

**FIFTH SUPPLEMENT TO THE
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF
EDGEMONT HIGHLANDS**

THIS FIFTH SUPPLEMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF EDGEMONT HIGHLANDS (the "Supplemental Declaration") is made and entered into this 14th day of January, 2013, by **GORTON FAMILY PARTNERSHIP, LLLP**, a Colorado Limited Liability Limited Partnership ("GFP"), **HIGHLANDS DEVELOPMENT II, LLC**, a Colorado Limited Liability Company ("Co-Declarant") **HIGHLANDS DEVELOPMENT IV, LLC**, a Colorado Limited Liability Company, of La Plata County, Colorado ("Co-Declarant").

RECITALS

A. **Phase 5A, Edgemont Highlands.** GFP is the owner of that real property located in the County of La Plata, State of Colorado, more particularly described as follows (hereinafter referred to as "Phase 5A"):

SEE EXHIBIT A, ATTACHED HERETO AND MADE A PART HEREOF BY THIS REFERENCE.

B. **Edgemont Highlands Governing Documents.** Co-Declarants are the successor declarants under the Amended and Restated Declaration and Covenants, Conditions and Restrictions for Edgemont Highlands recorded as Reception No. 884350 in the office of the Clerk and Recorder of La Plata County, Colorado (the "Amended and Restated Declaration") and Supplements and Amendments thereto recorded as Reception Nos. 896541, 893236, 894237 906547, 925868, 925870, 943223, 950576, 993084 and 1020189. In combination, the Amended and Restated Declaration and the foregoing Supplements and Amendments are referred to herein as the "Declaration".

C. **Plats of Edgemont Highlands - Phase 5A.** EDGEMONT HIGHLANDS, PHASE 5A, Project No. 2012-0065, was platted according to the plat thereof filed 1-15-2013 as Reception No. 1059148, La Plata County, Colorado ("Phase 5A Plat").

D. **Declaration Definitions.** Except to the extent expressly defined otherwise herein, the terms used in this Supplemental Declaration shall have the same meaning as set forth in the Amended and Restated Declaration. Specifically, the Amended and Restated Declaration provides the following pertinent definitions in Article II thereof:

"Supplemental Declaration": An instrument Recorded pursuant to Article IX which subjects additional property to this Declaration, identifies phases and neighborhoods, and/or creates or imposes additional easements, restrictions and obligations on the land described in such instrument.

E. **Expansion of Edgemont Highlands.** The Amended and Restated Declaration provides in Article 9 as follows:

9.1 Expansion by Declarant.

Declarant may subject to the provisions of this Declaration all or any portion of the property described in Exhibit "B" by Recording a Supplemental Declaration describing the additional property to be subjected. A Supplemental Declaration Recorded pursuant to this Section shall not require the consent of any Person except the owner of such property, if other than Declarant.

It is the desire and intention of Declarant to supplement the Declaration for the purpose of subjecting Phase 5A to the provisions thereof and the Governing Documents of Edgemont Highlands and to provide for the division of Phase 5A according to the supplemental plat filed for record under Reception No. 1059148, (the "Phase 5A Plat") and as defined and described by the Declaration and this Supplemental Declaration.

NOW, THEREFORE, Declarant hereby supplements the Declaration as follows:

1. **Supplemental Declaration.** Declarant hereby declares that all of Phase 5A is to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the limitations, restrictions, easements, conditions and covenants of the Declaration, Governing Documents, rules and regulations and plats of Edgemont Highlands published or recorded in connection therewith, all of which are declared and agreed to be in furtherance of a plan for the protection, subdivision, maintenance, improvement and sale of Phase 5A for the purpose of enhancing the value, desirability and attractiveness of Phase 5A and for the purpose of establishing a common interest planned community pursuant to the Colorado Common Interest Ownership Act (the "Act"). All provisions of this Supplemental Declaration, including without limitation the easements, uses, obligations, covenants, conditions, and restrictions hereof, are hereby imposed as equitable servitudes upon Phase 5A. All of the limitations, restrictions, easements, conditions and covenants herein shall run with the land and shall be binding on and for the benefit of all of Phase 5A and all parties having acquired any right, title or interest in Phase 5A, or any part thereof, and their successive owners or assigns.

