

...A TITLE OF NEW MEXICO,
20021274-YP

After Recording Return to:
View Point Acreage, L.L.C.
6300 Escondido Drive
El Paso, Texas 79912

Recorded 07/08/2009 DAC

FIRST AMENDMENT
to
Declaration of Covenants, Conditions and Restrictions
on and for
MESILLA ACRES ESTATES

A Subdivision in
Doña Ana County, New Mexico

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MESILLA ACRES ESTATES (hereinafter referred to as the "*First Amendment*"), dated effective February 28, 2007 (the "*Effective Date*"), is made by View Point Acreage, L.L.C., a Texas limited liability company, ("*Declarant*"), with respect to **MESILLA ACRES ESTATES**, a subdivision in Las Cruces, Doña Ana County, New Mexico (hereinafter referred to as the "*Subdivision*").

WITNESSETH:

WHEREAS, by that certain instrument entitled "Declaration of Covenants, Conditions and Restrictions, Easements, Charges and Liens", filed on February 28, 2007, recorded in Book 22, Pages 139 and 140 of Plat Records, Doña Ana County, New Mexico (hereinafter referred to as the "*Original Declaration*"), Declarant imposed certain covenants and restrictions on the following described lots (the "*Subdivision*"):

Lots 1-22, MESILLA ACRES ESTATES, Doña Ana County, New Mexico, as the same is shown and designated on the plat of said Mesilla Acres Estates filed in the Office of the County Clerk of Doña Ana County, New Mexico on February 28, 2007, in Plat Book 22, Folio 138-40.

WHEREAS, the Original Declaration included Lot 1 of MESILLA ACRES ESTATES ("*Lot 1*") as being subject to the Original Declaration; however, on the Effective Date, (a) Lots 2-22, MESILLA ACRES ESTATES were vacant lots, all on a gated street one block long, whereas a long existing home was then already constructed and existing on Lot 1; (b) Lot 1 is not accessible from the gated street and could not benefit from the assessments provided to maintain the gated street; (c) Lot 1 should not have been included as subject to the Original Declaration; and (d) by this First Amendment, Declarant desires to amend the Original Declaration to remove Lot 1 from the properties subject to the Original Declaration;

WHEREAS, this being a clarification and technical correction of the Original Declaration, and the parties still being in the "Development Period", Declarant has the power to amend the Original Declaration pursuant to Article XIII, Section 2(a) of the Original Declaration;

WHEREAS, pursuant to Article XIII, Section 2(a) of the Original Declaration, Declarant now desires to clarify, correct and amend the Original Declaration as set forth herein;

WHEREAS, Declarant affirmatively declares that it has judged this First Amendment to be reasonable and appropriate, and in the best interests of the Owners;

NOW, THEREFORE, Declarant hereby adopts the following actions:

- 1. Notwithstanding anything to the contrary in the Original Declaration:
 - a. The second paragraph under the title "PREAMBLE" to the Original Declaration shall be amended to read:

Declarant is the owner and developer of twenty-one of the lots within Mesilla Acres Estates (said twenty-one lots being referred to herein as the "Lots"), which Lots are commonly known and described as:

Lots 2-22, MESILLA ACRES ESTATES, Doña Ana County, New Mexico, as the same is shown and designated on the plat of said Mesilla Acres Estates filed in the Office of the County Clerk of Doña Ana County, New Mexico on February 28, 2007, in Plat Book 22, Folio 138-40.
 - b. On page 4 of the Original Declaration, the definition of "Lot" shall be amended to read:

"Lot" shall be limited to Lots 2-22, Mesilla Acres Estates, and shall mean and refer to each separately identifiable portion of the Assessable Property which is platted, filed and recorded in the office of the office of the County Clerk of Doña Ana County, New Mexico and which is assessed by any one or more of the Taxing Authorities and which is not intended to be an "open space" or a portion of the Common Properties.
 - c. On page 5 of the Original Declaration, the definition of "Properties" shall be amended to read:

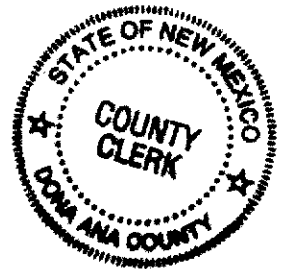
"Properties" shall mean and refer to: (i) the twenty-one Lots described in the Preamble hereinabove; and (ii) the other land within the Subdivision, including but not limited to the Common Properties, however excluding Lot 1 of the Subdivision.
 - d. Notwithstanding anything to the contrary herein, the Association shall have the right of access and right (but not obligation) of maintenance over any drainage easement on Lot 1, as reflected on the recorded Plat of the Subdivision.
- 2. Any capitalized terms used herein and not otherwise defined, shall have the definition as set forth in the Original Declaration.

COUNTY OF DONA ANA)
STATE OF NEW MEXICO) ss

COVENANTS
PAGES: 4

I Hereby Certify That This Instrument Was Filed for
Record On The 8TH Day Of July, 2009 at 03:29:08 PM
And Was Duly Recorded as Instrument #0918989
Of The Records Of Dona Ana County

Witness My Hand And Seal Of Office
Lynn J. Ellins
Deputy *Lynn J. Ellins* County Clerk, Dona Ana, NM



**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS,
EASEMENTS, CHARGES AND LIENS
ON AND FOR**

MESILLA ACRES ESTATES

**A SUBDIVISION IN
DOÑA ANA COUNTY, NEW MEXICO**

This Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens (the "Covenants") on and for MESILLA ACRES ESTATES, a subdivision in Doña Ana County, New Mexico is made effective as of the 28th day of February, 2007, by View Point Acreage, L.L.C., a Texas limited liability company (referred to herein as the "Declarant"):

PREAMBLE

Declarant is the owner and developer of a 27.63 acre tract of land in Doña Ana County, New Mexico, located in Section 1, T.24S., R.1E., N.M.P.M. of the U.S.R.S. Surveys, being a part of U.S.R.S. Tract 12-32A, Doña Ana County, New Mexico. The said property has been platted as and is now commonly be known and described as:

MESILLA ACRES ESTATES, Doña Ana County, New Mexico, as the same is shown and designated on the plat of said Mesilla Acres Estates filed in the Office of the County Clerk of Doña Ana County, New Mexico on February 28, 2007, in Plat Book 22, Folio 138-40.

Declarant is the owner and developer of twenty-two of the lots within Mesilla Acres Estates (said twenty-two lots being referred to herein as the "Lots"), which Lots are commonly known and described as:

Lots 1-22, MESILLA ACRES ESTATES, Doña Ana County, New Mexico, as the same is shown and designated on the plat of said Mesilla Acres Estates filed in the Office of the County Clerk of Doña Ana County, New Mexico on February 28, 2007, in Plat Book 22, Folio 138-40.

In addition to the said twenty-two lots, there is included within the Subdivision certain Common Properties (as defined hereinafter), namely (a) Teresa Drive, the street in the Subdivision; and (b) two parcels of land along Apodaca Road and Snow Road designated on the plat as "Additional 25' ROW (to be dedicated upon filing of this Plat)" [along Apodaca Road] and "Additional "30" ROW (to be dedicated upon filing of this Plat)" [along Snow Road] (collectively referred to as the "Landscape Parcels"). The Common Properties and the said twenty-two Lots are together referred to as the "Properties".

The Mesilla Acres Estates Homeowners Association, Inc. (the "Association") has been or will be chartered as a non-profit New Mexico corporation to assist in the ownership, management, use and care of

the various Common Properties within the Subdivision and to assist in the administration and enforcement of the covenants, conditions, restrictions, easements, charges and liens set forth with this Declaration.

DECLARATION

The Declarant hereby declares that all twenty-two Lots and the Common Properties constituting the Properties and located within Mesilla Acres Estates, are and shall be owned, held, mortgaged, transferred, sold, conveyed and occupied subject to the Covenants hereinafter set forth.

ARTICLE I CONCEPTS AND DEFINITIONS

The following words, when used in this Declaration or in any amended or supplementary Declaration (unless the context shall otherwise clearly indicate or prohibit), shall have the following respective concepts and meanings:

"Amended Declaration" shall mean and refer to each and every instrument recorded in the County Clerk's Records of Doña Ana County, New Mexico which amends, supplements, modifies, clarifies or restates some or all of the terms and provisions of this Declaration.

