

4



896541
1 of 6

11/3/2004 3:30:08 PM
DCL R \$31.00 D \$0.00

Linda J. Daley
Laplata County, CO

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

THIS FIRST SUPPLEMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF EDGEMONT HIGHLANDS (the "Supplemental Declaration") is made and entered into this 3 day of Nov., 2004, by **HIGHLANDS DEVELOPMENT II, LLC**, a Colorado Limited Liability Company, of La Plata County, Colorado (hereinafter referred to as the "Declarant").

RECITALS

A. Phase 2A, Edgemont Highlands. Declarant 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 the "Phase 2A"):

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

B. Edgemont Highlands Governing Documents. Declarant is the successor declarant to Highlands Development I, LLC under the Amended and Restated Declaration of Covenants, Conditions and Restrictions of 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 the Governing Documents of Edgemont Highlands.

C. Plats of Edgemont Highlands - Phase 1. EDGEMONT HIGHLANDS, PHASE 1, Project No. 2003-290, was platted according to the plat thereof filed January 20, 2004 as Reception No. 877022, La Plata County, Colorado ("Phase 1").

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 Declaration. Specifically, the 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 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 Amended and Restated Declaration for the purpose of subjecting Phase 2A to the provisions of the Amended and Restated Declaration and the Governing Documents of Edgemont Highlands and to provide for the division of Phase 2A into Lots according to the supplemental plat filed for record under Reception No. 896542 (the "Supplemental

Return to: GORTON, 211 RockPoint DR, Ste 107, Durango CO 81301

Plat") and as defined and described by the Amended and Restated Declaration and this Supplemental Declaration.

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

1. **Supplemental Declaration.** Declarant hereby declares that all of Phase 2A is to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the limitations, restrictions, easements, conditions and covenants of the Governing Documents, the Plat of Phase 1 of Edgemont Highlands, and the Supplemental Plat, all of which are declared and agreed to be in furtherance of a plan for the protection, subdivision, maintenance, improvement and sale of Phase 2A for the purpose of enhancing the value, desirability and attractiveness of Phase 2A 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 2A. 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 2A and all parties having acquired any right, title or interest in Phase 2A, or any part thereof, and their successive owners or assigns.

2. **Division Into Lots - Allocated Interests - Voting.** Phase 2A is hereby divided into lots (the "Lots"), each consisting of a fee simple interest in a Lot as shown on the Supplemental Plat, and the improvements and fixtures located thereon. All Units under Edgemont Highlands Phase 1 and the Lots created by this Supplemental Declaration (also defined as "Units" under the Amended and Restated Declaration) shall be assessed equally pursuant to Article 8 of the Amended and Restated Declaration. Each owner of a Unit or Lot within Phase 2A shall be a Member of the Association and shall have one equal vote for each Unit in which they hold 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. **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, 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.
- f. Amendment and Enforcement procedures;
- g. Association powers;

h. Provisions regarding Common Area

4. **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 2A, FINAL PLAT, PROJECT NO. 2004-221 according to the plat thereof filed for record Nov 3, 2004 under Reception No. 896542, County of La Plata, State of Colorado.

Every instrument of conveyance, mortgage, deed of trust, or other instrument affecting the title to a 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 a 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.

5. **Common Area/Open Space.**

a. Declarant shall convey the initial Common Area/Open Space shown on the Supplemental Plat to the Association prior to the conveyance of a Unit 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 within Phase 1.

b. Membership in the Association entitles Owners of Units in Phase 2A to the same rights in the Common Area/Open Space of Phase 1 enjoyed by Owners of Units in Phase 1. Conveyance of Common Area/Open Space in Phase 2A to the Association pursuant to Article 7 of the Declaration will entitle Owners of Units in Phase 1 to the same rights in the Common Area/Open Space of Phase 2A enjoyed by Owners of Units in Phase 2A, subject to any restrictions set forth in such transfer deed.

