed by Declarant. All references in this Declaration to the Design Review Committee shall be deemed to refer to the Design Review Committee for the applicable platted subdivision in which the Lot or area for which approval is being sought is located or which is in violation of this Declaration, whether such Design Review Committee is appointed by the Declarant or the Board, as provided in this Section 11.2.1. The Committee Members of the Design Review Committee need not be Members of the Association. The Design Review Committee shall exercise the functions assigned to it by this Declaration and the Design Guidelines, if any, including reviewing and approving all plans for Improvements as provided in this Declaration.

11.2.2 The initial terms of the Committee Members shall be as follows: one Committee Member shall serve for one year; one Committee Member shall serve for two years; and the remaining Committee Members (if there are more than three) shall serve for three years. Thereafter the terms of Committee Members appointed by Declarant or by the Executive Board, as applicable, to replace those whose terms expire shall be for a period of three years or such lesser time as is necessary to maintain the aforescribed staggered terms.

11.2.3 The power to "appoint," as provided herein, shall include without limitation the power to: constitute the initial membership of the Design Review Committee; appoint member(s) to the Design Review Committee on the occurrence of any vacancy therein, for whatever reason; and remove any member of the Design Review Committee, with or without cause, at any time, and appoint the successor thereof.

11.3 Delegation. Any Committee Member may, at such Committee Member's discretion, delegate to another Committee Member the right to represent and act for it in matters addressed to the Design Review Committee. In addition, the entire Design Review Committee may, at its discretion, delegate to the Executive Board any of the powers granted to it by this Article. Any such delegation shall be made by written notice to the Executive Board indicating what powers and authority are being delegated. Any such delegation shall be effective from the date such notice is recorded in the records of the Association.

11.4 Submission of Plans.

11.4.1 Prior to commencement of work to accomplish any proposed Improvement to Property, the Person proposing to make such Improvement to Property ("Applicant") shall submit to the Design Review Committee, at the principal office of the Association, plans showing the location of the structure and improvements, floor plans, fence

plans, elevations showing all aspects of the Improvement to Property and the development of the Lot as a Lot, together with the proposed color scheme and materials for roofs, and exteriors. The Design Review Committee may require submission of additional plans, specifications or other information prior to approving or disapproving the proposed Improvement to Property. Until receipt by the Design Review Committee of all required materials in connection with the proposed Improvement to Property, the Design Review Committee may postpone review of any materials submitted for approval.

11.4.2 The Design Review Committee may impose a fee in an amount not to exceed \$150 for each submittal to the Design Review Committee. Such fees shall be paid at the time of submittal unless otherwise authorized by the Design Review Committee and shall be levied in addition to the Common Expense Assessment against the Lot for which the request for Design Review Committee approval was made, and shall be subject to the Association's lien for Individual Assessments and subject to all other rights of the Association for the collection of such Assessments, as more fully provided in this Declaration.

11.5 Criteria for Approval. The Design Review Committee shall approve any proposed Improvement to Property only if (a) the proposed Improvement to Property complies with the requirements of the Subdivision Plat, the Design Review Guidelines for the Community and any agreements affecting the Community entered into by Declarant with any governmental entity, and (b) the Design Review Committee deems, in its reasonable discretion, that the Improvement to Property in the location indicated will not be detrimental to the appearance of the surrounding areas of the Community as a whole; that the appearance of the proposed Improvement to Property will be in harmony with the surrounding areas of the Community; and that the proposed Improvement to Property will not detract from the beauty, wholesomeness and attractiveness of the Community as a whole or the enjoyment thereof by the Lot Owners.

The Design Review Committee shall have the right to disapprove any proposed Improvement to Property which is not suitable or desirable in the Design Review Committee's opinion for aesthetic or other reasons. The standards of review utilized by the Design Review Committee shall be uniformly and nondiscriminately applied. The Design Review Committee shall exercise its reasonable judgment to the end that all attachments, improvements, construction, landscaping and alterations to Dwellings and on Lots within the Property conform to and harmonize with existing surroundings and structures. The Design Review Committee may condition the approval of any proposed Improvement to Property upon the making of such changes thereon as the Design Review Committee may deem appropriate. In reaching its decision thereon, the Design Review Committee may not take into account the interior layout or interior design of any proposed Improvement to Property.

11.6 Architectural Standards; Design Guidelines. The Design Review Committee may adopt architectural standards and guidelines to aid the Design Review Committee in the performance of its duties hereunder ("Design Review Guidelines"). The Design Review Guidelines shall contain, among other provisions, guidelines which clarify the types of designs and materials that are deemed acceptable for use in the Community. The Design Review Committee shall have the right and authority to amend or supplement the Design Review Guidelines from time to time conditioned upon ratification by the Executive Board.

11.7 Decision of Design Review Committee.

11.7.1 The decision of the Design Review Committee shall be made within thirty (30) days after receipt by the Design Review Committee of all materials required by the Design Review Committee. The decision shall be in writing and, if the decision is not to approve a proposed Improvement to Property, the reasons therefor shall be stated with reasonable particularity. The decision of the Design Review Committee shall be transmitted in writing to the Applicant at the address furnished by the Applicant to the Design Review Committee.

11.7.2 A majority of the members of the Design Review Committee shall constitute a quorum and a majority vote of the quorum shall constitute the action of the Design Review Committee. For purposes of this Article, any Committee Member to whom one or more other Committee Members have delegated the authority to act on their

behalf shall have a number of votes equal to the votes of delegating Committee Members, plus such Committee Member's own vote.

11.8 Failure to Act on Plans. Any request for approval of a proposed Improvement to Property shall be deemed approved, unless disapproval or a request for additional information is transmitted to the Applicant by the Design Review Committee within thirty (30) days after the date of receipt by the Design Review Committee of all necessary materials as determined by the Design Review Committee.

11.9 Records. The Design Review Committee shall maintain written records of all applications submitted to it and all actions taken by it thereon, and such records shall be available to Lot Owners for inspection at reasonable hours of the business day.

11.10 Variance. The Design Review Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article or Article 12 hereof, in order to overcome practical difficulties or prevent unnecessary hardships arising by reason of the application of any such conditions and restrictions. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the other property or improvements in the Community and shall not militate against the general intent and purpose hereof. The Design Review Committee may not grant variances from the requirements of the Subdivision Plat or any agreements affecting the Community entered into by Declarant with any governmental entity.

11.11 Waivers. The approval or consent of the Design Review Committee, any representative thereof or the Executive Board, to any application for architectural or design approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the Design Review Committee, any representative thereof or the Executive Board, as to any application or other matters whatsoever as to which approval or consent may subsequently or additionally be required.