"Annual Assessment" shall have the meaning specified in Article V below.

"Architectural Review Committee" (sometimes referred to herein as the "ARC") shall mean and refer to that particular committee which is described and explained within Article VIII below.

"Articles" shall mean and refer to the Articles of Incorporation (and any amendments thereto and restatements thereof) of the Association on file in the Office of the Corporations Bureau, Public Regulation Commission, State of New Mexico, Santa Fe, New Mexico.

"Assessable Property" shall mean and refer to each and every lot, parcel and tract within the entire Properties which: (i) the Declarant has subjected to and imposed upon a set of restrictive covenants calling for, *inter alia*, the payment of an Annual Assessment to the Association; (ii) may have been or will be given a separately identifiable tax or parcel number; (iii) is not designated a portion of the Common Properties. The Declarant proposes to cause each residential Lot within the Properties to constitute an Assessable Property.

"Association" shall mean and refer to the Mesilla Acres Estates Homeowners Association, Inc., a non-profit New Mexico corporation.

"Board" shall mean and refer to the Board of Directors of the Association.

"Bylaws" shall mean and refer to the Bylaws of the Association, as adapted and amended from time to time in accordance with the provisions of the New Mexico Non-Profit Corporation Act and this Declaration.

"Common Properties" shall mean and refer to any and all areas of land within the Properties which are known, described or designated as common areas, private streets, gate house and gate apparatus,

perimeter fences and columns, landscape easements, including without limitation those shown on any recorded subdivision plat of portions of the Properties, if any, together with all improvements that are now or that may hereafter be constructed thereon. The Declarant reserves the right to use, during the Development Period, portions of the Common Properties (e.g. a sales information center) for business matters directly and indirectly related to Mesilla Acres Estates subdivision. Declarant shall convey record title to some or all of the Common Properties to the Association if, as and when deemed appropriate by Declarant or as may be required by governmental officials, and Declarant shall at all times have and retain the right to effect minor redesigns or minor reconfigurations of the Common Properties.

"Covenants" shall mean and refer to all covenants, conditions, restrictions, easements, charges and liens set forth within this Declaration.

"Declarant" shall mean and refer to View Point Acreage, L.L.C., a Texas limited liability company, and any or a successor(s) and assign(s) of View Point Acreage, L.L.C. However, no person or entity merely purchasing one or more Lots from View Point Acreage, L.L.C., in the ordinary course of business shall be considered a "Declarant".

"Declaration" shall mean and refer to this instrument, together with any and all amendments or supplements hereto.

"Deed" shall mean and refer to any deed, assignment, testamentary bequest, muniment of title or other instrument, or intestate inheritance and succession, conveying or transferring fee simple title or a leasehold interest or another legally recognized estate in a Lot.

"Design Guidelines" shall mean and refer to those particular standards, restrictions, guidelines, recommendations and specifications applicable to most of the aspects of construction, placement, location, alteration, maintenance and design of any improvements to or within the Properties, and all amendments, bulletins, modifications, supplements and interpretations thereof. The initial Design Guidelines are attached hereto as Exhibit "A".

"Development Period" shall mean a period commencing on the date of the recording of the Declaration in the public real estate records of Doña Ana County, New Mexico and continuing thereafter until and ending the earlier to occur of: (i) substantial completion of all development within the Properties, as determined by the Declarant, and sale of all Lots by the Declarant; or (ii) the tenth (10th) anniversary of the date of recordation of this Declaration in the County Clerk's Records of Doña Ana County, New Mexico or (iii) Declarant's recordation in the real property records of Doña Ana County, New Mexico of an instrument specifying the end of the Development Period at such earlier date than otherwise established by (ii), in Declarant's sole and absolute discretion.

"Dwelling Unit" shall mean and refer to any building or portion of a building situated upon the Properties which is designed and intended for use and occupancy as a residence by a single person, a couple, a family or a permitted family size group of persons.

"Easement Area" shall mean and refer to those areas which may be covered by an easement specified in Article IX and in Article X below.

"Eligible Insurers" is defined in Article XII below.

"Eligible Mortgagees" is defined in Article XII below.

"Exempt Property" shall mean and refer to the following portions of the Properties: (i) all land and Improvements owned by the United States of America, the State of New Mexico, Doña Ana County, or any instrumentality, political subdivision or agency of any such governmental entity acting in a governmental (rather than a proprietary) capacity; (ii) all land and Improvements owned (including legal and beneficial ownership, whether now or in the future) by the Association or constituting a portion of the Common Properties; (iii) all land and Improvements which are exempt from the payment of ad valorem real property taxes by the Doña Ana County and are exempt from the payment of any assessments hereunder as expressly determined by written resolution of the Declarant and/or the Association; and (iv) such other land(s) and/or Improvement(s) and/or Lot(s) which are specifically exempted from the payment of annual Assessments in accordance with a special resolution of the Board.

"Fiscal Year" shall mean each twelve (12) month period commencing on January 1 and ending on the following December 31, unless the Board shall otherwise select an alternative twelve month period.

"Greenway Frontage" shall mean and refer to common green space, which are adjacent to rear or side yard Lot lines and/or clearly visible from public streets, sidewalks and rights-of-way.

"Homebuilder" shall mean and refer to each entity and/or individual which: (i) is regularly engaged in the ordinary business of constructing residential dwellings on subdivision lots for sale to third-party homeowners as their intended primary residence; and (ii) has entered into a contract with the Declarant to purchase one or more Lots.

"Improvement" shall mean any physical change to raw land or to an existing structure which alters the physical appearance, characteristics or properties of the land or structure, including but not limited to adding or removing square footage area space to or from a structure, painting or repainting a structure, or in any way altering the size, shape or physical appearance of any land or structure.

"Institutional Mortgage" shall mean and refer to any bona-fide mortgage, lien or security interest held by a bank, trust company, insurance company, savings and loan association or other recognized lending institution, or by an institutional or governmental purchaser of mortgage loans in the secondary market, such as Federal National Mortgage Association, Federal Home Loan Mortgage Corporation or their successors, or guaranteed or subsidized by the FHA and/or VA.

"Landscape Parcel" is refined in the Preamble.

"Lot" shall be limited to Lots 1-22, Mesilla Acres Estates, and shall mean and refer to each separately identifiable portion of the Assessable Property which is platted, filed and recorded in the office of the office of the County Clerk of Doña Ana County, New Mexico and which is assessed by any one or more of the Taxing Authorities and which is not intended to be an "open space" or a portion of the Common Properties.

"Member" shall mean and refer to each Owner who is in good standing with the Association and who has filed a proper statement of registration with the Association and who has complied with all

directives and requirements of the Association. Each and every Owner shall and must take such affirmative steps as are necessary to become and remain a Member of, and in good standing in, the Association.

"Owner" shall mean and refer to the holder(s) of record title to the fee simple interest of any Lot whether or not such holder(s) actually reside(s) on any part of the Lot.

"Payment and Performance Lien" shall mean and refer to the lien described within Sections 8 and 9 of Article V hereinbelow.

"Properties" shall mean and refer to: (i) the twenty-two Lots described in the Preamble hereinabove; and (ii) the other land within the Subdivision, including but not limited to the Common Properties.

"Structure" shall mean and refer to: (i) any thing or device, other than trees, shrubbery (less than two feet high if in the form of a hedge) and landscaping (the placement of which upon any Lot shall not adversely affect the appearance of such Lot) including but not limited to any building, garage, porch, shed, greenhouse or bathhouse, cabana, coop or cage, covered or uncovered patio, swimming pool, play apparatus, clothesline, fence, curbing, paving, wall or hedge more than two feet in height, signboard or other temporary or permanent living quarters or any temporary or permanent Improvement to any Lot; (ii) any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any Lot; (iii) any enclosure or receptacle for the concealment, collection and/or disposition of refuse; and (iv) any change in the grade of any Lot of more than three inches from that existing at the time of initial approval by the Architectural Review Committee.

