

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF SALTILLO SUBDIVISION

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF SALTILLO SUBDIVISION is made and entered into on this 3rd day of April, 2007, by Saltillo Communities LLC, a New Mexico limited liability company (the "Declarant").

WHEREAS, the Declarant owns certain real property in Bernalillo County, New Mexico, described in Exhibit "A" (the "Property") attached to this Declaration of Covenants, Conditions and Restrictions of Saltillo Subdivision (as amended, modified and supplemented, the "Declaration"); and,

WHEREAS, the Declarant desires to create a master planned development known as Saltillo Subdivision on the Property and such other land as may be added to the Property pursuant to the terms and provisions of this Declaration from time to time in the future;

NOW THEREFORE, the Declarant declares that the Property will be held, sold and conveyed subject to the restrictions, covenants and conditions contained in this Declaration, which will be deemed to be covenants running with the land and imposed on and intended to benefit and burden each Lot and the Property, and, as may be made subject to this Declaration in the future, the Additional Property, in order to maintain high standards within the Property. This Declaration will be binding on all parties having any right, title, or interest therein or any part thereof, their respective heirs, personal representatives, successors and assigns, and will inure to the benefit of each Owner.

1. Definitions. The following terms used herein are defined as follows:

A. "Additional Property" means any real property now or hereafter made subject to this Declaration together with all buildings, improvements and other permanent fixtures of whatever kind now or hereafter located on the Additional Property, and all easements, rights, appurtenances and privileges belonging or in any way pertaining to the Additional Property.

B. "Articles" means the Articles of Incorporation of the Association.

C. "Assessments" include the following (each an "Assessment"):

(1) "Maintenance Assessment" as determined in Sections 6A and 6F of this Declaration.

(2) "Capital Improvement Assessment" as determined in Section 6H of this Declaration.

(3) "Special Assessment" as determined in Section 6I of this Declaration.



(4) "Reimbursement Assessment" as determined in Section 6J of this Declaration.

D. "Association" means Saltillo Homeowners Association Inc., a New Mexico non-profit corporation, its successors and assigns.

E. "Association Rules" means the rules and regulations adopted by the Board of Directors pursuant to Section 4D of this Declaration, as such rules and regulations may be amended from time to time.

F. "Board of Directors" means the body responsible for the Association's general governance and administration, selected as provided in the Bylaws.

G. "Builder" means any Person who acquires Lots from the Declarant for the purpose of developing, improving and then reselling those Lots to the public. A Builder is an Owner as defined in this Declaration.

H. "Business Use" shall be construed to have its ordinary, generally accepted meaning and shall include any occupation, work or activity undertaken on an ongoing basis that involves the provision of goods or services to Persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required for such activity. The leasing of an Owner's own Lot for single family residential purposes shall not be considered a trade or business. A "Permitted Business Use" shall mean a "Business Use" that complies with all of the following: (a) the existence or operation of business activity is not apparent or detectable by sight, sound or smell from outside the Lot on which it occurs; (b) business activity does not involve individuals coming onto a Lot who do not reside on the Lot or door-to-door solicitation of residents of Lots; (c) not more than one employee who is not a family member works on the Lot; (d) commercial deliveries are not made to the Lots; and (e) business activity consistent with a residential character of property use and not a nuisance, or a hazardous or offensive use, or a threat to the security or safety of other Owners and Occupants, as may be determined in the sole discretion of the Board of Directors.

I. "Bylaws" means the Bylaws of Saltillo Homeowners Association Inc., as such Bylaws may be amended or supplemented from time to time.

J. "Class "A" Member Representative(s)" has the meaning given in the Bylaws.

K. "City" means the City of Albuquerque, Bernalillo County, New Mexico.

L. "Committee" means the Architectural Control Committee formed to establish and enforce architectural standards on the Property and to approve or disapprove plans for improvements proposed for the Lots, as described in Section 11.



M. "Common Areas" means all real property interests (not just fee title and leasehold interests) and the improvements or amenities thereon conveyed to the Association free and clear of monetary encumbrances for the common use and enjoyment of the Owners and Occupants, any private roads, streetscapes, parks or other dedicated areas maintained pursuant to an agreement between the Association and any governmental agency. Any real property interests, and improvements or amenities thereon, which are described as part of the "common areas" in a recorded plat of the Property shall, for all purposes, be integrated into and deemed to be a part of the Common Areas subject to this Declaration, unless otherwise specified in the Recorded plat.