11.12 Inspection of Work. The Design Review Committee or its duly authorized representative shall have the right to inspect any Improvement to Property prior to and after completion, provided that the right of inspection shall terminate thirty (30) days after the Certificate of Occupancy for said Improvement to Property has been issued.

11.13 Notice of Noncompliance. If the Design Review Committee finds that any Improvement to Property has been done without obtaining the approval of the Design Review Committee or was not done in substantial compliance with the plans and specifications furnished by the Lot Owner to the Design Review Committee, the Design Review Committee shall notify the Lot Owner in writing of such noncompliance ("Notice of Noncompliance"). The Notice of Noncompliance shall specify the particulars of the noncompliance and shall require the Lot Owner to take only such action as may be minimally necessary to remedy the noncompliance.

11.14 Correction of Noncompliance. If the Executive Board determines that a noncompliance exists, the Lot Owner shall remedy or remove the same within a period of not more than thirty (30) days from the date of receipt by the Lot Owner of the ruling of the Executive Board. If the Lot Owner does not comply with the Executive Board's ruling within such period, the Executive Board may, at its option, record a "Notice of Noncompliance" in the real estate records in the Office of the Clerk and Recorder, El Paso County, Colorado, which shall constitute a lien against the offending Lot, which lien the Executive Board shall have no obligation to release until such time as said noncompliance is remedied to the Executive Board's satisfaction. Additionally, the Executive Board may order the removal of the noncomplying Improvement to Property or may otherwise remedy the noncompliance. The Executive Board may levy an Individual Assessment in accordance with this Declaration against the Lot Owner of such Lot for such costs and expenses incurred. The right of the Executive Board to remedy or remove any noncompliance shall be in addition to all other rights and remedies which the Executive Board may have at law, in equity, or under this Declaration.

11.15 Nonliability for Committee Action. No member of the Design Review Committee, nor any member of the Executive Board nor the Declarant, shall be liable for any loss, damage or injury arising out of or in any way connected with the discharge of the duties of the Design Review Committee or Executive Board under this Article. In

reviewing any matter, the Design Review Committee shall not be responsible for reviewing, nor shall its approval of any Improvement to Property be deemed approval of, the Improvement to Property for compliance with applicable health and safety requirements, whether structural or otherwise, or being in conformance with building codes or other governmental laws or regulations.

11.16 Changes to Improvements. In addition to the architectural controls provided herein, no Lot Owner shall make any changes or alterations to the exterior of a Dwelling on a Lot nor to any of the other improvements outside of the Dwelling, including changes to the grading or drainage design of a Lot, without first obtaining written permission therefor from the Design Review Committee in accordance with this Article. In addition, the occupant of a Lot shall comply with all requirements of any Rules and Regulations adopted by the Association.

11.17 Address of Design Review Committee. The address of the Design Review Committee shall be at the principal office of the Association.

11.18 Northgate Declaration Architectural Approval Authority. In addition to any approvals for Improvements required hereunder by the Design Review Board, Lot Owners shall be obligated to obtain any approvals for Improvements required under the Northgate Declaration by the Architectural Approval Authority thereunder. No approval by the Design Review Board hereunder shall be binding on the Architectural Approval Authority under the Northgate Declaration, nor shall approval by the Design Review Board be deemed approval by the Architectural Approval Authority under the Northgate Declaration. If requested in writing by the Northgate Association and the Architectural Approval Authority, the Design Review Board may assume the rights and duties of approval of Improvements within the Community by such Architectural Approval Authority under the Northgate Declaration. The Association shall notify Lot Owners if such assignment of approval rights for Improvements under the Northgate Declaration, to the Design Review Board is approved by the Executive Board.

ARTICLE 12 USE RESTRICTIONS

12.1 Rules and Regulations. Rules and Regulations concerning and governing the Lots and/or the Community may be adopted, amended or repealed from time to time by the Executive Board, and the Executive Board may establish and enforce penalties for the infraction thereof, including, without limitation, the levying and collecting of Fines for the violation of any of such Rules and Regulations. Without limiting the foregoing, the Executive Board may enforce the provisions of the Rules and Regulations against any violation of the same in the same manner as the Executive Board may enforce the requirements of this Declaration. The additional restrictions set forth below shall also apply to the Community.

12.2 Destruction of Dwellings. If due to casualty or for any other reason a Dwelling shall be destroyed or so damaged that the Dwelling is no longer habitable, then the Lot Owner of such Lot shall within a reasonable time, not to exceed ninety (90) days after the event resulting in such damage or destruction, either commence and diligently pursue repair or reconstruction of the Dwelling or demolish the same. Demolition of a Dwelling shall include removal of any foundation, basement walls and floors, regrading the Lot to a level condition and the installation of such landscaping as may be required by the Design Review Committee pursuant to a plan submitted to the Design Review Committee by the Lot Owner of said Lot. If the Lot Owner of a Lot does not either commence repair, reconstruction or demolition activities within ninety (90) days as provided hereinabove and diligently pursue the same in conformance with a plan approved by the Design Review Committee, then the Association may, in its reasonable discretion, after providing the notice to the Lot Owner, enter upon the Lot for the purpose of demolishing the residence and landscape the Lot in conformance with approved plans. The cost related to such demolition and landscaping shall be the personal obligation of the Lot Owner of the Lot on which such work is performed and shall be subject to all of the terms and provisions applicable to assessments as provided in Article 10 hereof, including, without limitation, interest, late charges and lien rights.

12.3 Residential Use. Subject to Section 12.4 below, Lots shall be used for Residential Use only, including uses which are customarily incident thereto, and shall not be used at any time for business, commercial or professional purposes; provided, however, that a Lot Owner may use his Lot for professional or home occupation so long as the applicable zoning permits such use, there is no external evidence thereat such as signage, and no unreasonable inconvenience, such as excessive traffic, to other residents of the Lots is created thereby.

12.4 Declarant's Use. Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for Declarant, its employees, agents, and contractors, to perform such reasonable activities, and to maintain upon portions of the Lots and the Common Elements such facilities as Declarant deems reasonably necessary or incidental to the construction and sale of Lots, and development and construction of improvements, specifically including, without limiting generality of the foregoing, locating, maintaining and relocating management offices, signs, sales offices, in such numbers, of such sizes, and at such locations as it determines in reasonable discretion. In addition, prior to development of the balance of the Community, Declarant may use the Lots located within the balance of the Community for any purpose whatsoever, provided only that Declarant shall not perform any activity or maintain any facility on any portion of the Lots in such a way as to unreasonably interfere with or disturb any Lot Owner, or to unreasonably interfere with the use, enjoyment or access of such Lot Owner, his family members, guests or invites of and to his Lot and to a public right-of-way.

