

**FIRST AMENDMENT TO DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR VILLA VALENCIA UNIT 1**

This First Amendment ("First Amendment") to the Declaration of Covenants, Conditions and Restrictions for Villa Valencia Unit 1 (the "Covenants") is made by Villa Valencia Residential Santa Teresa, L.L.C. (the "Declarant").

1. Recitals. Whereby Declarant filed the Covenants of record in Instrument #1128879, Real Property Records of Dona Ana County, New Mexico on November 22, 2011;

Whereas, Section 5.02 of the Covenants authorizes the Declarant to amend the Covenants within ten years from the date the Covenants are recorded in the Real Property Records of Dona Ana County, New Mexico, for any purpose deemed necessary by the Declarant;

Whereas, ten years have not lapsed since the Covenants were recorded in the Real Property Records of Dona Ana County, New Mexico;

Whereas, Declarant deems it necessary and appropriate to amend the Covenants as more fully set forth herein;

NOW THEREFORE, the Declarant hereby amends certain portions of the Covenants as hereinafter provided.

2. Amendment to Article I. Article I of the Covenants is amended to include the following definition:

"Association" shall mean and refer to the Villa Valencia Homeowners Association, Inc., and its successors and assigns which shall serve as the homeowners association for all portions of the Villa Valencia Residential Development including Unit 1, Unit 2, Unit 3, and any other land which is encompassed within the Villa Valencia Residential Development.

"Successor Declarant" shall mean and refer to Desert View Homes and Flair Homes, Inc. as owners of 100% of the lots in the Subdivision. The Successor Declarant shall have all rights, duties and authority granted in the Covenants to the Declarant. All references in the Covenants to Declarant shall mean and include the Successor Declarant.

3. Amendment to 4.03. 4.03 is amended to change the initial Architectural Review Committee and initial address. The initial Architectural Review Committee shall be composed of Randy O'Leary, Edmundo Dena and Art Eliason. The initial address of the Architectural Review Committee shall be 7910 Gateway, El Paso, Texas 79915. All other the provisions of 4.03 shall remain unchanged.

4. Amendment to Section 5.03. Section 5.03 shall be deleted and superceded by the following provision:

5.03 Enforcement. Owners of Lots shall comply with the standards and provisions of the

Declaration. Declarant, the Association, or any Owner of a Lot, at their own expense, shall have the right to enforce, by proceedings in law or equity, all restrictions, covenants, conditions and reservations set out in the 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 the Declaration or any delay in taking action to enforce the 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. **Creation of Article VI.** The Covenants are amended to include the following:

**ARTICLE VI
THE ASSOCIATION**

Section 6.01 Organization. The Declarant has organized the Association as a non-profit corporation under the laws of the State of New Mexico.

Section 6.02. Purpose. The purpose of the Association, in general, shall be to provide for and promote the health, safety, and welfare of the Members, to collect the regular and any special assessments, and to administer the funds collected to provide for the maintenance, repair, preservation, upkeep, and protection of any parks in the Subdivision and such other purposes as from time to time determined by the Board of Directors or as stated in Articles of Incorporation consistent with the provisions of the Declaration for each Subdivision in the Villa Valencia Residential Development and any supplemental declarations.

Section 6.03 Directors. The Association shall act through a Board of Directors as provided in the Articles of Incorporation and By-laws, who shall manage the affairs of the Association. Prior to the Conversion Date (as defined in the By-laws), all members of the Board of Directors shall be appointed by the Declarant. Each Director shall continue to serve until such time as his or her successor is elected and qualified. After the Conversion Date, the Directors shall be elected by the Members in accordance with the terms of the Bylaws and shall serve a term of office as provided in the bylaws.

Section 6.04 Members. Each Owner, whether one or more persons or entities, of a Lot shall upon and by virtue of becoming such Owner become a Member of the Association and shall remain a Member thereof until such time as his Ownership ceases for any reason, at which time his Membership in the Association shall automatically cease. Membership in the Association shall be appurtenant to and automatically follow the legal Ownership of each Lot and may not be separated from such Ownership whenever the legal Ownership of any Lot passes from one person to another, by whatever means, it shall not be necessary that any instrument provide for the transfer of Membership in the Association, and no certificate of Membership will be issued.