N. "Common Expenses" means the costs incurred by the Association in conducting its operations and activities, administering, maintaining and operating the Common Areas and contiguous areas and in owning or leasing any portions thereof, including, but not limited to, the following:

(1) The costs of any maintenance, management, construction, operation, repair and replacement of the Common Areas, and all other areas in the Property that are managed or maintained by the Association;

(2) Unpaid Assessments and Reimbursement Assessments;

(3) The costs of maintenance by the Association of Common Areas, including landscaped areas within the right-of-way of any public streets in the vicinity of the Property that may be provided for in this Declaration or pursuant to agreements with the City or County;

(4) The costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees;

(5) The costs of utilities and services (including, but not limited to, water, electricity, gas, sewer, telephone, cable, trash pick-up and disposal) that are provided to the Association or the Common Areas, landscaping maintenance and other services that generally benefit and enhance the value and desirability of the Property and that are provided by the Association;

(6) The costs of insurance required to be maintained by the Association according to this Declaration;

(7) Reasonable reserves for contingencies, replacements and other proper purposes, if deemed appropriate by the Board of Directors, to meet anticipated costs and expenses including, but not limited to, maintenance, repairs and replacement of those Common Areas that must be maintained, repaired, or replaced on a periodic basis;

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(8) The costs that the Board of Directors may elect to incur to bond the members of the Board of Directors, officers of the Association, any professional managing agent or any other Person handling the funds of the Association;

(9) Taxes paid by the Association;

(10) Amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Areas or portions thereof;

(11) The costs incurred by the Committee;

(12) The costs incurred by any other committees established by the Board of Directors;

(13) Other expenses incurred by the Association for any reason whatsoever in connection with the Common Areas, or the costs of any other item or items designated by, or to be provided or performed by the Association pursuant to, the Governing Documents, or in furtherance of the purposes of the Association or in the discharge of any duties or powers of the Association.

O. "County" means the County of Bernalillo, a political subdivision of the State of New Mexico.

P. "Declarant" means the "Declarant" named on the first page of this Declaration and its successors and assigns who are designated as such in writing by the Declarant, and who consent in writing to assume the duties and obligations of the Declarant with respect to the Lots acquired by such successor or assigns.

Q. "Default Rate of Interest" means an annual rate of interest equal to the prime rate announced by the Wells Fargo Bank in Albuquerque, New Mexico, from time to time while interest is accruing (with interest hereunder adjusted as and when the announced prime rate is adjusted), plus 4% per annum, but never less than 18% (so that if, during any periods while interest is accruing, the announced prime rate plus 4% per annum is less than 18%, interest shall accrue during said periods at 18% per annum). Notwithstanding anything herein to the contrary, if, during any periods, the highest lawful rate of interest that may be paid by the Person required to pay the Default Rate of Interest under this Declaration, despite the provisions of this Section 1P, is less than the rate provided above, the interest payable by such Person during said periods shall be the highest lawful rate. If the Wells Fargo Bank in Albuquerque, New Mexico, should cease doing business or no longer announce its prime rate as described above, the Board of Directors may compute interest hereunder upon the announced prime rate of any other bank doing business in Albuquerque, New Mexico. If banks should cease announcing prime rates, the Board of Directors may elect to use 18% as the Default Rate of Interest, or may specify the rate, in lieu of said prime rate, for purposes of the computation hereunder that the Association would reasonably have to pay to borrow money at the time.



R. "Design Guidelines" means the rules, regulations, restrictions, architectural standards and design guidelines from time to time adopted by the Committee pursuant to Section 12 of this Declaration.

S. "Exempt Property" means the following parts of the Property:

(1) All land and improvements used for public purposes owned by or dedicated to and accepted by the United States, the State of New Mexico, the County, the City, or any political subdivision thereof, or any public improvement district ("PID") for as long as any such entity or political subdivision or PID is the owner thereof or for so long as said dedication remains effective;

(2) All Common Areas, for as long as the Association is the owner or lessee of the Common Areas; and

(3) All land and improvements owned or leased by a public service corporation providing utility services subject to regulation by the New Mexico Public Service Commission (or any successor regulatory body).

T. "First Mortgage" means a Mortgage that is the first and most senior of all Mortgages upon the same property.

U. "First Mortgagee" means the holder of a First Mortgage.

V. "Fiscal Year" means calendar year unless otherwise determined by the Board of Directors in accordance with the Bylaws.