6. **Commercial Lot Designations - Declarant's Right to Withdraw Property.** Those properties within Phase 2A identified by the Supplemental Plat as "Commercial/Residential" shall be subject to, and Declarant hereby reserves the right to, withdraw all, part or none of each of said separately designated properties from Edgemont Highlands. Each separately designated property subject to this right of withdrawal is referred to herein as a "Convertible Lot". Declarant's right to withdraw all or part of a Convertible Lot shall be exercised by Declarant's preparation, execution and recording of an amendment to this Supplemental Declaration legally describing all or part of the Convertible Lot to be withdrawn. This right of withdrawal may be exercised as to any one or more of the Convertible Lots without regard to order. No part of a Convertible Lot may be withdrawn after a Unit in that Convertible Lot has been conveyed to a purchaser(s) without the consent of the purchaser(s). The rights contained in this paragraph shall not terminate until the earlier of (a) 40 years from the date this Supplemental Declaration is Recorded; (b) all available rights of withdrawal have been exercised with respect all Convertible Lots; or (b) Recording by Declarant of a written statement that all sales activity has ceased. Notwithstanding the "commercial" description given to each Convertible Lot, commercial use of any part thereof to a degree in violation of the Governing Documents shall not be permitted in the absence of exercise by the Declarant of its right to withdraw such part intended

for commercial use. In the event that a right of withdrawal is exercised, the common expense assessment liability shall be reallocated upon a per Unit basis after adjustment for the Unit or Units withdrawn.

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.

8. **Effective Date.** Pursuant to Section 9.4 of the Amended and Restated Declaration, Declarant hereby declares the Effective Date of this Supplement Declaration with respect to assignment of voting rights and assessment liability shall be delayed until a date certain stated by Declarant in a supplemental instrument recorded in the real estate records of La Plata County, Colorado, which makes reference to this instrument.

IN WITNESS WHEREOF, Declarant has duly executed this Supplemental Declaration this 3 day of November, 2004.

HIGHLANDS DEVELOPMENT II, LLC, a Colorado Limited Liability Company

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

By [Signature]
Tom D. Gorton, President

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

SUBSCRIBED AND SWORN to before me this 3rd day of NOVEMBER, 2004, by Tom D. Gorton as President of Tom D. Gorton, Inc., Manager of Highlands Development II, LLC

WITNESS my hand and official seal. My commission expires: 8-16-07

[Signature]
Notary Public

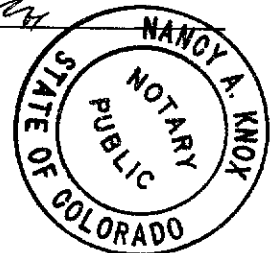


Exhibit A
Phase 2A

page 1 of 2

A tract of land located in Section 7, Township 35 North, Range 8 West, New Mexico Principal Meridian, in La Plata County, Colorado, being more particularly described as follows:

BEGINNING at a point on the northerly right of way of County Road 240 whence the West 1/4 Corner of said Section 7 bears N 49°56'32" W, 2111.88 feet;
Thence NORTH, 55.42 feet to the southerly line of a tract of land recorded in the Office of said Clerk and Recorder under Reception No. 491172;
Thence N 02°53'57" W, 119.99 feet along the easterly line of said tract, Reception No. 491172;
Thence N 36°53'57" W, 151.31 feet along the easterly line of said tract, Reception No. 491172;
Thence N 09°53'57" W, 584.46 feet along the easterly line of said tract, Reception No. 491172 to the northerly line of said tract, Reception No. 491172;
Thence N 29°11'45" W, 404.18 feet;
Thence S 69°54'50" W, 138.52 feet;
Thence N 20°05'10" W, 60.00 feet;
Thence N 69°54'50" E, 80.00 feet;
Thence along the arc of a non-tangent curve to the right with a delta angle of 90° 00' 00" and a radius of 20.00 feet for a distance of 31.42 feet, the long chord bears N 65° 05' 10" W, 28.28 feet;
Thence N 20°05'10" W, 8.46 feet;
Thence along the arc of a tangent curve to the right with a delta angle of 101° 41' 16" and a radius of 70.00 feet for a distance of 124.24 feet, the long chord bears N 30° 45' 28" E, 108.56 feet;
Thence N 81°36'06" E, 302.48 feet;
Thence along the arc of a tangent curve to the left with a delta angle of 22° 34' 25" and a radius of 330.00 feet for a distance of 130.01 feet, the long chord bears N 70° 18' 54" E, 129.17 feet;
Thence S 37°41'00" E, 135.27 feet;
Thence N 53°16'07" E, 483.91 feet;
Thence N 36°00'28" W, 151.04 feet;
Thence N 40°06'32" W, 60.00 feet;
Thence along the arc of a non-tangent curve to the left with a delta angle of 81° 55' 40" and a radius of 120.00 feet for a distance of 171.59 feet, the long chord bears N 08° 55' 38" E, 157.34 feet;
Thence N 32°02'12" W, 107.28 feet;
Thence N 57°57'48" E, 84.49 feet;
Thence along the arc of a tangent curve to the right with a delta angle of 66° 37' 40" and a radius of 430.00 feet for a distance of 500.04 feet, the long chord bears S 88° 43' 22" E, 472.33 feet;
Thence N 35°32'13" E, 295.35 feet;
Thence S 39°35'48" E, 395.16 feet;
Thence S 67°42'52" W, 297.95 feet;
Thence along the arc of a non-tangent curve to the right with a delta angle of 6° 40' 04" and a radius of 430.00 feet for a distance of 50.04 feet, the long chord bears S 20° 57' 02" E, 50.01 feet to the northerly line of Edgemont Highlands, Phase 1 recorded in the Office of the La Plata County, Colorado, Clerk and Recorder under Reception No. 877022;
Thence S 67°42'52" W, 60.23 feet along the northerly line of said Edgemont Highlands, Phase 1;
Thence along the arc of a non-tangent curve to the right with a delta angle of 32° 49' 28" and a radius of 370.00 feet for a distance of 211.97 feet, the long chord bears S 00° 26' 43" E, 209.08 feet along the westerly line of said Edgemont Highlands, Phase 1;