"Subdivision" shall mean and refer to the Lots, and the Common Properties in the Subdivision.

"Taxing Authorities" shall mean and refer to Doña Ana County, New Mexico, the State of New Mexico and any and all other governmental entities or agencies which have, or may in the future have, the power and authority to impose and collect ad valorem taxes on real property estates, in accordance with the New Mexico Constitution and applicable statutes and codes.

"Zoning Ordinance" shall mean and refer any and all applicable Doña Ana County, New Mexico and/or other applicable municipal zoning ordinance, governmental regulations, and all amendments thereto.

ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION

The Properties, including the twenty-two Lots, which are, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration within Mesilla Acres Estates are more particularly described in the Preamble hereinabove.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Each Owner of each which is subjected to these Covenants shall automatically be, and must at all times remain, a Member of the Association in good standing. During the Development Period, the Association shall have two (2) classes of Members: Class A and Class B. The Class A Members shall include all Lot Owners (other than the Declarant during the Development Period). The

Class B Member shall be the Declarant. Upon conclusion of the Development Period, the Class B membership shall terminate and the Declarant shall become a Class A Member.

Section 2. Voting Rights. There shall be two (2) classes of voting Members during the Development Period:

Class A: The Owner(s) of each Lot shall be entitled to one (1) vote per Lot. Where more than one (1) Owner owns and holds a record fee interest in a Lot such Owner(s) may divide and cast portions of the one (1) vote as they decide, but in no event shall any one (1) Lot yield more than one (1) vote.

Class B: The Class B Member shall have one (1) vote for each Lot it owns.

Any Owner or Member shall not be in "good standing" if such person or entity is: (a) in violation of any portion of these Covenants, the Design Guidelines, or any rule or regulation promulgated by the Board; (b) delinquent in the full, complete and timely payment of any Annual Assessment, special assessment, or any other fee, charge or fine which is levied, payable or collectible pursuant to the provisions of these Covenants, the Bylaws or any rule or regulation promulgated by the Board.

The Board may make such rules and regulations, consistent with the terms of this Declaration and the Bylaws, as it deems advisable, for: any meeting of Members; proof of membership in the Association; the status of good standing; evidence of right to vote; the appointment and duties of examiners and inspectors of votes; the procedures for actual voting in person or by proxy; registration of Members for voting purposes; and such other matters concerning the conduct of meetings and voting as the Board shall deem fit.

Section 3. Board of Directors. The affairs of the Association shall be managed initially by a board of two individuals elected by the Class B Member. However, beginning no later than the seventh annual meeting of the Members of the Association and continuing thereafter, the Board shall be expanded to consist of five individual Directors, three of whom shall be elected by the Class B Member and two of whom shall be elected by the Class A Members. Beginning with the ninth annual meeting and continuing thereafter, the Board shall still consist of five individual Directors, all of whom shall be elected by the Class A Members. The Directors need not be Members of the Association. Directors shall be elected for two year terms of office and shall serve until their respective successors are elected and qualified. Any vacancy which occurs in the Board, by reason of death, resignation, removal, or otherwise, may be filled at any meeting of the Board by the affirmative vote of a majority of the remaining Directors representing the same class of Members who elected the Director whose position has become vacant. Any Director elected to fill a vacancy shall serve as such until the expiration of the term of the Director whose position he or she was elected to fill.

Section 4. Notice and Voting Procedures. Quorum, notice and voting requirements of and pertaining to the Association may be set forth within the Articles and Bylaws, as either or both may be amended from time to time, and shall be in accordance with permitted New Mexico law.

ARTICLE IV RIGHTS OF ENJOYMENT IN THE COMMON PROPERTIES

Section 1. Easement. Subject to the provisions of Sections 2 through 7 of this Article, each Owner in good standing with the Association shall have a non-exclusive right and easement of enjoyment in and to all Common Properties, and such easement shall be appurtenant to and shall pass with every Lot. All Owners in

good standing with the Association shall have a non-transferable, non-exclusive privilege to use and enjoy all Common Properties for so long as they are Members in good standing with the Association.

Section 2. Extent of Members' Easements. The rights and easements of use, recreation and enjoyment created hereby shall be subject to the following:

(a) The right of the Declarant or Association to prescribe reasonable regulations (e.g. speed limits on the streets and limitations on parking on or in the streets) and policies governing, and to charge reasonable expense reimbursements and/or deposits (e.g., key, access card and/or radio transmitter device deposits) related to, the use, operation and maintenance of the Common Properties;

(b) The right of the Association to enter into and execute contracts with any party (including, without limitation, the Declarant or its corporate affiliates) for the purpose of providing management, maintenance or such other materials or services consistent with the purposes of the Association and/or this Declaration;

(c) The right of the Declarant or the Association to enter into and execute contracts for the purpose of extending cable or utility or security service on, over or under the Common Properties to ultimately provide service to one or more of the Lots;

(d) The right of the Declarant and/or the Association to dedicate or transfer all or any part of the Common Properties to any county or municipal corporation, public agency, governmental authority, or utility for such purposes and upon such conditions as may be agreed to by the Declarant and the Board; and

(e) The right of the Declarant and/or the Association to grant permits, licenses and easements over the Common Properties for utilities, roads and other purposes necessary for the proper operation of subdivision.

Section 3. Damage to the Common Properties. Each Member shall be liable to the Association for any damage to any portion of the Common Properties caused by the negligence or willful misconduct of the Member or his family and guests.

Section 4. Rules of the Board. All Members shall abide by any rules and regulations adopted by the Board. The Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and a Member determined to have violated said rules and regulations shall be liable to the Association for all damages and costs, including reasonable attorneys' fees.

Section 5. Use of Common Properties. The Board shall have the power and authority to prescribe rules and regulations regarding the Common Properties.

Section 6. User Fees and Charges. The Board may levy and collect special charges and fees for any and all extraordinary operation and maintenance of the Common Properties and services which the Board determines to be necessary for the benefit of the Owners. If an Owner shall fail to pay a charge or fee when due and payable, said unpaid charge or fee shall be delinquent and upon written notice to said Owner shall become a personal debt of said Owner. Failure of any Owner to pay said fee and charge when due and payable, in addition, shall be a breach of these Covenants.

Section 7. Private Streets. The entry gatehouse, streets, and sidewalks within the Subdivision residential community are "private" and constitute a portion of the Common Properties which are subject to the jurisdiction and administration by the Association. In addition to the other provisions appearing within this Article, the Board of Directors of the Association is specifically authorized (but not required) to recommend, adopt, implement and enforce rules, regulations, mechanisms and procedures governing use of the entry gatehouse, sidewalks, and streets covering items.

ARTICLE V COVENANTS FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot owned by it within the Subdivision, hereby covenants and agrees, and each subsequent Owner of any Lot, by acceptance of a Deed therefor, whether or not it shall be so expressed in any such Deed or other conveyance, shall be deemed to covenant and agree (and such covenant and agreement shall be deemed to constitute a portion of the purchase money and consideration for acquisition of the Lot so as to have affected the purchase price) to pay to the Association (or to an independent entity or agency which may be designated by the Association to receive such monies):

- (1) regular Annual Assessments;
- (2) special group assessments for capital improvements or unusual or emergency matters, such assessments to be fixed, established and collected from time to time as hereinafter provided;
- (3) special individual assessments levied against individual Owners to reimburse the Association for extra or unusual costs incurred for items such as (but not limited to): maintenance and repairs to portions of the Properties caused by the willful or negligent acts of the individual Owner or Member; the remedy, cure or minimizing of problems caused by, or as a result of, violations of these Covenants by an Owner or Member; and
- (4) individual assessments and fines levied against an individual Owner or Member for violations of rules and regulations pertaining to the Association and/or the Common Properties'.

The regular, special group, special individual and individual assessments, together with such late charges, interest and costs of collection thereof as are hereinafter provided, shall be a charge on the land and shall be a continuing lien upon each Lot against which each such assessment is made and shall also be the continuing personal obligation of the then-existing Owner and Member of such Lot at the time when the assessment fell due. Each Owner of each Lot shall be directly liable and responsible to the Association for the acts, conduct and omission of each and every Member associated with the Dwelling Unit(s) on such Owner's Lot.