Section 6.05 Voting Rights. Until the Conversion Date, the Declarant shall have the sole right to vote in matters concerning the Association. From and after the Conversion Date, each Member shall be entitled to one (1) vote for each Lot to which it holds the interest required for Association Membership. Where more than one person or entity holds such interest in any Lot, or portion thereof, all such persons or entities shall be a single Member and the vote for each Member shall be exercised as the parties shall determine among themselves, provided however, that in the aggregate, no more than one (1) vote shall be cast with respect to each Lot.

The Association shall not be a voting Member of the Association by virtue of its Ownership of any Lot or portion thereof.

5. **Creation of Article VII.** The Covenants are amended to include the following:

**ARTICLE VII
ASSESSMENTS AND LIENS**

Section 7.01 Purpose of Assessment. The assessments levied hereunder by the Association shall be used exclusively for the purpose of maintaining any parks in the Subdivision and promoting the comfort, collective mutual enjoyment, safety, health and welfare of the Owners of the property, including but not limited to the following:

- a. The maintenance, repair or replacement of any parks located within the Subdivision.
- b. Any management or supervisory services, fees for performing services to the Association, costs of any labor and equipment needed by the Association.
- c. The carrying out of the duties of the Board of Directors as provided in the bylaws and Articles of Incorporation of the Association and in this Declaration.
- d. The carrying out of the purposes of the Association as stated herein and in its Declaration and Articles of Incorporation, and:
- e. The carrying out of all other matters set forth or contemplated in the Declaration or allowed by the laws for the New Mexico Non-Profit Corporation.

Section 7.02 Annual Budget and Regular Annual Assessments. Each fiscal year while the Declaration is in force, the Board shall adopt an annual budget and Regular Annual Assessment to be levied for the next year. All Regular Annual Assessments will be made in accordance with the Bylaws of the Association and determined no later than 15 days before the beginning of the fiscal year.

Each Lot's pro rata share of the Regular Annual Assessment shall be determined by dividing the total Assessment by the number of Lots in the subdivision subject to Assessment. The Board as its discretion may adjust the pro rate share due for unimproved Lots.

Section 7.03 Payment of Regular Assessments. The Regular Annual Assessment provided for herein, shall commence on a date fixed by the board and thereafter be due and payable in annual installments in advance no later than 30 days after the beginning of the fiscal year. The initial regular assessment will be \$30.00 per quarter. At no time may the assessments increase in excess of 20% per year except in an emergency determined by the Board.

Section 7.04 Special Assessments. In addition to the Regular Assessments provided herein. Special Assessments may be levied as provided for in the bylaws of the Association, subject to the limitation in Section 7.03.

Section 7.05 Enforcement and Personal Obligation of Owners. The Regular Annual

Assessments and Special Assessments provided for herein shall be the personal and individual debt of the Owner of a Lot or portion thereof covered by such assessments. No Owner may, for any reason, except itself from liability for such Assessments levied in accordance with the provisions of this Declaration. In the event that any Assessment or installment thereof is not paid when due and remains unpaid for a period of (30) days thereafter, then the unpaid amount shall become delinquent and shall together with interest thereon and cost of collection become a personal obligation and debt of the non paying Owner (Member) secured by a self-executing lien on the Lot or portion thereof including all improvements thereon. The Association, at its sole discretion, may elect to accept a partial payment without waiving any rights with respect to the remaining balance due.

