

AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR  
VALENCIA HILLS UNIT 2 REPLAT A

Checkpoint Ginger, LLC ("Declarant"), the owner of all lots located in the Valencia Hills Unit 2 Replat A, a subdivision in Dona Ana County, New Mexico (the "Subdivision") as shown and designated on the plat of the Subdivision recorded in Plat Book \_\_\_ Pages \_\_\_\_\_, Records of Dona Ana County, New Mexico, pursuant to the authority retained by the Declarant under Section 5.02 of the Declaration to amend the Declaration, amends Section 3.01, 3.03 and 305 (b) of the Declaration as follows:

“3.01 Density Restrictions. The Subdivision is limited to a maximum of 113 residential units, with one (1) residence on each Lot.”

“3.03 Dwelling Size. Unless a variance is granted by the Architectural Review Committee, no residential structure erected on any Lot shall have more than two (2) stories, nor exceed thirty (30) feet in height (measured from the highest top of curb elevation adjacent to the Lot to the top of the gable). The combined living area of a house shall not be less than 1,250 square feet for a one-story dwelling and the combined living area of a 1 ½ or 2 story house shall not be less than 1,250 square feet. However, in no event shall the ground floor of a 1 ½ or 2 story house be less than 700 square feet. The Architectural Review Committee shall be empowered to grant individual waivers of the setbacks, minimum square footage and height requirements, provided that, in the sole discretion of the Architectural Review Committee the proposed dwelling shall, in general, be harmonious with the existing dwellings in that neighborhood.”

“3.05(b) All wall finishes, accents and special finishes must wrap around a minimum of 1 foot from front of house.”

Except as specifically provided in this Amendment, all terms and conditions of the Declaration remain in full force and effect without change.

Dated: \_\_\_\_\_, 2018.

Checkpoint Ginger, LLC,  
a New Mexico limited liability company

By: \_\_\_\_\_  
Russell Hanson, Manager

STATE OF TEXAS                    )

COUNTY OF EL PASO        )  
  )

This instrument was acknowledged before me on \_\_\_\_\_, 2018 by Russell Hanson as Manager of Checkpoint Ginger, LLC on behalf of said limited liability company.

\_\_\_\_\_  
Notary Public in and for the  
State of Texas

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
VALENCIA HILLS UNIT 2 REPLAT A

Checkpoint Ginger, LLC ("Declarant"), the owner of all lots located in the Valencia Hills Unit 2 Replat A, a subdivision in Dona Ana County, New Mexico (the "Subdivision") as shown and designated on the plat of the Subdivision recorded in Plat Book \_\_\_ Pages \_\_\_\_\_, Records of Dona Ana County, New Mexico, does hereby declare that the all the Lots in the Subdivision will be held, transferred , sold, conveyed occupied and enjoyed subject to the following covenants, conditions, restrictions and easements.

Article I  
Definitions

The following terms used in this declaration (the "Declaration") and in any document relating to the Subdivision, unless otherwise provided or unless the context provides otherwise, are defined as follows:

"Architectural Review Committee" shall mean the committee designated in Article IV.

"Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions.

"Declarant" shall mean and refer to Checkpoint Ginger, LLC and its designated successors and assigns of the rights of the Declarant reserved under this Declaration.

"Improvement(s)" shall mean any and all alterations of the Subdivision, other than interior modifications of structures and including, but not limited to, residences, out buildings, patios, garages, swimming pools, walls, fencing, landscaping and driveway, whether intended to be temporary or permanent.

"Initial Architectural Review Committee" shall have the meaning given such term in Section 4.03.

"Lot" shall mean and refer to any numbered lot shown on the Subdivision Plat.

"Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the payment or performance of an obligation.

"Subdivision" shall mean Valencia Hills Unit 2 as set forth on the Subdivision Plat.

"Subdivision Plat" shall mean and refer to the plat of the Subdivision recorded in Plat Book \_\_\_ Pages \_\_\_\_\_, Records of Dona Ana County, New Mexico.