12.5 Household Pets. No animals, livestock, birds, poultry, reptiles or insects of any kind shall be raised, bred, kept or boarded in or on the Lots; provided, however, that the Lot Owner of each Lot may keep dogs and domesticated cats if such animals are kept as pets and the total number does not exceed four animals, so long as such pets are bona fide household pets, are not kept for any commercial purpose and are not kept in such manner as to create a nuisance to any resident of the Lots. The Executive Board shall have, and is hereby given, the right and authority to determine in its sole discretion that dogs, cats or other household pets are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance, or that a Lot Owner is otherwise in violation of the provisions of this Section, and to take such action or actions as it deems appropriate to correct the same. A Lot Owner's right to keep household pets shall be coupled with the responsibility to pay for any damage caused by such pets, as well as any costs incurred by the Association as a result of such pets, and any such costs and damages shall be subject to all of the Association's rights with respect to the collection and enforcement of assessments as provided in Article 10 hereof.

12.6 Temporary Structures; Unsightly Condition. Except as hereinafter provided, no structure of a temporary character, including, but not limited to, a house trailer, tent, shack, storage shed, or outbuilding shall be placed or erected upon any Lot; provided, however, that during the actual construction, alteration, repair or remodeling of a structure or other Improvement to Property, necessary temporary structures for storage of materials may be erected and maintained by the person doing such work. The work of constructing, altering or remodeling any structure or other improvements shall be prosecuted diligently from the commencement thereof until the completion hereof. Further, no unsightly conditions, structures, equipment or objects shall be so located on any Lot as to be visible from a street or from any other Lot.

12.7 Miscellaneous Improvements.

12.7.1 No advertising or signs of any character shall be erected, placed, permitted, or maintained on any Lot other than a name plate of the occupant and a street number, and except for a "For Sale" or "Open House" sign of not more than five square feet, and of a color and design approved by the Design Review Committee.

12.7.2 No clotheslines, chain-linked dog runs, drying yards, service yards, or storage areas shall be located on any Lot. No Improvement to Property other than a boundary fence approved by the Design Review Committee shall be located on any Lot so as to be adjacent to any fence maintained by the Association.

12.7.3 No types of refrigerating, cooling or heating apparatus shall be permitted on a roof and no such apparatus shall be permitted elsewhere on a Lot, except when appropriately screened and approved by the Design Review Committee.

12.7.4 Except as provided below in this Section 12.7.4, no aerial, antenna, or other device for reception or transmission of radio or television or other electronic signals shall be maintained on the roof of any building, nor shall any such aerial, antenna or other device be mounted at any location so as to be visible from neighboring properties or adjacent streets. Plans for Improvements, other than FCC Protected Improvements, as defined below, must be submitted to and approved by the Design Review Committee prior to installation. If the Design Review Committee disapproves such structure, the party requesting approval may modify its plans to eliminate the Design Review Committee's objections and resubmit them for approval. If any such aerial, antenna, satellite dish or other device is installed without the approval of the Design Review Committee, the Design Review Committee shall have the rights set forth in these Covenants. Notwithstanding the above, an antenna that is (i) designed to receive direct broadcast satellite service that is one meter or less in diameter, (ii) designed to receive video programming services via multiple distribution services that is one meter or less in diameter or diagonal measurement, or (iii) that is designed to receive television broadcast signals, as defined by the Federal Communications Commission or the Telecommunications Act of 1996, as may be amended from time to time (collectively, "FCC Protected Structures"), shall be permitted so long as the means, method and location of such Antenna comply with the rules adopted from time to time by the Design Review Committee. No unreasonable delay or unreasonable increase in the cost or installation or maintenance of an FCC Protected Structure shall be imposed by such rules, nor shall the rules prevent reception or otherwise make reception impossible for any Owner who shall seek to install an FCC Protected Structure, other than for health and safety reasons.

12.7.5 No wind generators of any kind shall be constructed, installed, erected or maintained on the Lots.

12.7.6 No fences shall be constructed, installed, erected or maintained on any Lot unless approved by the Design Review Committee and except such fences, in such locations, as were installed or permitted to be installed by the Declarant in its construction of improvements on the Lots.

12.7.7 Any exterior lighting installed or maintained on the Lots shall either be indirect or of such controlled focus and intensity so as not to disturb the residents of adjacent or nearby property.

12.8 Vehicular Parking, Storage and Repairs.

12.8.1 No house trailer, camping trailer, boat trailer, hauling trailer, boat, or accessories thereto, truck (larger than 3/4 ton), self-contained motorized recreational vehicle, or other type of recreational vehicle or equipment, may be parked or stored on a Lot unless such parking or storage is within the garage area of any Lot or suitably screened from view, except that any such vehicle may be otherwise parked as a temporary expedient for loading, delivery, or emergency. This restriction, however, shall not restrict trucks or other commercial vehicles which are necessary for construction or for the maintenance of the Lots or any improvements located thereon.

12.8.2 Except as hereinabove provided, no abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked on a Lot unless such parking or storage is within the garage area of any Lot. An "abandoned or inoperable vehicle", shall be defined as any automobile, truck, motor-cycle, or other similar vehicle, which has not been driven under its own propulsion for a period of seventy-two hours or longer, or which does not have on an operable propulsion system installed therein; provided, however, that otherwise permitted vehicles parked by Lot Owners while on vacation (for a maximum of two weeks) or during a period of illness shall not be deemed to be abandoned.

12.8.3 In the event the Executive Board shall determine that a vehicle is parked or stored on any Lot in violation of this Section, then a written notice describing said vehicle shall be personally delivered to the owner thereof

(if such owner can be reasonably ascertained) or shall be conspicuously placed upon the vehicle (if the owner thereof cannot be reasonably ascertained), and if the vehicle is not removed within ten (10) days thereafter, the Executive Board shall have the right to remove the vehicle at the sole expense of the owner thereof

12.8.4 No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of vehicles, trailers or boats, may be performed or conducted on any Lot unless it is done within completely enclosed structures which screen the sight and sound of the activity from the street and from adjoining property. The foregoing restriction shall not be deemed to prevent washing and polishing of any motor vehicle, boat, trailer, motor-driven cycle, or other vehicle, together with those activities normally incident and necessary to such washing and polishing.

12.9 Nuisances. No nuisance shall be permitted on any Lot nor any use, activity or practice which is a source of annoyance or embarrassment to, or which offends or disturbs the resident of any Lot or which interferes with the peaceful enjoyment or possession and proper use of any Lot, or any portion thereof by its residents. As used herein, the term "nuisance" shall not include any activities of Declarant which are reasonably necessary to the development and construction of, and sales activities on, the Lots; provided, however, that such activities of the Declarant shall not unreasonably interfere with any Lot Owner's use and enjoyment of his Lot or with any Lot Owner's ingress and egress to or from his Lot and a public way. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done or placed on any Lot which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others. Further, no immoral, improper, offensive or unlawful use shall be permitted or made of any Lot or any portion thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Lots, or any portion thereof, shall be observed.