Section 2. Purposes of Assessments. The assessments levied by the Association shall be used for the purposes of promoting the comfort, health, recreation, safety, convenience, welfare and quality of life of the Owners of the Properties and in supplementing some services and facilities normally provided by or associated with governmental or quasi-governmental entities, and otherwise for the improvement and maintenance of private streets, gatehouse, common green, and other properties, services and facilities devoted and related to the use and enjoyment of the Common Properties and operation of the Association, including, but not limited to or for: the payment of taxes on the Common Properties and insurance in connection with the Common Properties; the payment for utilities and the repair, replacement and additions

of various items within the Common Properties; paying the cost of labor, equipment (including the expense of leasing any equipment) and materials required for, and management and supervision of, the Common Properties; carrying out the duties of the Board of Directors of the Association as set forth in Articles IV and VI herein; carrying out the other various matters set forth or envisioned herein or in any Amended Declaration related hereto; and for any matter or thing designated by Doña Ana County in connection with any zoning, subdivision, platting, building, development or occupancy requirements. The items and areas described above are not intended to be exhaustive but merely illustrative.

Section 3. Basis and Amount of Annual Assessments. Until and unless otherwise determined by the Board of Directors of the Association, the maximum initial regular base assessment shall be Six Hundred Dollars (\$600.00) per Lot per year. The Association's Board of Directors may fix the actual regular base assessment from time to time. The Board of Directors may be permitted to increase the maximum Annual Assessment without a vote of the Members. Notwithstanding any provision herein to the contrary, any and all lots owned by the Declarant during the Development Period shall be exempt from the payment of any and all assessments of any kind or character.

Section 4. Special Group Assessments. In addition to the regular Annual Assessment authorized by Section 3 hereof, the Association may levy in any Fiscal Year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of a capital improvement upon the Common Properties, including any necessary fixtures and personal property related thereto or for any unusual or emergency purpose(s) (including without limitation those matters arising out of litigation and/or judgments); provided that any such assessment shall have the affirmative approval of at least three-fourths of the individuals comprising the Board.

Section 5. Rate of Assessments. Both regular and special group assessments must be fixed at a uniform rate for all residential Lots owned by Class A Members who are not Homebuilders, unless otherwise approved by at least three-fourths of the individuals comprising the Board. The Declarant shall have the right to collect \$150.00 per Lot from each Homebuilder to cover the first six months (one-half the normal rate) from and after the closing of each particular Lot, and thereafter the Homebuilder shall pay the standard regular assessment for such Lot.

Section 6. Date of Commencement of Assessments; Due Dates. The Annual Assessment shall be due and payable in full in advance on the first day of each Fiscal Year and shall, if not automatically paid within thirty (30) consecutive calendar days thereafter, automatically become delinquent. The Board shall use reasonable efforts to provide each Owner with an invoice statement of the appropriate amount due, but any failure to provide such a notice shall not relieve any Owner of the obligation established by the preceding sentence.

Section 7. Duties of the Board of Directors with Respect to Assessments.

(a) In the event of a revision to the amount or rate of the Annual Assessment, or establishment of a special group assessment, the Board shall fix the amount of the assessment against each Lot, and the applicable due date(s) for each assessment, at least sixty (60) days in advance of such date or period and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association;

(b) Written notice of the applicable assessment shall be actually or constructively furnished to every Owner subject thereto in accordance with the procedures then determined by the Board as being reasonable and economical; and

(c) The Board shall, upon reasonable demand, furnish to any Owner originally liable for said assessment, a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid. A reasonable charge may be made by the Board for the issuance of such certificate.

Section 8. Effect of Non-Payment of Assessment; the Personal Obligation of the Owner; the Lien; and Remedies of Association.

(a) Effective as of, and from and after the filing and recordation of this Declaration, there shall exist a self-executing and continuing contract Payment and Performance Lien and equitable charge on each Lot to secure the full and timely payment of each and all assessments and all other charges and monetary amounts and performance obligations due hereunder. Such lien shall be at all times superior to any claim of homestead by or in any Owner. If any assessment, charge or fine or any part thereof is not paid on the date(s) when due, then the unpaid amount of such assessment, charge or fine shall (after the passage of any stated grace period) be considered delinquent and shall, together with any late charge and interest thereon at twelve percent (12%) per annum (however not to exceed the highest lawful rate of interest per annum permitted under applicable law) and costs of collection thereof, become a continuing debt secured by the self-executing Payment and Performance Lien on the Lot of the non-paying Owner/Member which shall bind such Lot in the hands of the Owner and Owner's heirs, executors, administrators, devisees, personal representatives, successors and assigns. The Association shall have the right to reject partial payments of an unpaid assessment or other monetary obligation and demand the full payment thereof. The personal obligation of the then-existing Owner to pay such assessment, however, shall remain the Owner's personal obligation and shall not pass to Owner's successors in title unless expressly assumed by them. However, the lien for unpaid assessments shall be unaffected by any sale or assignment of a Lot and shall continue in full force and effect;

(b) The Association may also give written notification to the holder(s) of any mortgage on the Lot of the non-paying Owner of such Owner's default in paying any assessment, charge or fine, particularly where the Association has theretofore been furnished in writing with the correct name and address of the holder(s) of such mortgage, a reasonable supply of self-addressed postage prepaid envelopes, and a written request to receive such notification;

(c) If any assessment, charge or fine or part thereof is not paid when due, the Association shall have the right and option to impose a late charge (but only to the extent permitted by applicable law) to cover the additional administrative costs involved in handling the account and/or to reflect any time-price differential assessment schedule adopted by the Association. The unpaid amount of any such delinquent assessment, charge or fine shall bear interest from and after the date when due at twelve percent (12%) per annum (however not to exceed the highest lawful rate of interest per annum) until fully paid. The Association may, at its election, retain the services of an attorney to review, monitor and/or collect unpaid assessments, charges, fines and delinquent accounts, and there shall also be added to the amount of any unpaid assessment, charge, fine or any delinquent account any and all attorneys' fees and other costs of collection incurred by the Association;

(d) The Association may, at its discretion but subject to all applicable debt collection statutes: (i) prepare and file a lien affidavit in the public records of Doña Ana County, New Mexico which specifically identifies the unpaid assessments, charges or fines; and (ii) publish and post, within one or more locations within the Properties, a list of those individuals or entities who are delinquent and, if applicable, their suspended use and enjoyment of the Common Properties until and unless the delinquency has been cured to the reasonable satisfaction of the Association. Each Owner consents to these procedures and authorizes the Board to undertake such measures for the general benefit of the Association;

(e) All agreements between any Owner and the Association and/or Declarant, whether now existing or hereafter arising and whether written or oral and whether implied or otherwise, are hereby expressly limited so that in no contingency or event whatsoever shall the amount paid, or agreed to be paid, to the Association and/or Declarant or for the payment or performance of any covenant or obligation contained herein or in any other document exceed the maximum amount permissible under applicable law. If from any circumstance whatsoever fulfillment of any provision hereof or of such other document at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any such circumstance the Association and/or Declarant should ever receive an amount deemed interest by applicable law which shall exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the actual base assessment amount or principal amount owing hereunder and other indebtedness of the Owner to the Association and/or Declarant and not to the payment of interest or if such excessive interest exceeds the unpaid balance of the actual Annual Assessment hereof and such other indebtedness, the excess shall be refunded to Owner. All sums paid or agreed to be paid by any Owner for the use, forbearance or detention of any indebtedness to the Association and/or Declarant shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of such indebtedness until payment in full so that the interest charged, collected or received on account of such indebtedness is never more than the maximum amount permitted by applicable law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between any Owner and the Association and/or Declarant.