2. **Division Into Lots - Allocated Interests - Voting.** Phase 5A is hereby divided as set for by the Phase 5A Plat to create Lot 405 as thereon described, referred to herein as a "Lot" and also referred to as "Unit" under the Declaration, consisting of a fee simple interest therein, and the improvements and fixtures located thereon. Lot 405 created by this Supplemental Declaration shall be assessed equally with all other Units in Edgemont Highlands pursuant to Article 8 of the Amended and Restated Declaration. Each owner of a Unit or Lot within Phase 5A shall be a Member of the Association and shall have one equal vote for each Unit in which the Member holds the interest required for membership under Section 6.2 of the Amended and Restated Declaration, except that there shall be only one vote per Unit. No vote shall be exercised for any property that is exempt from assessment under Section 8.8 of the Amended and Restated Declaration. All Class "A" votes shall be cast as provided in Section 6.3.3 of the Amended and Restated Declaration.

3. **Further Development of Phase 5A.** Lot 405, as a Unit in Phase 5A is subject to the Association Assessment levied in accordance with the current Association Budget effective as of January 1, 2013. All future Units created in Phase 5A shall be subject to Association Assessment at the time such Units are created in accordance with 4 below and other governing documents.

4. **Incorporation of Provisions of the Declaration.** All provisions of the Amended and Restated Declaration and Governing Documents are incorporated herein by this reference to the extent not inconsistent herewith. It is the purpose of incorporation of the terms of the original Amended and Restated Declaration and Governing Documents to have the provisions thereof construed to apply to and govern the management and administration of the Lots created by this Supplemental Declaration as a part of a singular common interest community consisting of the combination of the Lots established by the

original Amended and Restated Declaration together with the Lots created by this Supplemental Declaration and previous Supplemental Declarations, except as may be otherwise expressly set forth herein. This includes, but is not limited to, the provisions of the Amended and Restated Declaration concerning the following subjects:

- a. Assessments and Assessment procedures;
- b. HOA Reserve Payment requirements by initial Lot Owners other than Declarant
- c. Reserved Declarant Rights and Development Rights;
- d. General Easements, in addition to those expressly set forth on the Supplemental Plat or by this Supplemental Declaration;
- e. Membership in the EDGEMONT HIGHLANDS Community Association, Inc. (the "Association")
- f. Amendment and Enforcement procedures;
- g. Association powers;
- h. Provisions regarding Common Area

5. **Legal Description.** Every deed, lease, mortgage, will or other instrument shall legally describe a Lot created by this Supplemental Declaration by its identifying Lot letter or number on the recorded plat as follows:

Lot _____ of EDGEMONT HIGHLANDS, PHASE 5A, FINAL PLAT, PROJECT NO. 2012-0065 according to the plat thereof filed for record 1-15-13 under Reception No. 1059148, County of La Plata, State of Colorado.

Every instrument of conveyance, mortgage, deed of trust, or other instrument affecting the title to the Lot which legally describes said Lot in the manner set forth in this Section shall be construed to describe the Lot, together with all fixtures and improvements therein contained, and to incorporate all the rights incident to ownership of the Lot and all the limitations of ownership as described in the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Supplemental Declaration, including the owner's membership in the EDGEMONT HIGHLANDS Community Association, Inc., and the easement of enjoyment to use the Common Area.

6. **Common Area/Open Space.** Declarant shall convey the initial Common Area/Open Space shown on the Supplemental Plat to the Association prior to the conveyance of the Lot to any Person other than a Builder. Such Common Area/Open Space shall, in all respects, be subject to the same terms, conditions, provisions, restrictions and obligations as set forth in the Amended and Restated Declaration and Governing Documents with respect to Common Area/Open Space.

7. **General Provisions.**

a. If any of the provisions of this Supplemental Declaration or any paragraph, sentence, clause, phrase or word, or the application therein in any circumstance be invalidated, such invalidity shall not affect the validity of the remainder of this Supplemental Declaration, and the application of any such provisions, paragraph, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.

b. That whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

c. In the event of any inconsistency between the terms of this Supplemental Declaration and the Amended and Restated Declaration, the terms and provisions of this Supplemental Declaration shall be controlling.

IN WITNESS WHEREOF, Declarant has duly executed this Supplemental Declaration this ___ day of January, 2013.