W. "Governing Documents" means the Articles, the Bylaws, this Declaration, the Association Rules and the Design Guidelines.

X. "Improvement" shall mean, but not be limited to, buildings, sheds, utility buildings, roads, driveway, dams, channels, basins, parking areas, fences, walls, retaining walls, poles, statues, basketball goals, patio covers, solar systems, antennas, dish antennas, excavations, rocks, hedges, plantings, planted trees, and shrubs, and all other improvements of any type of kind.

Y. "Lot" means any area of the Property designated as a Lot on any recorded subdivision plat of real estate made subject to this Declaration.

Z. "Member" means every Owner who is a member of the Association. Each Lot shall have one membership in the Association.

AA. "Mortgage" means any recorded, filed or otherwise perfected instrument, that is not a fraudulent conveyance under New Mexico law, given in good faith and for valuable consideration as security for the performance of an obligation including, but not limited to, a deed of trust, but shall not include any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code.



BB. "Mortgagee" means the holder of a note secured by a Mortgage, including the trustee and beneficiary under any deed of trust.

CC. "Mortgagor" means the party executing a Mortgage as obligor.

DD. "Occupant" means any Person, other than an Owner, in rightful possession of any portion of the Property, whether as a guest, tenant or otherwise.

EE. "Owner" means the Record owner, whether one or more Persons or entities, of fee simple title, whether or not subject to any Mortgage, to any Lot that is a part of the Property, including contract purchasers but excluding those having such interest merely as security for the performance of an obligation. If fee simple title to any Lot is vested of record in a trustee pursuant to New Mexico law (as amended from time to time), legal title shall be deemed to be in the beneficiary of the trust. "Owner" includes each Builder and the Declarant.

FF. "Party Walls" or "Party Fences" shall mean those walls and fences described in Section 12.N of this Declaration.

GG. "Person" means an individual, corporation, partnership, trustee or other entity capable of holding title to real property, and their respective heirs, personal representatives, successors and assigns.

HH. "Project" means the development and improvement of the Property that is subject to this Declaration, including all elements reasonable and necessary for its completion.

II. "Record," "Recording," "Recorded" or "Recordation" means an instrument of record in, or the act of recording an instrument with, the office of the County Clerk for the County or other officer charged with the duty of recording and maintaining records for real property having jurisdiction of the Property.

JJ. "Single Family" means an unmarried individual living alone, an unmarried individual living with one or more individuals related by blood or legal adoption, or two or more individuals living together as a family. If two unmarried individuals are living together, all other persons living in the home must be related to at least one such individual by blood or legal adoption. "Single Family" does not include any group home or similar uses, even though the individuals may have common needs or interests.

KK. "Taking" means condemnation by eminent domain or sale under threat of condemnation of all or any portion of the Common Area.

LL. "Unit" means any building or portion of a building situated upon a Lot, designed and intended for use and occupancy as a residence by a Single Family.

MM. "Visible from Neighboring Property" means with respect to any given object, that the object is or would be visible to a six-foot-tall person standing at ground level on any part of the adjoining or neighboring property at an elevation no greater than



the elevation of the base of the object being viewed, except where the object is visible solely through a view fence and would not be visible if the view fence were a solid fence.

2. Property Subject to Declaration.

A. General Purpose. All of the Property is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration. This Declaration is declared and agreed to be in furtherance of a general plan for the Property, improvement and sale of the Property and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property. This Declaration shall run with the Property, for all purposes and shall be binding upon and inure to the benefit of the Declarant, all Owners and Occupants and their successors in interest. NOTHING IN THIS DECLARATION SHALL BE CONSTRUED TO PREVENT DECLARANT FROM (A) MODIFYING THE DEVELOPMENT PLAN OR ANY PORTIONS OF THE DEVELOPMENT PLAN, OR (B) DEDICATING OR CONVEYING PORTIONS OF THE PROPERTY, INCLUDING STREETS OR ROADWAYS, FREE AND CLEAR OF THIS DECLARATION, AND/OR FOR USES OTHER THAN AS A LOT, OR COMMON AREA.

B. Association Bound. This Declaration shall be binding upon and shall benefit the Association and its Members upon Recording.