## Article II Easements

2.01 Existing Easements. The Subdivision Plat dedicates for use, as such subject to the limitations set forth therein, certain streets and easements shown thereon, and the Subdivision Plat further establishes limitations, reservations and restrictions applicable to the Subdivision. Further, Declarant or its predecessors in title may have granted, created and dedicate by recorded instruments certain other easement and related rights affecting the Subdivision. All dedications, limitations, restrictions and reservations shown on the Subdivision Plat and all grants and dedications of easements and related rights made by Declarant and Declarant's predecessors in title affecting the Subdivision are incorporated herein by reference and made a part of this Declaration for all purposes, as if fully set forth herein and will be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the Subdivision.

2.02 Changes and Additions. Declarant reserves the right to make changes in and additions to the easements for the purpose of most efficiently and economically installing the improvements for the Subdivision. Further, Declarant reserves the right, without the necessity of the joiner of any Owner or other person or entity, to grant, dedicate, reserve or otherwise create, at any time or from time to time, easements for public utility purposes (including, without limitation, gas, water, sanitary sewer, electricity, cable, telephone and drainage), in favor of any person or entity furnishing or to furnish utility services to the Subdivision, along and on either or both sides of any side Lot line.

2.03 Installation and Maintenance. Declarant creates and establishes an easement upon, across, over and under all of the utility easements shown on the Subdivision Plat for ingress and egress in connection with installing replacing, repairing, and maintaining all utilities, including, but not limited to, water, sewer, telephone, cable, electricity, gas, irrigation, and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies and other entities supplying service to install and maintain pipes, wires, conduits, service lines, or other utility facilities or appurtenances thereto, on, across and under the Subdivision within the public utility easements from time to existing and from service lines

situated with an easement to the point of service on or in any structure. Notwithstanding anything contained in this paragraph, no utilities or appurtenances will be installed or relocated within the Subdivision until approved by Declarant. The utility companies furnishing service will have the right to remove all trees situated within the utility easements shown on the Subdivision Plat and to trim the overhanging trees and shrubs located on portions of the Subdivision abutting such easements.

2.04 Underground Electric Service. An underground electric distribution system will be installed within the Subdivision, which will serve all Lots in the Subdivision, but overhead transmission lines will remain within the utility easements shown on the Subdivision Plat. The Owner of each Lot shall, at his own cost; furnish, install, own, and maintain (all in accordance with the requirements of local government authorities and the National Electrical Code) the underground service cable and appurtenances from the point of the electric company's metering on the Owner's structure to the point of attachment at such company's installed transformers, or energized secondary junction boxes, such point of attachment to be made available by the electric company at a point designated by the electric company at the property line of each Lot. The electric company furnishing service shall make the necessary connections at the point of attachment and at the meter. In addition the Owner of each Lot shall, at his own cost furnish, install, own and maintain a meter loop (in accordance with the then current standards and specifications of the electric company furnishing service) for the location and installation of the meter of such electric company for the residence constructed on such Owner's Lot. For as long as underground service is maintained in the Subdivision, the electric service to each Lot therein shall be underground, uniform in character and exclusively of the type known as single phase 120/240 volt, three (3) wire, sixty(60) cycle alternating current.

2.05 Surface Areas. The surface of easement areas for underground utility services may be used for planting of shrubbery, trees, lawns, or flowers. However, neither the Declarant nor any supplier of any utility or service using any easement area shall be liable to any Owner for any damage done by them or either of them, or their respective agents, employees, servants or assigns, to any of the landscaping or improvements as a result of any activity relating to the construction, maintenance, operation or repair of any facility in any easement area. In the event of inconsistency between the provisions of this Section and the terms of an easement agreement with a utility company, the terms of easement agreement shall control.

### Article III Residential Area Covenants

3.01 Density Restrictions. The Subdivision is limited to a maximum of 113 residential units, with one (1) residence on each Lot.