Section 9. Mortgage. The lien described within the preceding Section is and shall be a contract Payment and Performance Lien. Each Owner, for the purpose of better securing each and all monetary obligations described within these Covenants, and in consideration of the benefits received and to be received by virtue of the ownership of real estate within the Subdivision, has granted, sold and conveyed and by these covenants does grant, sell and convey unto the Association, such Owner's Lot, with mortgage covenants. To have and to hold such Lot, together with the rights, privileges and appurtenances thereto belonging unto the said Association, and to its substitutes or successors, forever. And each Owner does hereby bind himself and/or herself, their heirs, executors, administrators and assigns to warrant and forever defend the Lot unto the said Association, its substitutes or successors and assigns, forever, against the claim, or claims of all persons claiming or to claim the same or any part thereof.

3. This conveyance is made to secure payment of each and all assessments and other obligations prescribed by these Covenants to and for the benefit of the Association as the mortgagee. In the event of default in the payment of any obligation hereby secured, in accordance with the terms thereof, then and in such event, the Association may elect to declare the entire indebtedness hereby secured with all interest accrued thereon and all other sums hereby secured due and payable, and in the event of default in the payment of said indebtedness when due or declared

due, it shall thereupon, or at any time thereafter, to foreclose on the Payment and Performance Lien in the manner of a mortgage foreclosure pursuant to applicable law and custom. In the event foreclosure proceedings are filed by the Association or the Association is involved in other litigation, all expenses of the Association incident to such litigation including, but not limited to, title search expense and reasonable attorneys' fees, shall be paid to the prevailing party by the non-prevailing party. In the event of a judicial sale pursuant to a foreclosure decree, it is understood and agreed that the Association may become the purchaser of the Lot subject to the foreclosure. **The redemption period shall be one (1) month after judicial sale under a decree of foreclosure of the Payment and Performance Lien in lieu of nine (9) months.**

Section 10. Subordination of the Lien to Mortgages. The lien securing the payment of the assessments and other obligations provided for herein shall be superior to any and all other charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon any Lot whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage or other instrument, except for (a) bona-fide first mortgage liens for purchase money and/or home improvement purposes placed upon a Lot, including without limitation Institutional Mortgages and Eligible Mortgages, in which event the Association's lien shall automatically become subordinate and inferior to such first lien; (b) liens for taxes or other public charges as are by applicable law made superior to the Association's lien; and (c) such other liens about which the Board may, in the exercise of its reasonable discretion, elect to voluntarily subordinate the Association's lien; provided however, such subordination shall apply only to: (i) the assessments which have been due and payable prior to the foreclosure sale of such Lot pursuant to the terms and conditions of any such first mortgage or tax lien; (ii) the permitted lien on the Lot alone and not on or to any easement appurtenant for use and enjoyment of the Common Properties. Such sale shall not relieve such Lot from liability for the amount of any assessment thereafter becoming due nor from the lien of any such subsequent assessment.

ARTICLE VI
GENERAL POWERS AND DUTIES OF THE
BOARD OF DIRECTORS OF THE ASSOCIATION

Section 1. Powers and Duties. The affairs of the Association shall be conducted by its Board. The Board, for the benefit of the Association, the Properties and the Owners and the Members, may provide and may pay for, out of the assessment funds provided for in Article V above, one or more of the following: (a)

Care, preservation and maintenance of the Common Properties, including without limitation the proper maintenance of the private streets; (b) Supplementing (to the extent, if any, deemed necessary, appropriate and affordable by the Board) the police, fire, ambulance, garbage and trash collection and similar services within the Properties traditionally provided by local governmental agencies; (c) Taxes, insurance and utilities (including, without limitation, electricity, gas, water, sewer and telephone charges) which pertain to the Common Properties; (d) The services of any person or firm (including the Declarant and any affiliates of the Declarant) to manage the Association or any separate portion thereof, to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by the manager of the Association; (e) Legal and accounting services and all costs and expenses reasonably incurred by the Architectural Review Committee; and (f) any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, taxes or assessments which the Board is required to obtain or pay for pursuant to the terms of this Declaration or which in its opinion shall be necessary or proper for the operation or protection of the Association or for the enforcement of this Declaration.

The Board shall have the following additional rights, powers and duties:

(g) To execute all declarations of ownership for tax assessment purposes with regard to any of the Common Properties owned by the Association;

(h) To enter into agreements or contracts with insurance companies, Taxing Authorities, the holders of first mortgage liens on the individual Lots and utility companies with respect to: (i) any taxes on the Common Properties; (ii) monthly escrow and impound payments by a mortgagee regarding the assessment, collection and disbursement process envisioned by Article V hereinabove; (iii) utility installation, consumption and service matters; and (iv) the escrow or impounding of monies sufficient to timely pay the Annual Assessment applicable to any Lot;

(i) To borrow funds (including, without limitation, the borrowing of funds from the Declarant and/or its affiliates) to pay costs of operation, secured by such assets of the Association as deemed appropriate by the lender and the Association;

(j) To enter into contracts, maintain one or more bank accounts and, generally, to have all the powers necessary or incidental to the operation and management of the Association;

(k) To protect or defend the Common Properties from loss or damage by suit or otherwise, to sue or defend in any court on behalf of the Association and to provide adequate reserves for repairs and replacements;

(l) To make reasonable rules and regulations for the operation of the Common Properties and to amend them from time to time and to enter into concession agreements regarding food, beverage, vending and other products and services within the Common Properties;

(m) To prepare an annual operating budget;

(n) Pursuant to Article VII herein, to adjust the amount, collect and use any insurance proceeds to repair damage or replace lost property; and if proceeds are insufficient to repair damage or replace lost property, to assess the Owners in proportionate amounts to cover the deficiency; and

(o) To enforce the provisions of this Declaration and any rules made hereunder and to enjoin and seek damages from any Owner or Member for violation of such provisions or rules. The Board is specifically authorized and empowered to establish (and to revise and amend from time to time) a monetary "fines" system which may include component steps such as warning citations, ticketing, due process hearings and appeals and a flat rate or discretionary range or geometric progression of fine amounts, which, when pronounced, shall constitute a permitted individual Lot Owner assessment secured by the continuing Payment and Performance Lien herein established.

The Association may: (i) borrow monies from the Declarant; (ii) lease equipment from the Declarant; (iii) contract with the Declarant concerning the provision of any personnel, labor, supplies, materials and services, provided such contract terms and conditions are: generally comparable (in terms of price, quality and timeliness) with those that might be otherwise obtained from unrelated third parties; and, as to professional management contracts, terminable by the Association at any time for any reason whatsoever and without penalty upon furnishing at least ninety (90) days advance notice thereof to Declarant. The Board shall not be required to solicit bids from unrelated third parties before entering into any contract with the Declarant and the reasonable judgment and resolution of the Board to enter into any such contract with the Declarant (absent fraud, gross negligence or willful misconduct) shall be final and conclusive and binding upon the Association and all of its Members.

Section 2. Board Powers. The Board shall have the right and obligation to perform the functions of the Board on behalf of the Association. In the event or if for any reason the Board is not deemed authorized to act for and on behalf of the Association and the Members, then the Declarant may exercise its power and authority under Article XIII, Section 1, to act for and on behalf of the Association and the Members, and the Association shall reimburse the Declarant for any and all reasonable expenses incurred in so acting.

Section 3. Maintenance Contracts. The Board, on behalf of the Association, shall have full power and authority to contract with any Owner or Member (including, without limitation, the Declarant) for performance, on behalf of the Association, of services which the Association is otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interests of the Association.

Section 4. Liability Limitations. The directors and officers and managers of the Association shall not be personally liable for debts contracted for or otherwise incurred by the Association or for any torts committed by or on behalf of the Association. Neither the Declarant, the Association, its directors, officers, managers, agents or employees shall be liable for any actual, incidental or consequential damages for failure to inspect any premises, improvements or portion thereof or for failure to repair or maintain the same. The Declarant, the Association or any other person, firm or corporation liable to make such repairs or

maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any improvements or portion thereof.

Section 5. Reserve Funds. The Declarant and the Board may establish (but shall not be obligated to establish) reserve funds which may be maintained and/or accounted for separately from other funds maintained for annual operating expenses and may establish separate, irrevocable trust accounts or any other recognized bookkeeping or tax procedures in order to better demonstrate that the amounts deposited therein are capital contributions and not net or taxable income to the Association.