HIGHLANDS DEVELOPMENT II, LLC, a Colorado Limited Liability Company

By: **Tom D. Gorton, Inc.**, a Colorado corporation, Manager

Date: 1/14/13

By [Signature]
Tom D. Gorton, President

HIGHLANDS DEVELOPMENT IV, LLC, a Colorado Limited Liability Company

By: **Tom D. Gorton, Inc.**, a Colorado corporation, Manager

Date: 1/14/13

By [Signature]
Tom D. Gorton, President

GORTON FAMILY PARTNERSHIP, LLLP, a Colorado Limited Liability Limited Partnership

By [Signature]
THOMAS D. GORTON A General Partner

Date: 1/14/13

Date: 1/14/13

By [Signature]
DEBORAH A. GORTON A General Partner

STATE OF COLORADO)
) ss.
COUNTY OF LA PLATA)

THIS INSTRUMENT ACKNOWLEDGED before me this 14 day of January, 2013, by Tom D. Gorton as President of Tom D. Gorton, Inc., Manager of Highlands Development II, LLC and Highlands Development IV, LLC.

WITNESS my hand and official seal.

My commission expires: 8/28/13

MATT BUSHNELL
NOTARY PUBLIC
STATE OF COLORADO

[Signature]
Notary Public

My Commission Expires 08/28/2013

STATE OF COLORADO)
) ss.
COUNTY OF LA PLATA)

THIS INSTRUMENT ACKNOWLEDGED before me this 14 day of January, 2013, by Thomas D. Gorton and Deborah A. Gorton as General Partners of GORTON FAMILY PARTNERSHIP, LLLP, a Colorado Limited Liability Limited Partnership.

WITNESS my hand and official seal. My commission expires: 8/28/13



Notary Public

MATT BUSHNELL
NOTARY PUBLIC
STATE OF COLORADO
My Commission Expires 08/28/2013

Exhibit A

EDGEMONT HIGHLANDS - PHASE 5A

Legal Description:

All that part of the SW1/4 of Section 7, Township 35 North, Range 8 West, N.M.P.M., County of La Plata, State of Colorado lying Westerly of Edgemont Highlands, Phase 2A Final Plat, Project No. 2004-221 recorded November 3, 2004 as Reception No. 896542 and Northerly of County Road 240 as conveyed to The Board of County Commissioners of La Plata County Colorado in instrument recorded November 19, 2007 as Reception No. 968084 and lying Easterly of Edgemont Highlands, Phase 4 Final Plat, Project No. 2006-340 as recorded January 26, 2007 as Reception No. 950578 and Southerly of the southern boundary of the 60' easement described in Grant of Easement recorded October 28, 2004 and Edgemont Highlands Pass as shown on plat of Edgemont Highlands, Phase 2A Final Plat, Project No. 2004-221 recorded November 3, 2004 as Reception No. 896542.

LESS AND EXCEPT a tract of land as described in the deed recorded to the County of La Plata, a body corporate and politic recorded November 2, 1983 as Reception No. 491172.

ALSO LESS AND EXCEPT a tract of land reserved for Phase 5B pond area described as follows:

Beginning at the westernmost corner of Phase 5A as shown thereon;

THENCE along the eastern boundary of an Access and Utility Easement recorded at Reception No 896180, 157.31feet along a tangential curve to the left having a radius of 287.50 feet and a delta angle of 31°23'03";

THENCE along the southern boundary of an Access and Utility Easement recorded at Reception No 896180, N 36°55'08" E for a distance of 12.22 feet;

THENCE continuing along the southern boundary of said Access and Utility Easement 136.03 feet along a tangential curve to the right having a radius of 135 feet and a delta angle of 57°43'59";

THENCE continuing along the southern boundary of said Access and Utility Easement, S 85°20'52" E for a distance of 63.85 feet;

THENCE continuing along the southern boundary of said Access and Utility Easement 288.22 feet along a tangential curve to the left having a radius of 330.67 feet and a delta angle of 49°56'28";

THENCE S 34°35'13" W for a distance of 81.66 feet;

THENCE S 52°17'14" W for a distance of 95.06 feet;

THENCE S 55°12'00" W for a distance of 82.55 feet;

THENCE S 62°09'20" W for a distance of 210.96 feet to the point of beginning,

County of La Plata,
State of Colorado