3. The Property, Rights of Enjoyment.

A. Right of Enjoyment. Every Owner and Occupant shall have a nonexclusive license to use and enjoy the Common Areas, subject to all of the easements, covenants, conditions, restrictions and other provisions contained in this Declaration, including, but not limited to, the following provisions:

(1) The right of the Board of Directors to impose reasonable limits on the number of guests of Owners and Occupants utilizing Common Areas and to impose reasonable limits on the use of the Common Areas by Persons who are not Owners, and to charge admission, membership and other Fees for the use of any recreational or other facility situated upon the Common Areas when all or any portion of the costs of ownership, operation, maintenance and repair of such facilities should, in the opinion of the Board of Directors, be borne by users of the facilities rather than by all Members of the Association;

(2) The right of the Board of Directors to establish reasonable rules and regulations that are not inconsistent with this Declaration, pertaining to or restricting the use of the Common Areas by Owners, Occupants or other Persons;

(3) The right of the Board of Directors to borrow money for the purpose of improving, replacing, restoring or expanding the Common Areas or adding new Common Areas and, in aid thereof, to mortgage said property, provided that the rights



of the Mortgagee of the Common Areas shall be subordinated to the rights of the Owners;

(4) The right of the Board of Directors to suspend the right of an Owner, Occupant or any Person (including, but not limited to, a member of the family of an Owner) to use the Common Areas or any designated portion of the Common Areas (and to suspend the Owner's voting rights) during any time in which any Assessment respecting such Owner or such Owner's Lot remains unpaid and delinquent, or for any infraction of the Association Rules or breach of this Declaration, and for any repetition of any such payment delinquency or infraction, in accordance with the provisions of this Declaration and the Bylaws. Notwithstanding the foregoing, the Board of Directors shall not have the right under this Declaration to limit or suspend any Owner's rights to such an extent that the Owner is denied access to his Lot;

(5) The right of the Board of Directors to dedicate or transfer all or any part of, or interest in, the Common Areas to any public agency, authority or utility (whether public or private) for such purposes and subject to such conditions as may be agreed to by the Board of Directors without the consent or approval of any Member or other Person. Except as expressly required in this Declaration (by way of illustration and not limitation, the Board of Directors shall have a right to dedicate or transfer to the public all or any portion(s) of any private roads at any time or from time to time), but no such dedication or transfer by the Board of Directors shall be effective without the written consent of the Declarant (so long as the Declarant owns any property subject to this Declaration); and

(6) The right of the Board of Directors to change the size, shape or location of Common Areas, to exchange Common Areas for other lands or interests therein that become Common Areas and to abandon or otherwise transfer Common Areas.

B. Delegation of Use. No Owner may delegate his right to use and enjoy the Common Areas to any Person, except to the members of his immediate family, to Occupants of his Lot, or to his invitees, in each case as permitted by the Association Rules.

C. Waiver of Use. No Owner may exempt himself, and no Owner shall be exempt, from personal liability for Assessments, as identified in Section 6 of this Declaration, or impose penalties as identified in Section 4U of the Bylaws, and no Owner may release any Lot owned by him from the liens, charges and other provisions of the Governing Documents, by voluntary waiver of, or suspension or restriction of the Owner's right to use and enjoy the Common Areas or by the abandonment of the Owner's Lot.

#### 4. Association.

A. Purpose of Association. The Association has been incorporated as a nonprofit corporation to serve as the governing body for all of the Owners for the

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protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the Property, the assessment of expenses, payment of losses, disposition of casualty insurance proceeds, and other matters as provided in the Governing Documents. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the benefit of the Owners in accordance with the provisions of this Declaration, the Articles and the Bylaws.

B. Articles and Bylaws. In addition to the rights and powers of the Association set forth in this Declaration, the Association and its directors, officers, employees, agents and Members shall have such rights and powers as are set forth in the Articles and Bylaws and are not inconsistent with law or this Declaration. Such rights and powers, subject to the approval thereof by any agencies or institutions deemed necessary by the Declarant, may encompass any and all things that a natural person could do or that now or hereafter may be authorized by law, provided the Articles and Bylaws are not inconsistent with the provisions of this Declaration and are necessary, desirable or convenient in furtherance of the purposes set forth in this Declaration. A copy of the Articles and Bylaws shall be available for inspection at the office of the Association during reasonable business hours. In the event of conflict between the terms of this Declaration and the Articles, Bylaws or Design Guidelines the Declaration, the Articles, the Bylaws and the Design Guidelines (in that descending order) will prevail.