12.10 Lots Not to be Subdivided. No Lot shall be subdivided, except for the purpose of combining portions with an adjoining Lot provided that no additional building site is created thereby. Not less than one entire Lot, as conveyed, shall be used as a building site.

12.11 No Hazardous Activities. No activities shall be conducted on any Lot or within improvements constructed on any Lot which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any Lot and no open fires shall be lighted or permitted on any Lot except in a contained barbecue Lot while attended and in use for cooking purposes or within on an interior fireplace, or except such campfires or picnic fires on property which may be designated for such use by the Association.

12.12 No Annoying Light, Sounds or Odors. No light shall be emitted from any Lot which is unreasonably bright or causes unreasonable glare; no sound shall be emitted from any Lot which is unreasonably loud or annoying; and no odor shall be permitted from any Lot which is noxious or offensive to others.

12.13 Restrictions on Trash and Materials. No refuse, garbage, trash, lumber, grass, shrubs or tree clippings, plant waste, metal, bulk materials, scrap or debris of any kind shall be kept, stored, or allowed to accumulate on any Lot unless placed in a suitable container suitably located solely for the purpose of garbage pickup or composting. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No garbage or trash cans or receptacles shall be maintained in an exposed or unsightly manner.

12.14 Lots to be Maintained. Each Lot shall at all times be kept in a clean, sightly and wholesome condition by the Lot Owner of the Lot.

12.15 Grading Patterns. No material change may be made in the ground level, slope, pitch or drainage patterns of any Lot as fixed by the original, approved finish grading plan except after first obtaining the prior consent and approval of the Declarant. Grading shall be maintained at all times so as to conduct irrigation and surface waters away from buildings and so as to protect foundations and footings from excess moisture. Any construction, grading or swales should direct surface waters to a drainage easement or to the street. Surface waters should not be concentrated

and directed differently than the historic direction of flow. Special attention should be paid to the revegetation of approved grades, cuts and fills to eliminate erosion.

12.16 Use of Common Elements.

12.16.1 An easement is hereby granted to the Declarant through the Common Elements as may be reasonably necessary for the purpose of discharging any of Declarant's obligations or exercising any Special Declarant Rights, as defined in Article 13.

12.16.2 No use shall be made of the Common Elements which will in any manner violate the Subdivision Plat, any agreements entered into by the Declarant with any governmental entity, or the statutes, rules, or regulations of any governmental authority having jurisdiction over the Common Elements.

12.16.3 No Lot Owner shall engage in any activity which will temporarily or permanently deny free access to any part of the Common Elements to all Lot Owners, nor shall any Lot Owner place any structure whatsoever upon the Common Elements.

12.16.4 The use of the Common Elements shall be subject to the Rules and Regulations as may be adopted from time to time by the Executive Board.

12.16.5 No use shall ever be made of the Common Elements which will deny ingress and egress to those Lot Owners having access to their Lots only over Common Elements, and the right of ingress and egress to said Lots is hereby expressly granted.

12.17 Dwelling Size. No Dwelling shall be permitted on a Lot unless it is in conformity with the following minimum permitted dwelling sizes: the main floor for a dwelling, exclusive of open porches, garages, and garden level and walkout basements, shall be not less than one thousand two hundred (1,200) square feet for a one story dwelling, nor less than one thousand four hundred (1,400) square feet for a dwelling of more than one story.

12.18 Building Location. No Dwelling shall be located on any Lot nearer to the front, side or rear lot lines than the minimum building setback lines shown on the Subdivision Plat or as provided by applicable law, whichever is greater. A Dwelling located on any Lot shall be located entirely within any building area specified on the Subdivision Plat for such Lot. Covered patios, decks, fireplace stacks and other ancillary Improvements to Property shall not be considered as part of the Dwelling. Anything in the foregoing to the contrary notwithstanding, no Improvement to Property shall be located within any drainage easement shown on the Subdivision Plat.

12.19 Sight Distance at Intersection. No Improvement having a height in excess of three feet above the elevation of the lowest point of the crown of the adjacent roadway shall be placed or permitted to remain on any corner Lot within the triangle formed by measuring from the point of the intersection of the front and exterior side lot lines a distance of thirty feet along said front and side lot lines, connecting the points so established to form a sight triangle on the area of the lot adjacent to the roadway. Anything in the foregoing to the contrary notwithstanding, it is expressly understood that the provisions of this Section shall be subject to any applicable laws.

12.20 Height Restrictions. The height of any Improvement to Property shall not exceed the lesser of (a) thirty-five feet and (b) the height permitted by applicable ordinances, rules or regulations. For purposes of the height restrictions set forth in this Section, the height of the roof line of any Improvement to Property shall be measured vertically from the average finished grade immediately adjacent to such Improvement to Property to the highest point on the roof line of the Improvement to Property.

12.21 Fences. No fences shall be erected on any Lot or elsewhere in the Community, other than subdivision perimeter fences installed by the Declarant or the Association, except with approval of the Design Review Committee and subject to the conditions set forth on the Subdivision Plat. Under no circumstances will a fence or hedge more than

two feet high be permitted to be installed closer to an adjoining street than the Dwellings or any other building located on the Lot is to the street. Chain link fences are prohibited.

12.22 Exterior Materials and Colors. Unless otherwise approved by the Design Review Committee, exterior walls of Dwellings shall be constructed of or covered by materials in a color and composition consistent with those neighboring Dwellings, including wood, stone, stucco, brick or manufactured siding as approved by the Design Review Committee. The Design Review Committee shall not approve exterior materials or colors for Dwellings and other Improvement on the Property if such materials and colors are not compatible with materials and colors used on neighboring Dwellings.

12.23 Roofs. All roof areas shall be of wood shakes, wood shingles, composition shingles, asphalt shingles, slate, tile or other material approved by the Design Review Committee and of a color approved by the Design Review Committee.

ARTICLE 13 SPECIAL DECLARANT RIGHTS

13.1 Reservation of Development Rights. The Declarant reserves the following development rights ("Development Rights"):

- A. The right to construct underground utility lines, pipes, wires, ducts, conduits and other facilities for the purpose of furnishing utility and other services to buildings and Improvements to be constructed on the Property.
- B. The right to create additional Lots and Common Elements, and to subdivide Lots, or convert Lots into Common Elements, or prior to conveyance to the Association, convert Tracts into Lots.
- C. The right to withdraw any real estate from the Community, in accordance with the Act.