3.02 Land Use, Building Type, and Garages. No Lot shall be used except for residential purposes. No Improvement shall be erected, altered, or placed or be permitted to remain on any of said Lots, or any part thereof, without approval of the Architectural Review Committee. Permitted uses on a Lot include one detached single family dwelling, together with a private garage and other customary appurtenances to private dwellings, including a detached living structure in the rear, yard gazebos, dog houses, portico, gym sets and storage buildings

that are appropriate for the neighborhood and reasonable to the adjoining landowners and no structure shall be occupied or used until the exterior construction thereof is completed. Except as provided herein, no more than one residential structure shall be erected on any Lot. No Lot shall be used or occupied for any business, or commercial purpose either apart from or in connection with the use thereof as a private residence, whether for profit or not. Each single family detached residence situated on a Lot shall have an enclosed, attached or detached garage for not less than two (2) automobiles. No carport shall be built, placed, constructed or reconstructed on any Lot. No garage shall be changed, altered, reconstructed or otherwise converted for any purpose inconsistent with the garaging of automobiles. All Owners, their families, tenants and contract purchasers shall, to the greatest extent practicable, utilize such garages for the garaging of vehicles belonging to them.

3.03 Dwelling Size. Unless a variance is granted by the Architectural Review Committee, no residential structure erected on any Lot shall have more than two (2) stories, nor exceed thirty (30) feet in height (measured from the highest top of curb elevation adjacent to the Lot to the top of the gable). The combined living area of a house shall not be less than 1,250 square feet for a one-story dwelling and the combined living area of a 1 ½ or 2 story house shall not be less than 1,250 square feet. However, in no event shall the ground floor of a 1 ½ or 2 story house be less than 700 square feet. The Architectural Review Committee shall be empowered to grant individual waivers of the setbacks, minimum square footage and height requirements, provided that, in the sole discretion of the Architectural Review Committee the proposed dwelling shall, in general, be harmonious with the existing dwellings in that neighborhood.

3.04 Building Location. Without exception, all building setback lines will comply with setback requirements of all applicable zoning ordinances and governmental regulations. Any detached living structure in the rear yard of a Lot will be no closer to the street than the rear line of the main structure. Unless a variance is granted by the Architectural Review Committee, any detached structure in the rear yard of a Lot will have a minimum five (5) foot set back from the rear Lot line and a five (5) foot setback from the side Lot line.

3.05 Building Exteriors. Every residential structure will meet the following requirements:

- (a) All doors that are visible from the street in front of the Lot must be under a porch.
- (b) All wall finishes, accents and special finishes must wrap around a minimum of 1 foot from front of house.
- (c) Each structure (other than detached garages) will have at least two massings, other than porches, that are recessed or protrude at least 2 feet from the main facade of the structure.
- (d) All structures will have flat roofs or clay/concrete tile roofs or shingles or a combination of these products. All clay or concrete roof or roof shingles tiles must be neutral colors.

(e) All visible flashing/ sheet metal and vents must be painted to match the adjacent roof, accent or primary color.

(f) Any antennas, solar panels or similar equipment may not be visible from the street unless State or Federal Law states otherwise. Small (less than 2 feet in diameter) satellite dishes may be visible from the street, but must be placed on the farthest point from the street allowing proper exposure for reception.

(g) Each structure may utilize only one color as its primary paint color and accent colors may not exceed more than thirty percent (30%) of painted surface of the structure.

(h) No structure may be painted with any color that has not been approved by the Architectural Review Committee. The following colors will be automatically approved by the Architectural Review Committee:

Sherwin Williams colors SW 6043, 6044, 6045, 6046, 6057, 6058, 6059, 6060, 6064, 6065, 6066, 6067, 6078, 7079, 6080, 6081, 6085, 6086, 6087, 6088, 6092, 6093, 6094, 6095, 6099, 6100, 6101, 6102, 6106, 6107, 6108, 6109, 6141, 6142, 6143, 6144, 6047, 6061, 6068, 6082, 6089, 6096, 6103, 6110, 6145. Dunn Edwards colors DE 6149, 6112, 6118, 6116, C714, C713, 6124, 6098, 6216, C757, 6137, 6136, 6216, 6049, C759, 6231, C718, C756, 6131, A161, C750, C755, C712, 6130, 6244, 6228, 6229, 6241

(i) All wrought iron must be painted black, dark brown or rust brown.

3.06 Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat or as recorded by separate instrument.

3.07 Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood.

3.08 Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other building shall be used on any Lot at any time as a residence, either temporarily or permanently.