Thence S 15°58'01" W, 246.91 feet along the westerly line of said Edgemont Highlands, Phase 1;
Thence along the arc of a tangent curve to the left with a delta angle of 78° 50' 27" and a radius of 471.00 feet for a distance of 648.11 feet, the long chord bears S 23° 27' 13" E, 598.18 feet along the westerly line of said Edgemont Highlands, Phase 1;
Thence S 62°52'26" E, 395.89 feet along the westerly line of said Edgemont Highlands, Phase 1;
Thence along the arc of a tangent curve to the right with a delta angle of 31° 00' 37" and a radius of 520.00 feet for a distance of 281.44 feet, the long chord bears S 47° 22' 08" E, 278.02 feet along the westerly line of said Edgemont Highlands, Phase 1;
Thence S 50°16'29" W, 10.10 feet along the westerly line of said Edgemont Highlands, Phase 1;
Thence along the arc of a tangent curve to the right with a delta angle of 39° 07' 26" and a radius of 510.00 feet for a distance of 348.25 feet, the long chord bears S 12° 08' 47" E, 341.52 feet along the westerly line of said Edgemont Highlands, Phase 1;
Thence S 07°24'56" W, 133.54 feet along the westerly line of said Edgemont Highlands, Phase 1;
Thence along the arc of a tangent curve to the left with a delta angle of 06° 43' 04" and a radius of 1340.00 feet for a distance of 157.11 feet, the long chord bears S 04° 03' 24" W, 157.02 feet along the westerly line of said Edgemont Highlands, Phase 1;
Thence S 00°41'52" W, 56.56 feet along the westerly line of said Edgemont Highlands, Phase 1 to the northerly right of way of County Road 240;
Thence along the arc of a non-tangent curve to the left with a delta angle of 04° 43' 54" and a radius of 1689.00 feet for a distance of 139.48 feet, the long chord bears S 84° 57' 30" W, 139.44 feet along the northerly right of way of County Road 240;
Thence S 82°35'33" W, 175.17 feet along the northerly right of way of County Road 240;
Thence along the arc of a tangent curve to the right with a delta angle of 26° 05' 31" and a radius of 898.00 feet for a distance of 408.94 feet, the long chord bears N 84° 21' 42" W, 405.41 feet along the northerly right of way of County Road 240;
Thence N 71°18'57" W, 94.95 feet along the northerly right of way of County Road 240;
Thence S 18°41'03" W, 45.00 feet to the centerline of County Road 240;
Thence N 71°18'57" W, 390.14 feet along the centerline of County Road 240;
Thence along the arc of a tangent curve to the left with a delta angle of 28° 27' 14" and a radius of 1052.61 feet for a distance of 522.74 feet, the long chord bears N 85° 32' 34" W, 517.38 feet along the centerline of County Road 240;
Thence NORTH, 45.63 feet to the point of beginning.