13.2 Phasing of Development Rights. No assurances are made by the Declarant regarding the Development Rights reserved as to whether the Declarant will exercise its Development Rights or the order in which such portions, or all of the areas, will be developed. The exercise of Development Rights as to some portions will not obligate the Declarant to exercise them as to other portions.

13.3 Special Declarant Rights. The Declarant reserves the following special Declarant rights ("Special Declarant Rights"), to the maximum extent permitted by law, which may be exercised, where applicable, anywhere within the Community:

- A. To complete Improvements indicated on the Subdivision Plats;
- B. To exercise any Development Rights reserved herein;
- C. To maintain construction, sales and management offices, and signs advertising the Community and models;
- D. To use and to permit others to use easements through the Community for construction, and to discharge Declarant's obligations under the Act and this Declaration;
- E. To appoint or remove any officer of the Association or a member of the Executive Board during the Period of Declarant Control subject to the provisions of this Declaration;
- F. To merge or consolidate the Community with another common interest community or subject it to a Master Association;

- G. To amend the Declaration and the Subdivision Plat in connection with the exercise of any development rights; and
- H. To exercise any other Declarant right created by any other provision of this Declaration.

13.4 Rights Transferable. Any Special Declarant Right or additional reserved right created or reserved under this Article for the benefit of the Declarant may be transferred to any person by an instrument describing the rights transferred and recorded in the real estate records of El Paso County, Colorado. Such instrument shall be executed by the transferor Declarant and the transferee.

**ARTICLE 14
MORTGAGEE PROTECTION**

14.1 Introduction. This Article establishes certain standards and covenants which are for the benefit of the holders, insurers, and guarantors of certain Security Interests.

14.2 Notice. Each First Mortgagee, upon written request to the Association, shall be entitled to:

14.2.1 Budgets, Assessments, Etc. Receive copies of budgets, notices of Assessments or any other notice or statement provided under this Declaration by the Association to the Lot Owner of the Lot covered by such Security Interest.

14.2.2 Financial Statements. Receive any audited or unaudited financial statement of the Association which is prepared for distribution to the Lot Owners within ninety (90) days following the end of any fiscal year.

14.2.3 Meetings. Receive copies of notices of meetings of the Lot Owners.

14.2.4 Amendment to Bylaws or Articles. Receive at least thirty (30) days prior notice of the decision of the Declarant, the Lot Owners or the Executive Board to make any material amendment to this Declaration or the articles of incorporation or bylaws of the Association.

14.2.5 Damage. Receive notice of substantial damage to or destruction of any part of the Common Elements.

14.2.6 Default. Receive notice of any default under this Declaration by any Lot Owner of a Lot in which the First Mortgagee holds a first Security Interest.

14.2.7 Right to Examine Books and Records. Examine the books and records of the Association at any reasonable time.

14.2.8 Any Other Notice. Receive any other notice or copy provided for elsewhere in this Declaration.

14.3 Form of Request. The request of a First Mortgagee shall specify which of the items described in Section 14.2 above it desires to receive and shall indicate the address to which any such notice or document shall be sent by the Association. Failure of the Association to provide any of the foregoing to a First Mortgagee who has made a proper request shall not affect the validity of any action which is related to any of the foregoing. The Association need not inquire into the validity of any request made by a First Mortgagee, and in the event of multiple requests from purported holders of the same interest, the Association shall honor the most recent request received.

14.4 Rights of First Mortgagees. Notwithstanding any other provisions of this Declaration, unless at least sixty-seven (67%) percent of the First Mortgagees (based upon one vote for each mortgage owned) have given their prior written approval, the Association shall not be entitled to:

14.4.1 Abandon, Partition, Subdivide, Convey or Encumber. Abandon, partition, subdivide, convey or encumber the Common Elements or any portion thereof, except as expressly provided herein. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Community shall not be deemed a conveyance within the meaning of this clause.)

14.4.2 Hazard Insurance Proceeds. Use hazard insurance proceeds on account of any casualty loss other than to repair, replace or reconstruct the damaged property.

14.5 Failure to Respond. The failure of any First Mortgagee to respond within thirty (30) days to any written request of the Association delivered by certified mail, return receipt requested, for approval of any matter set forth in Section 14.4 above shall constitute an implied approval of such matter.

ARTICLE 15 ANNEXATION, AMENDMENTS AND MERGER

15.1 Amendment. Declarant declares and reserves, as a Special Declarant Right, the right to amend without the consent of Lot Owners this Declaration, or the Subdivision Plat, Articles of Incorporation or Bylaws, any time within fifteen (15) years from the date this Declaration is recorded, or before Declarant conveys the last Lot to a purchaser other than Declarant or a successor Declarant whichever first occurs, as follows:

(i) To make nonmaterial changes, such as the correction of a technical, clerical, grammatical or typographical error or clarification of a statement.

(ii) To comply with any requirements of the Act or amendments thereto, or any of the Agencies or to induce any of the Agencies to make, purchase, sell, insure or guarantee First Security Interests.

(iii) To add additional real estate to the Community from the "Expansion Property," as described on Exhibit B attached hereto and incorporated herein, and from such other locations as the Declarant may elect in its sole discretion, so long as the total additional real estate so annexed to the Community pursuant to this sentence, and not described in the attached Exhibit A description of the Property or in the Exhibit B description of the Expansion Property, does not exceed ten percent (10%) of the total area of the real property described in the attached Exhibit A and Exhibit B.

15.2 Mergers. The Community may be merged or consolidated with another common interest community of the same form of ownership by complying with Section 38-33.3-221 of the Act.

15.3 Recordation of Amendments. Each amendment to the Declaration must be recorded in accordance with Section 38-33-217(3) of the Act as it may be amended.

15.4 Special Declarant Rights. Provisions in this Declaration creating Special Declarant Rights under Article 13 may not be amended without the consent of the Declarant.

15.5 Consent of Holders of Security Interests. Amendments are subject to the consent requirements of Section 16.5.

15.6 Expenses. All expenses associated with preparing and recording an amendment shall be allocated in accordance with Section 38-33.3-217(6) of the Act.