C. Board of Directors of Directors and Officers. The affairs of the Association shall be conducted by the Board of Directors and such officers as the Board of Directors may elect or appoint in accordance with the Articles and the Bylaws and this Declaration. The initial Board of Directors shall be composed of 3 members appointed by the Declarant. The Board of Directors may also appoint various committees (which may consist, in whole or in part, of individuals who are not on the Board of Directors) and may appoint a manager or managing agent who shall, subject to the direction of the Board of Directors, be responsible for the day-to-day operation of the Association. The Board of Directors shall determine the compensation to be paid to the manager or managing agent.

D. Association Rules. The Board of Directors shall be empowered to adopt, amend and repeal the Association Rules, effective upon adoption or at such later time as may be specified therein, and binding upon all Persons subject to this Declaration, to govern the use and/or occupancy of the Common Areas and any other part(s) of the Property. The Association Rules may include the establishment of a system of fines and penalties that are enforceable as Reimbursement Assessments. The Association Rules shall govern such matters in furtherance of the purposes of the Association including, but not limited to, the use of the Common Areas; provided, however, that the Association Rules may not discriminate among Owners, except as expressly provided or permitted in this Declaration, and shall not be inconsistent with the Governing Documents. The Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration and (subject to Section 14 of this Declaration) shall be binding on Owners and all other Persons having any



interest in or making any use of the Property, whether or not actually received thereby. The Association Rules shall be available at the principal office of the Association to each Owner or other Person reasonably entitled to the Association Rules, upon request. In the event of any conflict between any provision of the Articles, the Bylaws, this Declaration or the Design Guidelines, the provisions of the Association Rules shall be deemed to be superseded by the provisions of (and in the following descending order of importance) this Declaration, the Articles, the Bylaws and the Design Guidelines to the extent of any such conflict and in that order, except where there is a conflict between the Design Guidelines and this Declaration, as amended, the more restrictive of the two shall govern and control.

E. Indemnification. To the fullest extent permitted by law, every director and officer of the Association, every member of any committee created expressly by the Bylaws or this Declaration, and the Declarant shall be indemnified by the Association, and every other Person serving as an employee or direct agent of the Association, or on behalf of the Association as a member of a committee or otherwise, may, in the discretion of the Board of Directors, be indemnified by the Association against all expenses and liabilities including, but not limited to, attorneys' fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party or in which he may become involved, by reason of his being or having served in such capacity on behalf of the Association (or in the case of the Declarant by reason of having appointed, removed or controlled or failed to control members of the Board of Directors or a committee or action taken regarding the Property and the governance of the Association and implementation of the Governing Documents), or any settlement thereof, whether or not he is a director, officer or member of a committee or serving in such other specified capacity at the time such expenses are incurred, provided that the Board of Directors shall determine, in good faith, that the Person to be indemnified hereunder did not act, fail to act, or refuse to act with gross negligence or fraudulent or criminal intent in the performance of his duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such Persons may be entitled at law or otherwise. Notwithstanding the foregoing, to the extent of that Section 56-7-1 NMSA 1978 applies to any portion of this Declaration, the indemnification provisions of this Declaration are subject to and limited by such statute.

F. Non-Liability of Officials. To the fullest extent permitted by law, neither the Declarant, nor any committee created expressly by the Bylaws or this Declaration or any member thereof, nor any directors or officers of the Association, shall be liable to any Member, Owner, Occupant, the Association or any other Person for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of drawings or specifications (whether or not defective), course of action, act, inaction, omission, error, negligence or the like made in good faith and that the Declarant, the Board of Directors, or such committees or Persons reasonably believed to be within the scope of their respective duties.

G. Accounting. The Association, at all times, shall keep, or cause to be kept, true and correct records of account in accordance with sound accounting principles,

which shall specify in reasonable detail all expenses incurred and funds accumulated from Assessments or otherwise.

H. Records. Upon reasonable written request and pursuant to procedures established in the Bylaws or by law, the Association shall make the books, records and financial statements of the Association available for inspection by each Owner and Member together with current copies, as amended from time to time, of the Governing Documents. The Declarant shall be under no obligation to make its own books and records available for inspection by any Owner, Member or other Person. The books and records of the Association may be audited or un-audited as the Board of Directors, from time to time, may determine.

I. Manager or Managing Agent. All powers, duties and rights of the Association or the Board of Directors, as provided by law and in this Declaration, may be delegated to a manager or managing agent; provided, however, that no such delegation shall relieve the Association of its obligation to perform any such delegated duty. Any agreement for management, or any other contract providing for services to the Association, shall not exceed an initial term of three years.