ARTICLE VII
INSURANCE; REPAIR; RESTORATION;
COMMUNITY SERVICES ARRANGEMENTS

Section 1. Right to Purchase Insurance. The Association shall have the right and option to purchase, carry and maintain in force insurance covering any or all portions of the Common Properties, any improvements thereon or appurtenant thereto, for the interest of the Association, its Board of Directors, officers, managers, agents and employees, and of all Members of the Association, in such amounts and with such endorsements and coverage as shall be deemed appropriate by the Board and/or as specifically required by the Eligible Mortgagees or Eligible Insurers.

Section 2. Insurance and Condemnation Proceeds. The Association shall be the exclusive representative of the Members in any proceedings, negotiations, settlements or agreements concerning insurance or condemnation.

Section 3. Insufficient Proceeds. If the insurance or condemnation proceeds are insufficient to repair or replace any loss or damage, the Association may levy a special group assessment as provided for in Article V of this Declaration to cover the deficiency.

Section 4. Community Services Arrangements. Declarant and the Association have arranged for the employment and utilization of a mechanical crossing gate at the gatehouse entry point to the Properties (with no guard service planned). The Declarant and the Association hope that the gatehouse and private streets concept will discourage undesired and unauthorized vehicular traffic within the Properties and foster a higher degree of peace and tranquility. However, the Properties are not entirely encompassed by a fence nor are there any plans for such an enclosure. Also, the gatehouse program is not designed to restrict or impede pedestrian traffic into, within or out of the Properties.

Although the Declarant and the Association reasonably believe that the existence of controlled access points may discourage the commission of criminal acts (e.g., burglary, theft, etc.) within the Properties, nevertheless neither the Declarant nor the Association warrant or guarantee that: (a) the gate arrangements are sufficient and adequate to diminish or eliminate the commission of crimes against persons or property; and (b) such acts will not be attempted or actually occur within the Properties. These controlled access points are not designed or intended to replace the conventional police and fire protection and paramedical services available from Doña Ana County, New Mexico.

The Association will seek to carry public liability insurance generally covering bodily injury and property damage arising out of negligent acts by employees, members or authorized representatives of the Association. The Association will not carry any insurance pertaining to, nor does it assume any liability or

responsibility for, the real or personal property of the Owners and Members (and their respective family members and guests).

Each Owner and Member expressly understands, covenants and agrees with the Declarant and the Association that:

(a) Neither Declarant nor the Association has any responsibility or liability of any kind or character whatsoever regarding or pertaining to the real and personal property of each Owner and Member;

(b) Each Owner and Member shall, from time to time and at various times, consult with reputable insurance industry representatives of each Owner's and Member's own selection to select, purchase, obtain and maintain appropriate insurance providing the amount, type and kind of insurance deemed satisfactory to each Owner and Member covering his or her real and personal property;

ARTICLE VIII ARCHITECTURAL REVIEW

Section 1. Architectural Review Committee. The Architectural Review Committee ("ARC") shall be composed of at least two (2) individuals selected and appointed by the Declarant, each generally familiar with residential and community development design matters and knowledgeable about the Declarant's concern for a consistent approach to and construction of improvements within the Subdivision. The original members of the ARC shall be Andy J. Winton and Marty Schaeffer. In the event of the death, incapacity or resignation of any member of the ARC, the Declarant (during the Development Period) shall have full authority to designate and appoint a successor. From and after conclusion of the Development Period, the ARC members shall be appointed, and replaced in the event of death, incapacity or resignation, by the Board.

Section 2. ARC Jurisdiction. No building, structure, fence, wall or improvement of any kind or nature shall be erected, placed or altered on any Lot until all plans and specifications have been submitted to and approved in writing by the ARC, or a majority of its members, as to:

(i) quality of workmanship and materials, adequacy of site dimensions, adequacy of structural design, proper facing of main elevation with respect to nearby streets, and zero lot-line considerations, in accordance with this Declaration and/or the Design Guidelines and/or bulletins;

(ii) minimum finished floor elevation and proposed footprint of the dwelling;

(iii) conformity and harmony of the external design, color, type and appearance of exterior surfaces and landscaping;

(iv) ponding and drainage solutions;

(v) the observance of and compliance with applicable setback lines and easement areas and the enhancement of aesthetic views and visual corridors to and from the Common Properties; and

(vi) the other standards set forth within this Declaration (and any amendments hereto) or as may be set forth within the Design Guidelines, bulletins promulgated by the ARC, or matters in which the ARC has been vested with the authority to render a final interpretation and decision.

The ARC is authorized and empowered to consider and review any and all aspects of construction, location and landscaping, which may, in the reasonable opinion of the ARC, adversely affect the living enjoyment of one or more Owner(s) or the general value of the Properties. Also, the ARC is permitted to consider technological advances and changes in design and materials and such comparable or alternative techniques, methods or materials may or may not be permitted, in accordance with the reasonable opinion of the ARC.

The following is a general outline of the steps likely to be involved in the review of plans and specifications:

- (1) Submit preliminary plans and specifications to the ARC;
- (2) Submit final plans and specifications to the ARC.

The ARC may require as a condition precedent to any approval of the final plans and specifications, that the applicant obtain and produce an appropriate building permit from the any governmental authority requiring such a permit, if any. The ARC is also authorized to coordinate with Doña Ana County and any applicable municipality in connection with the applicant's observance and compliance of the construction standards set forth in this Declaration, the Design Guidelines, and any bulletins or lot information sheets promulgated thereunder. However, the mere fact that a building permit is issued with respect to a proposed structure does not automatically mean that the ARC is obliged to unconditionally approve the plans and specifications. Similarly, the ARC's approval of any plans and specifications does not mean that all applicable building requirements of Doña Ana County or any applicable municipality have been satisfied.

Each and every owner and applicant shall use their respective best efforts to commence construction of all improvements approved by the ARC and Doña Ana County (and any and all other applicable municipalities and governmental agencies) within sixty (60) days after obtaining all necessary governmental approvals therefor and thereafter diligently pursue the project through to completion.

Section 3. Design Guidelines. The initial Design Guidelines are attached hereto as Exhibit "A". The ARC may, from time to time, publish and promulgate additional or revised Design Guidelines, and such design guidelines shall be explanatory and illustrative of the general intent of the proposed development of the Properties and are intended as a guide to assist the ARC in reviewing plans and specifications. The Architectural Review Committee shall have the right, power and authority to establish and prescribe architectural restrictions and guidelines pertaining to items and topics such as (but not necessarily limited to):

- a. A site plan showing the "footprint" of the building, location of all existing and proposed improvements, including but not limited to, structures, patios, driveways, parking areas and structures, fences and walls.
- b. Exterior elevations of all proposed buildings and structures.
- c. A description and samples of exterior materials, colors, textures and shapes of all buildings and structures.

d. Landscape plans, which shall include walkways, fences, walls, details, elevation changes, irrigation and watering systems, vegetation and ground cover (indicating size, spacing and quantity), and the protection and preservation of trees and other existing and introduced vegetation.

e. Utility connections, including routing of electrical, gas, water, sanitary sewer, telephone cables and prewired CATV facilities.

f. Exterior illumination and location.

g. Dimensional floor plan of all enclosed spaces and any garages or parking facilities (particularly where the garages face the street).

h. Smoke detector locations.

i. Drainage solutions.

j. Such other matters as may be required by the then applicable zoning and building codes of Dona Ana County.

k. The items described within Section 2 above and any other data or information requested or deemed reasonably necessary by the Architectural Review Committee.