**ARTICLE 16
GENERAL PROVISIONS**

16.1 Enforcement. Enforcement of any provision of this Declaration, the Act, the articles of incorporation and/or Bylaws of the Association, and any Rules and Regulations shall be by appropriate proceedings at law or in equity against those Persons violating or attempting to violate any such provision. Such proceedings may be for the purpose of removing a violation, restraining or enjoining a future violation, recovering damages for any violation, foreclosing a lien, obtaining such other and further relief as may be available, or any combination thereof. Such proceedings may be instituted by a Lot Owner or by the Association. In any such proceedings the prevailing party shall be entitled to recover the costs and reasonable attorneys' fees incurred in connection with such proceedings. In addition, the Association may levy Fines against a Lot Owner or such Lot Owner's lessee, because of a violation of the terms of this Declaration. The Rules and Regulations adopted by the Association shall provide for notice to the affected Lot Owner or such Lot Owner's lessee, and hearing before any such Fines are assessed. The unpaid Fines shall be added to the Assessments against the Lot of such Lot Owner. The failure to enforce any provision of this Declaration, the Act, the articles of incorporation and/or Bylaws of the Association and the Rules and Regulations shall not preclude or prevent the enforcement thereof for a further or continued violation, whether such violation shall be of the same or a different provision.

16.2 Indemnification. To the full extent permitted by law, each officer and member of the Executive Board shall be and is hereby indemnified by the Lot Owners and the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred or imposed upon them in any proceeding to which they may be a party, or in which they may be involved, by reason of their being or having been an officer or member of the Executive Board, or any settlement thereof, whether or not they are an officer or member of the Executive Board at the time such expenses are incurred, except in cases where such officer or member of the Executive Board is adjudged guilty of willful misfeasance or malfeasance in the performance of his or her duties; provided that, in the event of a settlement, the indemnification shall apply only when the Executive Board approves such settlement and reimbursement as being in the best interest of the Association.

16.3 Severability. If any provision or term of this Declaration is invalidated, such invalidity shall not affect the validity of the remainder of this Declaration. In the event of a conflict between the provisions of this Declaration and the articles of incorporation and/or bylaws of the Association, this Declaration shall prevail, except to the extent that this Declaration is inconsistent with any mandatory provisions of the Act.

16.4 Duration. The covenants, conditions and restrictions of this Declaration shall run with the Property, shall be binding and all Lot Owners, their legal representatives, heirs, successors and assigns, and shall be in effect in perpetuity unless amended or terminated as provided in this Declaration or the Act.

16.5 Amendment. Except as otherwise provided in this Declaration or the Act, this Declaration may be amended at any time by a written and recorded instrument containing the consents of the then record Lot Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

16.6 Notice. Notice of matters affecting the Community shall be given to Lot Owners by the Association, or by other Lot Owners, in the following manner: Notice shall be hand-delivered or sent by United States, first class, registered or certified mail as selected by the Association, with postage prepaid, to the mailing address of each Lot or to any other mailing address designated in writing by the Lot Owner. Such notice shall be deemed received on the earlier of the date actually received by the Lot Owner or three (3) days after being properly deposited in the United States mail. Receipt by any Lot Owner shall be deemed a receipt by all of the Lot Owners for that Lot.

16.7 Termination. Termination of the Community may be accomplished only in accordance with Section 38-33.3-218 of the Act upon agreement of the Lot Owners to which at least sixty-seven percent (67%) of the votes are acceptable.

EXHIBIT A

PROPERTY

LEGAL DESCRIPTION:

A TRACT OF LAND BEING PORTION OF THE SOUTHWEST QUARTER OF SECTION 16 AND THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 17, TOWNSHIP 12 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, BEING PORTIONS OF TRACT A AND B AS SHOWN ON SUBDIVISION WAIVER MAP RECORDED IN BOOK 2276 AT PAGE 87-90, EL PASO COUNTY, COLORADO BEING DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS:

THE WEST LINE OF THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 12 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, BEING MONUMENTED AT THE WEST QUARTER CORNER BY A NO. 6 REBAR WITH 2-1/2" ALUMINUM SURVEYORS CAP STAMPED "D.B. & CO. PLS 22573" AND AT THE SOUTHWEST SECTION CORNER BY A 3-1/4" BUREAU OF LAND MANAGEMENT BRASS CAP APPROPRIATELY STAMPED, BEARING N00°55'22"W, A DISTANCE OF 2640.58 FEET, GRID BEARING OF THE COLORADO COORDINATE SYSTEM OF 1983, CENTRAL ZONE, PER GLOBAL POSITIONING SYSTEM SURVEY.

COMMENCING AT THE WEST QUARTER CORNER OF SECTION 16, TOWNSHIP 12 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO; THENCE N89°07'56"E, A DISTANCE OF 368.90 FEET TO THE NORTHEASTERLY CORNER OF LOT 1, RAMTRON FILING NO. 1, RECORDED IN PLAT BOOK E-4 AT PAGE 53, EL PASO COUNTY, COLORADO, SAID POINT BEING THE POINT OF BEGINNING;
THENCE N89°04'41"E, ON THE NORTHERLY LINE OF TRACT A AND B AS SHOWN ON SUBDIVISION WAIVER MAP RECORDED IN BOOK 2276 AT PAGE 87-90, A DISTANCE OF 1383.06 FEET TO A POINT ON THE EASTERLY LINE OF SAID TRACT B;
THENCE S01°10'42"E, ON SAID EASTERLY LINE, A DISTANCE OF 1319.42 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID TRACT A AND B;
THENCE S88°58'51"W ON THE SOUTHERLY LINE OF SAID TRACT B AND A, AND ON THE WESTERLY EXTENSION OF THE SOUTHERLY LINE OF SAID TRACT A, A DISTANCE OF 1806.87 FEET;
THENCE N04°32'44"E, A DISTANCE OF 97.24 FEET TO THE SOUTHEASTERLY CORNER OF SNOWFLAKE DRIVE AS PLATTED IN NORTHGATE FILING NO. 8, RECORDED UNDER RECEPTION NO. 200144406.
THENCE N04°32'44"E ON THE EASTERLY RIGHT OF WAY LINE OF SAID SNOWFLAKE DRIVE A DISTANCE OF 60.00 FEET TO A POINT ON CURVE;
THENCE ON THE ARC OF A CURVE TO THE LEFT, WHOSE CENTER BEARS N04°32'44"E, HAVING A DELTA OF 14°06'04", A RADIUS OF 370.00 FEET, A DISTANCE OF 91.06 FEET TO A POINT OF TANGENT;
THENCE N80°26'40"E, A DISTANCE OF 32.12 FEET;
THENCE N80°28'45"E, A DISTANCE OF 179.62 FEET;
THENCE N09°20'32"W, A DISTANCE OF 100.97 FEET;
THENCE N00°03'13"W, A DISTANCE OF 323.95 FEET;
THENCE N12°15'01"W, A DISTANCE OF 54.05 FEET;
THENCE N00°56'04"W, A DISTANCE OF 55.28 FEET TO A POINT ON THE MOST EASTERLY BOUNDARY OF SAID NORTHGATE FILING NO. 8.
THENCE N00°56'04"W, ON SAID EASTERLY BOUNDARY, A DISTANCE OF 84.72' FEET TO A POINT ON THE SOUTHERLY LINE OF SAID LOT 1, RAMTRON FILING NO. 1;
THENCE N89°05'07"E, ON SAID SOUTHERLY LINE OF LOT 1, RAMTRON FILING NO. 1, A DISTANCE OF 125.63 FEET;
THENCE N01°10'58"W, ON THE EASTERLY LINE OF SAID LOT 1, RAMTRON FILING NO. 1, A DISTANCE OF 515.00 FEET, TO THE POINT OF BEGINNING.