J. Rights of Enforcement. The Board of Directors shall have the first right to enforce the provisions of this Declaration and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, deed, declaration or other instrument relating to the Property that: (i) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (ii) otherwise shall indicate that the provisions of such instrument were intended to be enforced either by the Association or by the Declarant. If, however, both the Board of Directors and the Declarant fail or refuse to enforce this Declaration or any provision of this Declaration after reasonably informative written notice of a violation of these Declarations is provided to them, then an Owner may enforce them on behalf of the Association by any appropriate legal action, whether at law or in equity and the Association and the Declarant may pursue whatever rights and remedies might be available to them at law or in equity.

K. Contracts with Others for Performance of Association's Duties. Subject to the restrictions and limitations contained in this Declaration, the Board of Directors may enter into contracts and transactions with others, including the Declarant and any affiliated Persons, for the performance of the Association's duties and other purposes consistent with this Declaration, and such contracts or transactions shall not be invalidated or in any way affected by the fact that one or more directors or officers of the Association or members of any committee may be employed by or otherwise connected with the Declarant or any affiliated Person, provided that the fact of such interest shall be disclosed or known to the other directors acting upon such contract or transaction, and provided further that the transaction or contract is fair and reasonable. Any such director, officer or committee member may be counted in determining the existence of a quorum at any meeting of the Board of Directors or committee of which he is a member, which shall authorize any contract or transaction described above or grant or deny any approval sought by the Declarant or other Person, and may vote thereon to authorize

any such contract, transaction or approval with like force and effect as if he were not so interested.

L. Change of Use of Common Areas. During the Class "B" Control Period, without the approval or consent of any Member or other Person; and after the Class "B" Control Period: (i) upon adoption of a resolution by the Board of Directors stating that, in the Board of Directors' opinion, the then-present use of a designated part of the Common Areas is no longer in the best interest of the Owners and Occupants or no longer necessary or appropriate for the purposes intended; and (ii) with the approval of such resolution by a majority of Class "A" Member Representatives at a meeting duly called for such purpose, the Board of Directors shall have the power and right to sell, exchange, convey or abandon such Common Areas or change the use of the Common Areas (and, in connection therewith, construct, reconstruct, alter or change the buildings, structures and improvements on the Common Areas in any manner deemed necessary by the Board of Directors to accommodate the new use), provided that any such new use (I) shall be for the benefit of the Owners and Occupants; (II) shall be consistent with any deed restrictions (and zoning regulations) restricting or limiting the use of the Common Areas; and (III) shall be consistent with the then-effective development plan. Anything foregoing to the contrary notwithstanding, if the Board of Directors determines, and the resolution of the Board of Directors recites, that any transaction involving the disposition or exchange of the Common Areas will not have an adverse effect on the Association and the Owners and Occupants of the Property, the Board of Directors may, in lieu of calling a meeting pursuant to (ii) above, give notice to all Owners of the proposed transaction and of any right to object to the proposed transaction that might be available hereunder and, if no more than 20% of the Members object in writing to the Association within 30 days after the giving of such notice, the transaction shall be deemed approved by the Members and a meeting of the Class "A" Member Representatives shall not be necessary.

M. Purposes for Which Association's Funds May Be Used. The Association, except as otherwise permitted in this Declaration, shall apply all funds and property collected and received by it (including Assessments, Reimbursement Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of the Property and the Owners and Occupants by devoting said funds and property, among other things, to the Common Expenses. Notwithstanding such requirements, all funds of the Association shall be deemed to be the sole property of the Association in its corporate capacity, and not trust funds, and the Association shall not be deemed to hold any such funds as trustee or in any fiduciary capacity, except as expressly provided in this Declaration. The Association also may expend its funds for any purposes for which any municipality in the State of New Mexico may expend its funds under the laws of the State of New Mexico or such municipality's charter.

N. Borrowing Power. The Association may borrow money in such amounts, at such rates, upon such terms and security, and for such periods of time as the Board of Directors deems necessary or appropriate.



O. Association's Rights in Spending Funds From Year to Year. The Association shall not be obligated to spend in any year all the sums received by it in such year, regardless of source, unless specifically provided to the contrary in this Declaration, and may carry forward, as additional working capital or reserves, any balances remaining. The Association shall not be obligated to reduce the amount of the Maintenance Assessments in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board of Directors, in its discretion, may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

5. Memberships and Voting.

A. Transfer of Membership. The rights and obligations of a Member shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership to a Lot, and then only to the transferee of ownership to the Lot. A transfer of ownership to a Lot may be effected by deed, intestate succession, testamentary disposition, foreclosure of a Mortgage, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of New Mexico. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot shall operate to transfer the Association membership appurtenant to the Lot to the new Owner(s) of the Lot.