* PRIOR TO ACQUIRING ANY INTEREST IN A LOT, EACH *
* PROSPECTIVE PURCHASER, TRANSFEREE, MORTGAGEE AND *
* OWNER OF ANY LOT IN THE SUBDIVISION IS STRONGLY *
* ENCOURAGED TO CONTACT THE DECLARANT OR ASSOCIATION *
* OR THE ARC TO OBTAIN AND REVIEW THE MOST RECENT *
* DESIGN GUIDELINES WHICH WILL CONTROL THE *
* DEVELOPMENT, CONSTRUCTION AND USE OF THE LOT. *

Section 4. Preliminary and Final Plan Submissions. The Architectural Review Committee is authorized and empowered to and shall consider, review and comment on preliminary plans submitted in duplicate on an informal basis to assist Owners, developers, homebuilders and prospective purchasers of the Lots in complying with these Covenants and to assist in the completion of any feasibility studies undertaken by such persons or entities. [The ARC shall have the right, however, to prescribe reasonable limitations concerning the time, effort and expense likely to be involved in handling such matters on an informal basis]. If the preliminary plans and specifications are approved by the ARC, the Owner or the Owner's designated representative will be so advised by letter or notation on the plans. If found not to be in compliance with these Covenants, the Owner or the Owner's designated representative will be so advised by letter containing a reasonable statement and explanation of items found not to comply with these Covenants. If the ARC fails to approve or disapprove such plans and specifications within thirty (30) days after the actual date on which the submission is received, approval of the matters submitted shall be presumed. Comments on and approvals of preliminary plans and specifications shall be binding upon the Architectural Review Committee

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provided that conforming final plans and specifications are submitted within ninety (90) days of such preliminary comments or approvals.

Final plans, specifications and surveys shall be submitted in duplicate to the Committee for approval or disapproval. The Committee is authorized to request the submission of samples of proposed construction materials. At such time as the plans, specifications and surveys meet the approval of the ARC, one complete set of plans, specifications and surveys will be retained by the ARC and the other complete set will be marked "Approved" and returned to the Lot Owner or his designated representative. If found not to be in compliance with these Covenants, one set of such plans, specifications and surveys shall be returned marked "Disapproved," accompanied by a reasonable statement and explanation of items found not to comply with these Covenants. Any modification or change to the approved set of plans, specifications and surveys must again be submitted to the ARC for its inspection and approval. The ARC's approval or disapproval, as required herein, shall be in writing. If the ARC fails to approve or disapprove such plans, specifications and surveys within thirty (30) days after the actual date on which the submission is received, then the ARC approval shall be presumed.

The ARC may from time to time publish and promulgate architectural standards bulletins and/or lot information sheets which shall be fair and reasonable and shall carry forward the spirit and intention of these Covenants. Such bulletins and lot information sheets shall supplement these Covenants and are incorporated herein by reference. **EACH OWNER SHALL SEEK AND OBTAIN AND BECOME THOROUGHLY FAMILIAR WITH ANY AND ALL ARCHITECTURAL STANDARDS BULLETINS AND LOT INFORMATION SHEETS PRIOR TO ACQUISITION OF, AND CONSTRUCTION ON, ANY LOT WITHIN THE SUBDIVISION.**

Section 5. General. The following declarations within this Section apply to the ARC. The ARC shall be entitled, at any time and from time to time, to associate or employ a staff and to seek and obtain professional advice and counsel (including but not limited to architects, attorneys, designers, engineers and landscape technicians) in connection with the performance of its duties with all reasonable costs and expenses related thereto paid for or reimbursed by the Association. The Association may, in turn, reasonably recoup some or all of these expenses from the applicants seeking review and approval of plans and specifications.

The Declarant and/or the Association and/or the ARC may require any Owner to restore such Owner's improvements or alteration to the condition existing prior to the construction thereof (including, without limitation, the demolition and removal of any unapproved improvement) if such improvements or alterations were commenced or constructed in violation of this Article. In addition, the Declarant and/or the Association and/or the ARC may, but has no obligation to do so, cause such restoration, demolition and removal and levy the amount of the cost thereof as a special individual assessment against the Lot upon which such improvements or alterations were commenced or constructed.

Neither Declarant, nor the Association, nor the ARC, nor the Board nor the officers, directors, managers, members, employees and agents of any of them, shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner of property affected by these restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. No approval of plans and specifications and no publication of any Design Guidelines, architectural bulletins or lot information sheets shall be construed as representing or implying that such plans, specifications, guidelines,

bulletins or sheets will, if followed, result in properly designed improvements and/or improvements built in a good and workmanlike manner. Every person or entity who submits plans or specifications, and every Owner of each and every Lot, agrees that he will not bring any action or suit against Declarant, the Association, the ARC, the Board, or the officers, directors, managers, members, employees and agents of any of them, to recover any such damages and hereby releases, remises and quitclaims all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given.

The ARC shall have the power to grant variances, waivers, tolerances or modifications of the standards set forth within the Covenants under circumstances and conditions deemed reasonable, appropriate and prudent by the ARC. Matters of "quality", "adequacy" and "propriety" are to be considered by the ARC generally from an aesthetic standpoint, rather than from an engineering standpoint. Plans and specifications are not reviewed or approved for engineering or structural design or technical quality of materials, and by approving such plans and specifications neither the ARC, nor the members thereof, nor the Association, assumes liability or responsibility therefor, nor for any defect in any structure constructed from such plans and specifications.

ARTICLE IX USE OF LOTS IN THE SUBDIVISION; PROTECTIVE COVENANTS

The Subdivision (and each Lot situated therein) shall be constructed, developed, occupied and used as follows:

Section 1. Residential Lots. All Lots within the Subdivision shall be used, known and described as residential Lots, unless otherwise indicated on the Subdivision plat. Lots shall not be further subdivided and, except for the powers and privileges herein reserved by the Declarant, the boundaries between lots shall not be relocated without the prior express written consent of the ARC. No building or structure shall be erected, altered, placed or permitted to remain on any residential Lot other than one (1) single-family dwelling and, if any, its customary and usual accessory structures (unless otherwise prohibited herein). No building or structure intended for or adapted to business or commercial purposes shall be erected, placed, permitted or maintained on such premises, or any part hereof, save and except those related to development, construction and sales purposes of a bona-fide homebuilder, the Declarant or the Association.

Section 2. Minimum Floor Space; Alarms. Each dwelling constructed on any Lot shall contain such minimum square feet of air-conditioned floor area (exclusive of all porches, garages or breezeways attached to the main dwelling) as may be specified by the Design Guidelines and/or the ARC.

Section 3. Garages; Parking. Each single-family residential dwelling erected on any Lot shall provide garage space for a minimum of two (2) conventional automobiles, unless otherwise specifically approved by the ARC. RV's, boats, trailers and any similar equipment located on a Lot for more than thirty (30) days must be garaged or located so as not to be unsightly to other Owners.

Section 4. Setback Requirements. Setback requirements are described within the Design Guidelines. The Architectural Review Committee may establish additional setback lines (for fences, walls and for buildings) from the front property line of each Lot at varying distances; the mixture of various front

setbacks may satisfy requirements of Doña Ana County and reflect architectural style and design. In order to allow flexibility for: (i) implementation of state-of-the-art construction designs, and (ii) any consolidation of two (2) or more Lots to accommodate the construction of a lesser number of dwellings thereon, the Architectural Review Committee shall also have the authority to develop and refine rear and side yard setback requirements.

Section 5. Height Limitations; Elevations. No building or structure on any Lot shall exceed the height limit specified by the Design Guidelines or the ARC. The Architectural Review Committee shall have the power and authority to further develop and refine guidelines and interpretations concerning the height concepts and limitations envisioned herein.

Section 6. Fences; Signs. No fence, wall or hedge (which serves as a barrier) shall be erected, placed or altered on any Lot nearer to any street than the dwelling constructed on the Lot. All exterior mechanical or service equipment must be enclosed within fences, walls or landscaping so as not to be visible from the immediate residential street. No fence, wall or hedge shall be erected, placed or altered on any residential Lot without the approval of the Architectural Review Committee.

The cost of walls will be shared equally by the Owners benefiting from the wall. The cost of a wall on a property line dividing two Lots shall be shared equally between the adjoining Lot Owners. If one Owner first constructs the wall, the Owner of the adjoining Lot, at the time the second Owner commences construction of a residence on the second Owner's Lot, shall reimburse the first Owner who constructed the rock wall, one-half of the reasonable cost of the wall, upon presentation of an invoice and breakdown of the cost of said wall.