TO BE PLATTED AS LOTS 1 THROUGH 141 AND TRACTS A, B AND C OF THE FINAL PLAT OF DEER CREEK AT NORTHGATE, FILING NO. 1 EL PASO COUNTY, COLORADO

This document alone does not constitute a deed. It is subject to the provisions of the Colorado Uniform Gifts to Minors Act, C.R.S. 15-11-101, et seq. and the Colorado Uniform Transfers to Minors Act, C.R.S. 15-11-102, et seq.

J. Patrick Kelly EL Paso Cty, CO
12/06/2001 09:02 201178537
Doc \$0.00 Page
Rec \$170.00 30 of 34

EXHIBIT B

EXPANSION PROPERTY

PARCEL A

A PARCEL OF LAND BEING A PORTION OF THE SOUTHEAST QUARTER OF SECTION 17 AND A PORTION OF THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 12 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE WEST LINE OF THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 12 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, BEING MONUMENTED AT THE WEST QUARTER CORNER BY A NO. 6 REBAR WITH A 2-1/2" ALUMINUM SURVEYOR'S CAP STAMPED "D.B. & CO. PLS 22573" AND AT THE SOUTHWEST SECTION CORNER BY A 3-1/4" BUREAU OF LAND MANAGEMENT BRASS CAP APPROPRIATELY STAMPED, BEARING N00°55'22"W, A DISTANCE OF 2640.58 FEET, GRID BEARING OF THE COLORADO COORDINATE SYSTEM OF 1983, CENTRAL ZONE, PER GLOBAL POSITIONING SYSTEM SURVEY.

COMMENCING AT THE SOUTHERLY TERMINUS OF THE EASTERLY RIGHT-OF-WAY LINE OF RIDGELINE DRIVE AS PLATTED IN NORTHGATE FILING NO. 8 RECORDED UNDER RECEPTION NO. 200144406, RECORDS OF EL PASO COUNTY, COLORADO, SAID POINT ALSO BEING ON THE WESTERLY BOUNDARY OF FUTURE DEER CREEK AT NORTHGATE FILING NO. 1, SAID POINT BEING THE POINT OF BEGINNING;
THENCE ON THE BOUNDARY OF SAID FUTURE DEER CREEK AT NORTHGATE FILING NO. 1 THE FOLLOWING SEVEN (7) COURSES:

1. S00°56'04"E, A DISTANCE OF 55.28 FEET;
2. S12°15'01"E, A DISTANCE OF 54.05 FEET;
3. S00°03'13"E, A DISTANCE OF 323.95 FEET;
4. S09°20'32"E, A DISTANCE OF 190.97 FEET;
5. S80°28'45"W, A DISTANCE OF 179.62 FEET;
6. S80°26'40"W, A DISTANCE OF 32.12 TO A POINT OF CURVE;
7. ON THE ARC OF A CURVE TO THE RIGHT, HAVING A DELTA OF 14°06'04", A RADIUS OF 370.00 FEET, A DISTANCE OF 91.06 FEET TO A POINT BEING THE NORTHERLY TERMINUS OF THE EASTERLY RIGHT-OF-WAY OF SNOWFLAKE DRIVE AS PLATTED IN SAID NORTHGATE FILING NO. 8;

THENCE ON THE BOUNDARY OF SAID NORTHGATE FILING NO. 8, THE FOLLOWING TEN (10) COURSES:

1. ON THE ARC OF A CURVE TO THE RIGHT WHOSE CENTER BEAR N04°32'44"E, HAVING A DELTA OF 14°04'06", A RADIUS OF 370.00 FEET, A DISTANCE OF 90.85 FEET TO A POINT OF TANGENT;
2. N71°23'10"W, A DISTANCE OF 156.37 FEET TO A POINT ON CURVE;
3. ON THE ARC OF A CURVE TO THE LEFT WHOSE CENTER BEARS N76°33'46"W, HAVING A DELTA OF 06°19'15", A RADIUS OF 332.50 FEET, A DISTANCE OF 36.68 FEET TO A POINT OF TANGENT;
4. N07°06'59"E, A DISTANCE OF 128.58 FEET TO A POINT OF CURVE;
5. ON THE ARC OF A CURVE TO THE RIGHT, HAVING A DELTA OF 21°52'05", A RADIUS OF 267.50 FEET, A DISTANCE OF 102.10 FEET TO A POINT OF TANGENT;
6. N28°59'04"E, A DISTANCE OF 69.38 FEET TO A POINT OF CURVE;
7. ON THE ARC OF A CURVE TO THE RIGHT HAVING A DELTA OF 46°22'54", A RADIUS OF 267.50 FEET, A DISTANCE OF 216.54 TO A POINT OF TANGENT;
8. N75°21'58"E, A DISTANCE OF 161.85 FEET TO A POINT OF CURVE;
9. ON THE ARC OF A CURVE TO THE RIGHT, HAVING A DELTA OF 10°21'32", A RADIUS OF 270.00 FEET, A DISTANCE OF 48.82 FEET TO A POINT OF TANGENT;
10. N85°43'30"E, A DISTANCE OF 48.97 FEET TO THE POINT OF BEGINNING;

PARCEL B

THAT PORTION OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 12 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN LYING EAST OF FUTURE DEER CREEK AT NORTHGATE FILING NO. 1

PARCEL C

THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 12 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN EXCEPT THE WEST 22.5 ACRES.

This document is not a legal instrument. A closure is required under Colorado law.