3.09 Fences and Garden Walls.

(a) No fence or wall (other than garden walls, fences and hedges between the front building setback line and the street, which are no more than 18 inches in height measured from the finished grade of the highest of the adjoining Lots) shall be erected, placed or altered on any Lot nearer to any street than the minimum building setback line, except that on corner lots a fence may be placed or erected along the rear lot line from the interior lot line to the side street lot line, and forward along the side street lot line not farther than within 10 feet of the front of the dwelling. This provision shall not preclude

any necessary retaining walls. Masonry fences only shall be permitted across the rear of any Lot, the interior lot line of any lot, or along the side yard of a corner lot where such side yards abut on a side street. All side or rear fences and walls (except for the garden walls permitted above) must be a minimum of four (4) feet in height, unless otherwise approved in writing by the Architectural Review Committee. Fence construction must be of ornamental iron, masonry (including concrete), or combination thereof. Chain link fences are not permitted on any Lot where such fences are visible from a public street.

(b) Each Owner will construct all walls along common boundary lines with adjoining Lots as party walls. The costs of party walls will be shared equally with the respective Owners of the adjoining lots (other than Declarant) provided that the cost does not exceed the prevailing cost at the time the wall is built. The division of costs on party walls will be the responsibility of the Owners of lots and each Owner who erects common walls will make his own arrangements with the other Owner for sharing the costs of party walls. Declarant will not be responsible for the cost of any party walls. Any wall which is not on or adjacent to a common boundary line will be placed inside the property line of the Lots and the entire cost of the wall will be borne by Owner. Each Owner will construct the rock walls according to the Subdivision Improvement Plan specifications if those requirements vary from the requirements in this paragraph.

3.10 Completion of Structure. Any residential or accessory structure once commenced shall be completed as to exterior and front yard landscaping (and side yard landscaping facing a public street) in accordance with the provisions of these Covenants in not more than 180 days from the date of commencement.

3.11 Sight Distance at Intersections. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two and six feet above the roadway shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight-line limitations shall apply on any Lot within 10 feet from the intersection of the street property line with the edge of a driveway or alley pavement and within the sight visibility easements shown on the plat. No trees shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of the sight lines.

3.12 Landscaping. Each front and side yard any rear parkway of each Lot must be landscaped prior to the occupancy of any structure on the Lot.

3.13 Detached Structures; Exterior Maintenance. Detached structures will at all times be maintained with a compatible scheme as to exterior treatment as the main structure.

3.14 Trash Containers and Storage of Materials. All trash, garbage, or waste matter shall be kept in adequate containers constructed of metal, plastic or masonry materials, with tight-fitting lids, which shall be maintained in a clean and sanitary condition and screened from public view. No Lot shall be used for open storage of any materials whatsoever, which storage is

visible from the street, except that new building materials used in the construction of improvements erected on any Lot may be placed upon such Lot at the time construction is commenced and may be maintained thereon for a reasonable time, so long as the construction progresses without unreasonable delay, until completion of the improvements, after which time these materials shall either be removed from the Lot or stored in a suitable enclosure on the Lot. No garbage, trash, debris, or other waste matter of any kind shall be burned on any Lot.

3.15 Sidewalks. Each Owner of a Lot shall construct at the Owner's expense, sidewalks along street rights-of-way across the front of each lot, behind the rear wall on double front lots and on the side of each corner lot. All parkways between required sidewalks and curb shall be landscaped and/or xeriscaped unless specifically approved by the Architectural Review Committee.

3.16 Soils Testing. Prior to construction, each Owner will obtain soil tests on his Lot and will design and construct the improvements in accordance with prudent engineering practices and principles and applicable governmental regulations based upon the soil conditions of the Lot. Each Owner has the exclusive duty and responsibility to determine the soil conditions for his Lot. **An Owner's failure to test the soil conditions and to design the improvements accordingly, may result in loss or damage to the improvements. IT IS EACH OWNER'S DUTY TO DETERMINE THE SOIL CONDITIONS FOR HIS LOT**