No sign or signs shall be displayed to the public view on any residential Lot, except: (a) any builder, during the applicable initial construction and sales period, may utilize one (1) professional sign [of not more than sixteen (16) square feet in size] per Lot for advertising and sales purposes; (b) thereafter, a dignified "For Sale" or "For Lease" sign [of not more than six (6) square feet in size] may be utilized by the Owner of the respective residential Lot for the applicable sale or lease situation; and (c) development-related signs owned or erected by the Declarant shall be permitted.

The Declarant and/or the ARC shall have the right and privilege to develop and implement uniform signage specifications and requirements applicable throughout the Subdivision.

Section 7. Easements; Utilities; Water Rights.

(a) Easements and Utilities. Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded subdivision plat. Utility service may be installed along or near the front and/or side and/or rear Lot lines and each Lot Owner shall have the task and responsibility of determining the specific location of all such utilities. Except as may be otherwise permitted by the ARC, no Owner shall erect, construct or permit any obstructions or permanent improvements of any type or kind to exist within any easement area, nor shall anything be done or permitted within an easement area which would restrict or adversely affect drainage. Electrical (and possibly other utility) easements are likely to be located at or near or along the rear lot line(s), and each Lot Owner assumes full, complete and exclusive liability and responsibility for all cost and expense related to damage, repair, relocation and restoration of such improvements or fence. Except as to special street lighting or other aerial facilities which may be required by Doña Ana County or which may be required by the franchise of any utility company or

which may be installed by the Declarant pursuant to its development plan, no aerial utility facilities of any type (except meters, risers, service pedestals and other surface installations necessary to maintain or operate appropriate underground facilities) shall be erected or installed on the Subdivision whether upon individual Lots, easements, streets or rights-of-way of any type, either by the utility company or any other person or entity, including, but not limited to, any person owning or acquiring any part of the Subdivision, and all utility service facilities (including, but not limited to, water, sewer, gas, electricity and telephone) shall be buried underground unless otherwise required by a public utility. All utility meters, equipment, air conditioning compressors and similar items must be visually screened and located in areas designated by the Architectural Review Committee (unless on the roof). The Association or the Architectural Review Committee shall have the right and privilege to designate the underground location of any CATV-related cable. Each Owner shall assume full and complete responsibility for all costs and expenses arising out of or related to the repair, replacement or restoration of any utility equipment damaged or destroyed as a result of the negligence or mischief of any Owner. Each Owner agrees to provide, at the sole cost and expense of each Owner, such land and equipment and apparatus as are necessary and appropriate to install and maintain additional lighting and security-related measures which becomes technologically provident in the future.

(b) **Water Rights.** Declarant hereby reserves unto itself forever, (a) the right to execute with any party, an assignment of Irrigation Water Rights with respect to the Properties, on terms and conditions acceptable to Declarant in Declarant's sole discretion, and the right to receive for Declarant's own account any compensation received for said assignment; (b) all water in and under and that may be produced from the Properties, including all benefits from said production; and (c) the executive right to sell, convey, lease, assign and encumber the surface water rights and the ground water rights with respect to the Properties, including but not limited to the right to execute and any and all sale, use and/or forbearance agreements, leases, assignments, and encumbrances of any kind covering the said water rights (the "Executive Right").

The following provisions and covenants are to run with the land within the Subdivision with the same force and effect as all other Covenants herein and as if such provisions and covenants had originally been recited within each deed to each Lot executed and delivered by Declarant:

" Grantor reserves forever, (i) all surface water rights (including, but not limited to all rights to water, of any kind or nature, arising out of the Rio Grande Reclamation Project and/or inclusion of the Property in the Elephant Butte Irrigation District or any successor to said District) that may now or hereafter be available to the Property and the right to divert and use said surface water (the "Surface Water Rights"), (ii) all ground water, being all underground water, percolating water, artesian water and other water from any and all reservoirs, formations, depths and horizons beneath the surface of the earth in, under or that may be produced from the Property (the "Ground Water Rights", the Surface Water Rights and the Ground Water Rights being collectively referred to as the "Water Rights"), (iii) the executive rights to sell, convey, lease, assign and encumber the Water Rights, and to execute and any and all sale, use and/or forbearance agreements, leases and encumbrances of any kind covering the Water Rights, and Grantee, its successors and assigns and if applicable, heirs, shall not be entitled to participate in any consideration for the Water Rights, however denominated, received by Grantor. In the event any such consideration, however denominated, is paid to or received by or for the benefit of the Grantee, then Grantee, its successors and assigns or heirs, if applicable, shall hold such consideration in trust for the benefit of Grantor, and shall pay the same to Grantor, upon demand. To give further effect to this reservation, Grantee, its successors and assigns, irrevocably appoints Grantor as Grantee's attorney-in-fact with the power to execute agreements to lease or convey the Water Rights, for the benefit of Grantor, and Grantee upon request, will join in

such agreements for the benefit of Grantor. The reservation and obligations contained in this paragraph shall be covenants running with the Property and shall be binding upon and shall inure to the benefit and be binding upon Grantor and Grantee and their respective successors, legal representatives, heirs, and assigns."

Section 8. Temporary Structures and Vehicles. No temporary structure of any kind shall be erected or placed upon any Lot.

Section 9. Site Maintenance, Garbage and Trash Collection. Lot Owners are responsible to keep construction sites free of rubbish on a daily basis and streets (to the crown) scraped clear of any mud accumulation. Lot Owners will not be allowed to store any excavation of soil on streets or adjacent sites. Soil runoff due to rain or irrigation will be removed promptly from streets and sidewalks by the Lot Owner. All Lots must be kept free of debris during construction. All garbage shall be kept in plastic bags or other containers required by and meeting the specifications of Doña Ana County and/or any private garbage collection service. Each Owner and Member shall observe and comply with any and all regulations or requirements promulgated by the Association, Doña Ana County, or any private garbage collection service in connection with the storage and removal of trash and garbage, particularly where the collection point is in front of the residential Dwelling Units. No residential Lot, or any portion of the Common Properties or any public right-of-way area, shall be used or maintained as a dumping ground for rubbish, trash or garbage. No Owner shall dump grass clippings, landscape debris, garbage or trash of any kind on another Lot. Each Owner is responsible for the appearance and condition of such Owner's Lot. If more than five (5) days after prior written notice an Owner shall fail to: (i) control weeds, grass and/or other unsightly growth; (ii) remove trash, rubble, building and construction debris; or (iii) exercise reasonable care or conduct to prevent or remedy an unclean, untidy or unsightly condition, then Declarant or the Association shall have the authority and right to go onto said Lot for the purpose of mowing and cleaning said Lot and shall have the authority and right to assess and collect from the Owner of said Lot a reasonable charge for mowing or cleaning said Lot on each respective occasion of such mowing or cleaning. The assessments, together with such interest thereon and costs of collection thereof, shall be a charge on the land and shall be a continuing Payment and Performance Lien upon each Lot against which each such assessment is made. Each such assessment, together with interest thereon and costs of collection thereof, shall also be the continuing personal obligation of the person who was the Owner of such Lot at the time when the assessment occurred.

Section 10. Offensive Activities; Pets. No noxious or offensive activity or pollution emitting sight/sound/smell, as determined by the ARC, shall be conducted or permitted on any portion of the Properties. No direct sales activities (excluding, however, activities of the Declarant and bona-fide homebuilders and community activities specifically approved by the Board), garage sales, yard sales, patio sales, flea markets, bazaars, sample sales, promotional dinner parties or similar activities shall be conducted on any portion of the Subdivision. Any noise or odor emitted by, and any discharge or waste from, any animal (including without limitation dogs and cats) which can be seen, heard or smelled outside the perimeter of the subject Owner's Lot shall be deemed noxious and offensive and is therefore prohibited. No animals, livestock or poultry of any kind shall be raised, bred or kept on any residential Lot, except that not more than two (2) dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for commercial purposes and they are not noxious, offensive, vicious (e.g. pit bull terriers shall not be permitted within the Properties) or dangerous. Any outside pen, cage, kennel, shelter, concrete pet pad, run, track or other building, structure or device directly or indirectly related to animals which can be seen, heard or smelled by anyone other than the subject Lot Owner must be approved by the Architectural Review Committee in its sole and absolute discretion. Each and every dog, cat or other household pet, if not