J. Patrick Kelly EL PASO COUNTY
12/06/2001 09:02 2011/853/
Doc \$0.00 Page
Rec \$170.00 29 of 34

TABLE OF CONTENTS

ARTICLE 1

SUBMISSION OF PROPERTY 1

ARTICLE 2

DEFINITIONS 1

2.1 Act 1

2.2 Agencies 1

2.3 Assessments 2

2.4 Assessment Lien 2

2.5 Association 2

2.6 Board of Directors 2

2.7 Bylaws 2

2.8 Common Elements 2

2.9 Common Expenses 2

2.10 Common Expense Assessments 2

2.11 Community 2

2.12 Declarant 2

2.13 Declaration 3

2.14 Design Review Committee 3

2.15 Dwelling 3

2.16 Executive Board 3

2.17 Expansion Property 3

2.18 Fines 3

2.19 First Mortgage 3

2.20 First Mortgagee 3

2.21 Improvement to Property 3

2.22 Individual Assessment 3

2.23 Lot 3

2.24 Lot Owner 4

2.25 Northgate Association 4

2.26 Northgate Declaration 4

2.27 Person 4

2.28 Property 4

2.29 Residential Use 4

2.30 Rules and Regulations 4

2.31 Security Interest 4

2.32 Special Assessments 4

2.33 Subdivision Plat 4

ARTICLE 3

COMMON INTEREST COMMUNITY 4

3.1 General Description 4

3.2 Number of Lots 4

3.3 Recording Data 4

ARTICLE 4

ASSOCIATION 5

4.1 Name 5

4.2 Powers 5

4.3 Membership and Allocation of Votes 5

4.4 Declarant Control 5

J. Patrick Kelly El Paso Cty, CO 201178537
 12/06/2001 09:02
 Doc \$0.00 Page
 Reo \$170.00 31 of 34

This document is the property of the undersigned. Full Resale Disclosure as required under Colorado Law.

ARTICLE 5

EXECUTIVE BOARD MEMBERS AND OFFICERS 5
5.1 Authority of Executive Board 5
5.2 Election of Board Members During Period of Declarant Control 5
5.3 Termination of Period of Declarant Control 5

ARTICLE 6

MAINTENANCE 5
6.1 Common Elements 5
6.2 Tracts A, B and C 6
6.3 Easements and Landscaping 6
6.4 Individual Lots 6
6.5 Damage by Lot Owner 6
6.6 Association's Easement to Perform Work 6

ARTICLE 7

EASEMENTS AND LIMITED ACCESS 7
7.1 Access 7
7.2 Easements for Drainage and Utilities 7
7.3 Declarant's and Builder's Easements 7
7.4 Emergency Easements 7
7.5 No Access from Ridgeline 7
7.6 Easements Deemed Created 7
7.7 Lot Owners' Easement Rights 7
7.8 Extent of Lot Owners' Easements 7
7.9 Delegation of Use 8
7.10 Payment of Taxes or Insurance by First Mortgagees 8

ARTICLE 8

INSURANCE 8
8.1 Insurance 8
8.2 General Provisions of Insurance Policies 9
8.3 Deductibles 9
8.4 Payment of Insurance Proceeds 10
8.5 Association Insurance as Primary Coverage 10
8.6 Acceptable Insurance Companies 10
8.7 Insurance to be Maintained by Lot Owners 10
8.8 Annual Review of Insurance Policies 10
8.9 Notice of Cancellation; Other Insurance 11

ARTICLE 9

DAMAGE OR DESTRUCTION 11
9.1 Damage or Destruction 11
9.2 Use or Distribution of Insurance Proceeds 11

ARTICLE 10

ASSESSMENT AND COLLECTION OF COMMON EXPENSES,
ASSOCIATION ASSESSMENTS 11
10.1 Apportionment of Common Expenses 11
10.2 Common Expenses Attributable to Fewer than all Lots 13
10.3 Lien 13
10.4 Budget Adoption and Ratification 14
10.5 Certificate of Payment of Assessments 14
10.6 Effect of Nonpayment of Assessments; Remedies of the Association 14

10.7 Acceleration of Assessments 15

10.8 No Waiver of Liability for Common Expenses 15

10.9 Personal Liability of Lot Owners 15

10.10 Surplus Funds 15

10.11 Working Capital Fund 15

10.12 Northgate Residential Properties 15

ARTICLE 11

DESIGN REVIEW COMMITTEE 16

11.1 Approval of Improvements Required 16

11.2 Composition Of Committee 16

11.3 Delegation 16

11.4 Submission of Plans 16

11.5 Criteria for Approval 17

11.6 Architectural Standards; Design Guidelines 17

11.7 Decision of Design Review Committee 17

11.8 Failure to Act on Plans 18

11.9 Records 18

11.10 Variance 18

11.11 Waivers 18

11.12 Inspection of Work 18

11.13 Notice of Noncompliance 18

11.14 Correction of Noncompliance 18

11.15 Nonliability for Committee Action 18

11.16 Changes to Improvements 19

11.17 Address of Design Review Committee 19

11.18 Northgate Declaration Architectural Approval Authority 19

ARTICLE 12

USE RESTRICTIONS 19

12.1 Rules and Regulations 19

12.2 Destruction of Dwellings 19

12.3 Residential Use 20

12.4 Declarant's Use 20

12.5 Household Pets 20

12.6 Temporary Structures; Unsightly Condition 20

12.7 Miscellaneous Improvements 20

12.8 Vehicle Parking, Storage and Repairs 21

12.9 Nuisances 22

12.10 Lots Not to be Subdivided 22

12.11 No Hazardous Activities 22

12.12 No Annoying Light, Sounds or Odors 22

12.13 Restrictions on Trash and Materials 22

12.14 Lots to be Maintained 22

12.15 Grading Patterns 22

12.16 Use of Common Elements 23

12.17 Dwelling Size 23

12.18 Building Location 23

12.19 Sight Distance at Intersection 23

12.20 Height Restrictions 23

12.21 Fences 23

12.22 Exterior Materials and Colors 24

12.23 Roofs 24

ARTICLE 13

SPECIAL DECLARANT RIGHTS 24
13.1 Reservation of Development Rights 24
13.2 Phasing of Development Rights 24
13.3 Special Declarant Rights 24
13.4 Rights Transferable 25

ARTICLE 14

MORTGAGEE PROTECTION 25
14.1 Introduction 25
14.2 Notice 25
14.3 Form of Request 25
14.4 Rights of First Mortgagees 25
14.5 Failure to Respond 26

ARTICLE 15

ANNEXATION, AMENDMENTS AND MERGER 26
15.1 Amendment 26
15.2 Mergers 26
15.3 Recordation of Amendments 26
15.4 Special Declarant Rights 26
15.5 Consent of Holders of Security Interests 26
15.6 Expenses 26

ARTICLE 16

GENERAL PROVISIONS 27
16.1 Enforcement 27
16.2 Indemnification 27
16.3 Severability 27
16.4 Duration 27
16.5 Amendment 27
16.6 Notice 27
16.7 Termination 27
16.8 Registration of Mailing Address 28
16.9 Arbitration/Attorneys' Fees 28

- EXHIBIT A - Property
- EXHIBIT B - Expansion Property

This document does not constitute Full Resale Disclosure as required under Colorado Law.