The obligation of an Owner to pay an assessment on a Lot during such Owners period of ownership shall remain its personal obligation, and a sale or other transfer of title to such Lots shall not release the former Owner from said liability. The lien for any unpaid Assessment shall be unaffected by the sale or transfer of full or partial interest in a Lot. In the event of a full or partial sale of a Lot, it is the sole responsibility of the Owner, and not the Association, to disclose to the buyer or transferee that an unpaid Assessment against the Ownership interest exist. A copy of the notice shall be sent to the Association at the time notification is given and upon written request, the Association shall provide Owner with a statement reflecting the amount of any unpaid or delinquent Assessments with respect to the Lot (s) owned by said Owner.

The unpaid amount of any Assessment shall bear interest at eighteen percent (18%) per annum or the maximum legal rate of interest then prevailing, whichever is less. In addition, the Board may elect to retain the services of any attorney of its choice for the purposes of collecting any unpaid Assessment and interest charges thereon, and/or to foreclose the lien against the property, or to pursue any other legal or equitable remedy which the Association may have. The cost of collection shall be added to the unpaid and/or delinquent amount due the Association.

Section 7.06. Lien and Foreclosure. All sums assessed in the manner provided in this Declaration or in the Bylaws, together with all interest and collection cost as herein provided shall be secured by the lien provided for in section 7.05 above. The Association, at its sole discretion, may elect to proceed with any and all legal remedies, including but not limited to foreclosure, for the collection of the delinquent amount. The Association shall have the right to bid on the property being foreclosed.

Section 7.07. Lien Subordination. Any lien established as herein provided in this Declaration or the Bylaws shall be subordinate and inferior to any Purchase Money Mortgage or Deed of Trust in favor of any Bank, Mortgage Company or other lender. Provided however that such subordination shall apply only to Assessments which have become due and payable prior to a foreclosure by any lender under the terms and conditions any such Mortgage or Deed of Trust. Such foreclosure shall not relieve any new Owner from the liability of any new Assessments thereafter becoming due or from any lien arising out of any such subsequent Assessments. Notwithstanding anything to the contrary herein, a lien for Assessments shall be unaffected by a foreclosure of other than a first lien created by a Deed of Trust or Mortgage.

Section 7.08. Collection and Enforcement. Each Member, by his assertion to title or claim of Ownership, or by his acceptance of a deed to a Lot, whether or not recited in such deed, shall be conclusively deemed to have an expressly vested interest in the Association. The Association, through its officers and agents shall have the right and authority to take all action which the Association deems proper for the collection of Assessments and/or the enforcement of the bylaws or liens due the Association.

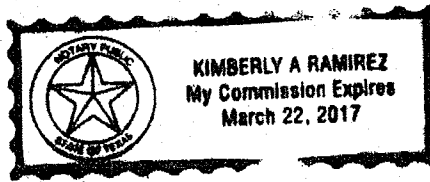
6. **Modification.** Except as expressly amended herein, all provisions of the Covenants are hereby ratified and continued in full force and effect.

IN WITNESS WHEREOF, the undersigned, being the Declarant, has executed this First Amendment to Declaration of Covenants, Conditions and Restrictions to be effective this 30 day of May, 2012.

VILLA VALENCIA RESIDENTIAL SANTA TERESA, LLC, A
NEW MEXICO LIMITED LIABILITY COMPANY

BY: [Signature]
RANDY O'LEARY, MANAGER

THE STATE OF NEW MEXICO)
COUNTY OF DONA ANA)



This instrument was acknowledged before me on the 30 day of May, 2012 by Randy S. O'Leary, MANAGER of Villa Valencia Residential Santa Teresa, LLC, a New Mexico Limited Liability Company on behalf of said company.

[Signature]
NOTARY PUBLIC, STATE OF NEW MEXICO

SEAL:

F:\LAB\DesertViewHomes\VillaValencia\HA\First Amendment to Declaration.120312.wpd



COUNTY OF DONA ANA) AMENDMENT TO DECLARATI
STATE OF NEW MEXICO) es PAGES: 5

I Hereby Certify That This Instrument Was Filed for
Record On JUN 28, 2013 08:43:33 AM
And Was Duly Recorded as Instrument # 1316435
Of The Records Of Dona Ana County



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

Deputy Cynthia Chavez