3.17 Drainage. All Lots, whether vacant, with buildings under construction or with completed buildings (occupied or unoccupied) shall be designed and constructed to provide positive drainage as required by the pertinent governmental authorities at the time from the rear of the Lot to the street in front of the Lot as shown on the engineering plans for the subdivision. This positive lot drainage to the street in front of each lot must be maintained at all times by the owner. Driveways, patios, walks, landscaping (including without limitation, grass, bushes, trees, brick, rock or other materials), and all other portions of each Lot shall be constructed, installed and shall be maintained to drain away from the main building structure, and swaled, sloped or slanted through the rear, side and front yards so as to drain to the street in front of the lot. If necessary, roof drainage will be collected in gutters and diverted toward the front of the lot. Walls or other structures should not be placed along the side of any dwelling in a manner that would block or impair drainage from the rear of the lot to the street. Drainage of Lots shall be maintained in accordance with the approved drainage plans on file at the City of Sunland Park. It is unlawful to alter or in any way change the drainage of any Lot, without prior approval of all governmental authorities having jurisdiction over the Lot **FAILURE BY AN OWNER (INCLUDING BUILDERS) TO MAINTAIN THE PROPER DRAINAGE CAN RESULT IN DAMAGE TO THE IMPROVMENTS (FOUNDATIONS, GARDEN AND/OR RETAINING WALLS, POOLS, WALKS, ETC) FROM SETTLING AND/OR EROSION ON THE SUBJECT LOT AND ON SURROUNDING LOTS.**

3.18 Lots with Slopes. Certain Lots have graded slopes. Graded slopes, as shown on the Grading Plan of the Subdivision on file with the City of Sunland Park, have been engineered based on a geotechnical soils investigation to stand at the slope indicated. However, erosion is inevitable on any slope, even in highly cohesive soils. **EACH OWNER OF A LOT WITH A GRADED SLOPE MUST MAINTAIN THE SLOPE AND ANTI-EROSION MEASURES ON**

SLOPES WITHIN ITS LOT. If no anti-erosion measures have been installed prior to an Owner's purchase of the Lot, the Owner should provide anti-erosion controls on graded slopes within the bounds of its Lot. Anti-erosion controls may include, but not limited to, concrete rip-rap, mortared rock rip-rap (for slopes 1:1 or less), loose rock rip-rap of a specified diameter, soil retention blankets and plantings of native species.

3.19 Lot Maintenance. Each Owner or other occupant of a Lot will keep all grass, weeds, vegetation and other landscaping maintained and trimmed at regular intervals. Trees, shrubs, vines and plants which die shall be promptly removed from the Lot and must be replaced if necessary to comply with the minimum landscape requirements. Fences and walls must be repaired and maintained. In the event that any Owner or occupant violates this Section and the violation continues for more than ten (10) days after written notice, Declarant, its successors and assigns may without liability to the Owner or occupant in trespass or otherwise, enter upon the Lot and cut or trim the landscaping and charge the Owner and/or the occupant for the cost of that work.

3.20 Miscellaneous. The drying of clothes in full public view is prohibited and yard equipment, wood piles or storage areas must be screened from public view. No privy shall be placed upon any of the Lots. No signboard or other visible advertisement larger than one square foot may be placed upon any Lot, other than signs pertaining to the sale of a Lot or the builders' signs which may be placed upon a Lot during the construction of improvements. Signing shall comply with all applicable government regulations. No excavation shall be made on any Lot for the purpose of obtaining sand, rock, clay, dirt, coal or gravel, whether for profit or otherwise. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except that dogs, cats or other household pets (not to exceed three (3) adult animals) may be kept provided that they are not kept, bred, or maintained for any commercial purpose whatever. No window or wall-type air conditioners shall be permitted to be used, placed or maintained on or in any building where visible from the street or from adjacent lots unless otherwise approved by the Architectural Review Committee.

3.21 Conflicts. In the event of a conflict between a provision of this Declaration or an applicable law of any governmental entity having jurisdiction, the most restrictive provision will govern and control.

#### Article IV Architectural Review Committee

4.01 General. Declarant has imposed these Covenants to promote a cohesive and consistent development of the Subdivision to protect Declarant and Owners against substandard development on a Lot which would tend to diminish the value of the surrounding Lots and the Subdivision in general. Declarant shall have authority, from time to time to amend or supplement the Residential Area Covenants of Article III to correct inconsistencies or to clarify any ambiguity.

4.02 Committee Approval of Improvements. No improvement, including landscaping, shall be commenced, erected, constructed, reconstructed, placed, altered, removed, permitted to

remain, or maintained upon any Lot, until the detailed plans and specifications for the improvement have been submitted to and approved in writing as to compliance with these Covenants by the Architectural Review Committee.

The submitted plans and specifications shall specify, in such form as the Architectural Review Committee may reasonably require, including but not limited to engineering, grading, utility, structural, mechanical, electrical, and plumbing detail and the nature, kind, shape, height, exterior color scheme, material to be incorporated into, and location of the proposed improvements or alterations. In the event the Architectural Review Committee fails to approve or disapprove such plans and specifications within forty-five (45) days after the plans and specifications have been submitted to it, approval will not be required and the provisions of this Section will be deemed to have been fully complied with. However, that the failure of the Architectural Review Committee to approve or disapprove such plans and specifications within the forty-five (45) day period shall not operate to permit any improvements on a Lot to be commenced, erected, placed, constructed, reconstructed or maintained on the Property in a manner inconsistent with any provision of these Covenants. Once the plans and specifications have been approved, the plans and specifications will not be materially altered, changed or revised without the approval of the Architectural Review Committee. The Architectural Review Committee also shall have full power and authority to reject any plans and specifications that do not comply with these Covenants. The Architectural Review Committee shall have the authority to issue rules or guidelines setting forth procedures for the submission of plans for approval. Declarant shall not be required to submit to or obtain approval of the Architectural Review Committee with respect to any construction or improvements on Lot or portion of the Subdivision owned by it.

4.03 Membership. The initial Architectural Review Committee shall be composed of Russell Hanson, Lorraine Fender and Joe Hanson. The initial Architectural Review Committee's address is PO Box 220630, El Paso, Texas 79913. In the event of the death or resignation of any member of the Architectural Review Committee, Declarant will appoint a successor. All appointments to the Architectural Review Committee by Declarant shall be by a written appointment recorded in the Records of Dona Ana County, New Mexico. All members to the Architectural Review Committee as designated above or appointed by Declarant will be referred to as the "Initial Committee". A majority of the Architectural Review Committee may designate representative to act for it.

4.04 Members Compensation and Liability. None of the members of the Architectural Review Committee or its designated representative shall be entitled to any compensation for services performed pursuant to these Covenants. Since architectural review of construction plans, as required in this Article, is subjective in nature, the action or non-action by the members of the Architectural Review Committee shall not subject any member of the Architectural Review Committee to personal liability nor shall the members of the Architectural Review Committee be charged with the responsibility for enforcement of the provisions of these Covenants. The enforcement of the architectural review provisions under this Article by any aggrieved party shall be as provided in Section 5.03, and shall be pursued solely against the person or persons allegedly violating or attempting to violate the provisions and standards

specified in these Covenants. The members of the Architectural Review Committee shall not be proper parties to such action.

4.05 Variances. In its sole discretion under the circumstances set forth below, the Architectural Review Committee may grant variances from these Covenants, including, but not limited to the minimum square footage of a residence in Section 3.03, the garage size or orientation requirements of Section 3.02, the percentage color requirement of Section 3.05(i) and the color requirement of Section 3.05(j). Any grant of a variance may include any conditions or safeguards which the Architectural Review Committee deems appropriate, such as the building location or landscaping, as restrictions filed of record and legally enforceable. A variance(s) from compliance with these Covenants may be granted under any one of the following circumstances:

- (a) There has been a bonafide mistake or error in construction (whether during construction or after the completion of construction) despite the use of qualified professionals; or
- (b) In the sole and final judgment of the Architectural Review Committee, the granting of the variance will not be substantially detrimental to neighboring Lots or have an effect on the value of neighboring Lots, the granting of the variance is reasonable and within the general intent of this Declaration and the requested variance does not violate the City Code.

4.06 Termination of Initial Architectural Review Committee. On the earlier to occur of: (i) Declarant's recording in the Records of Dona Ana County, New Mexico of a waiver its right to appoint members to the Architectural Review Committee; or (ii) residential dwellings having been built upon 100% of the Lots, the terms of the Initial Architectural Review Committee members automatically terminate without action or resignation by such members. At any time thereafter, a majority of the Owners shall have the power through a duly written recorded instrument to form an Architectural Review Committee of three or more members. Successors to membership in the Architectural Review Committee shall be named in an instrument executed and acknowledged by the then Chairman of the Architectural Review Committee who shall be elected by a majority of its then members. Such instrument shall be recorded in the Records of Dona Ana County, New Mexico.

4.07 No Waiver of Future Approvals. The approval of the Architectural Review Committee of any proposal, plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the Architectural Review Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposal, plans and specifications, drawings or matters subsequently or additionally submitted for approval or consent.

Article V  
General Provisions

5.01. Term. Declaration are to run with the land and shall be binding on all parties and all persons claiming under them for a period of forty (40) years from the date Declaration are recorded, after which time Declaration shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by the owners of the then current majority of the Lots has been recorded agreeing to terminate Declaration.

5.02 Amendment. The Declarant expressly reserves the right to amend these restrictions (i) at any time as to any remaining land owned by it at such time or not initially/currently built on, and such amendment shall in no way serve to release, modify or affect Declaration as to any land theretofore conveyed, (ii) within ten (10) years from the date Declaration are recorded in the Records of Dona Ana County, New Mexico, for any purpose deemed necessary by Declarant, and (iii) at any time in response to any governmental or quasi-governmental suggestion, guideline, checklist, requisite or requirement, particularly with respect to those entities or agencies directly or indirectly involved in, or having an impact on, mortgage financing, mortgage insurance and/or reinsurance. In addition to the right of the Declarant to amend Declaration, a majority of the owners of the Lots may change Declaration in whole or in part after ten (10) years following the date Declaration are recorded in the Records of Dona Ana County, New Mexico. It is expressly agreed and understood, however, that the conditions and restrictions contained herein, pertaining to residential density, may only be amended, released, revised or modified with the prior consent of, and coordination with, all governmental authorities having jurisdiction over the Lot.

5.03 Enforcement. Owners of Lots shall comply with the standards and provisions of Declaration. Declarant or any Owner of a Lot, at their own expense, shall have the right to enforce, by proceedings at law or in equity, all restrictions, covenants, conditions and reservations set out in Declaration, either to restrain violation or to recover damages, without the necessity of posting a bond, cash or otherwise. The prevailing party in any enforcement action shall be entitled to recover his costs, including reasonable attorney's fees and expert fees. The failure to take any action upon any breach or default of Declaration or any delay in taking action to enforce Declaration shall not be deemed a waiver of the right to take enforcement action for that breach or default or the right to take enforcement action for any similar subsequent breach or default.

5.04 Severability. The invalidity of any one or more of the covenants, restrictions, conditions, or provisions contained in Declaration, shall in no manner affect any of the other covenants, restrictions, conditions, or provisions hereof, which shall remain in full force and effect.

5.05 Encroachments. It shall not be a violation of Declaration for a Lot owner to acquire or own a portion of an adjoining Lot in order to comply with the building setback requirements or to resolve problems resulting from encroachment of buildings, rock walls, or other permanent Improvements.

5.06 Interpretation. If Declaration or any word, clause, sentence, paragraph, or other part thereof shall be susceptible of more than one or conflicting interpretations, then the

interpretation which is most nearly in accordance with the general purposes and objectives of Declaration shall govern.

5.07 Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, males or females, shall in all cases be assumed as though in each case fully expressed.

5.08 Applicable Law. Nothing contained in these covenants shall supersede the applicable laws of any governmental entity having jurisdiction.

5.09 Rights Cumulative. All rights, remedies and privileges granted to the Declarant or any Owner pursuant to the provisions of Declaration, shall be deemed to be cumulative and the exercise of any one or more of such rights, remedies and privileges shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other additional rights, remedies or privileges, as may be available to such party at law or in equity.

Dated: \_\_\_\_\_, 2016.

Checkpoint Ginger, LLC,  
a New Mexico limited liability company

By: \_\_\_\_\_  
Russell Hanson, Manager

STATE OF TEXAS            )  
  )  
COUNTY OF EL PASO        )

This instrument was acknowledged before me on \_\_\_\_\_, 2016 by Russell Hanson as Manager of Checkpoint Ginger, LLC on behalf of said limited liability company.

\_\_\_\_\_  
Notary Public in and for the  
State of Texas