B. Use of Membership; Designees. The Board of Directors may provide in its rules or Bylaws for the use of proxies by Class "A" Member Representatives.

C. Memberships. Every Owner shall be a Member of the Association, and such membership shall be appurtenant to, and inseparable from, ownership of a Lot. There shall be only one membership per Lot. If a Lot is owned by more than one person, all co-Owners shall share the privileges of such membership, subject to reasonable Board of Directors regulation and the restrictions on voting set forth in Section 5D of this Declaration and in the Bylaws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner that is not a natural person may be exercised by any officer, director, partner or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the secretary of the Association.

D. Voting. The Association shall have two classes of membership, Class "A" and Class "B."

(1) Class "A": Class "A" Members shall be all Owners except the Class "B" Member. Class "A" Members shall have one equal vote for each Lot in which they hold the interest required for membership under Section 5C of this Declaration; provided, there shall be only one vote per Lot and no vote shall be exercised for any property that is Exempt Property. All Class "A" votes shall be exercisable only as provided in the Bylaws.

(2) Class "B": The sole Class "B" Member shall be the Declarant. The Class "B" Member shall appoint all members of the Board of Directors during the Class "B" Control Period, as specified in the Bylaws. The Class "B" membership shall terminate as provided in the Bylaws.

(3) Exercise of Voting Rights: In any situation where a Member is entitled personally to exercise the vote for his or her Lot and there is more than one Owner of such Lot, the vote for such Lot shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing, prior to the vote being taken. Absent such advice, the Lot's vote shall be suspended if more than one Person seeks to exercise it.

E. Declarant Appointment Rights. The Declarant will have the right to appoint and remove the members of the Board of Directors during the Class "B" Control Period as provided in the Bylaws.

## 6. Assessments.

A. Creation of Assessments. There are hereby created Assessments for Association expenses as the Board of Directors may specifically authorize from time to time.

(1) There shall be four (4) types of Assessments:

(a) Maintenance assessments to fund Common Expenses for general benefit of all Lots (the "Maintenance Assessment");

(b) Capital improvement assessments as described in Section 6H of this Declaration (the "Capital Improvement Assessment"); and

(c) Special assessments as described in Section 6I of this Declaration (the "Special Assessments"); and

(d) Reimbursement assessments as described in Section 6J of this Declaration ("Reimbursement Assessment").

(2) Each Owner, by accepting a deed or entering into a recorded New Mexico real estate contract for any portion of the Property, is deemed to covenant and agree to pay the Assessments.

B. Assessments as Lien on Lot. All Assessments, together with interest (computed from the due date of such assessment at the Default Rate of Interest as established from time to time); late charges in such amount as the Board of Directors may establish by resolution; costs; and reasonable attorneys' fees, shall be a charge and continuing lien upon each Lot against which the Assessment is made until paid as more particularly provided in this Declaration. Each Assessment, together with interest at the Default rate of interest, late charges, costs, and reasonable attorneys' fees, also shall be the personal obligation of the Owner from and after the time the Assessment

arises. Upon a transfer of title to a Lot, the grantor and grantee shall be jointly and severally liable for any Assessments and other charges due at the time of conveyance. However, no First Mortgagee who obtains title to a Lot by exercising the remedies provided in the First Mortgage shall be liable for unpaid Assessments that accrued prior to the date of its acquisition of title.

C. Certificate of Assessment Status. The Association shall, upon request, furnish to any Owner liable for any type of Assessment a certificate in writing signed by an Association officer or its authorized representative setting forth whether such Assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

D. Payment of Assessments. Assessments shall be paid in such manner and on such dates as the Board of Directors may establish. The Board of Directors may require advance payment of an Assessment at closing or transfer of title to a Lot and impose special requirements for Owners with a history of delinquent payments. If the Board of Directors so elects, Assessments may be paid in two (2) or more installments. Unless the Board of Directors otherwise provides, the Maintenance Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any Assessment or other charge levied on his/her Lot, the Board of Directors may require any unpaid installment of any and all outstanding Assessments to be paid in full immediately.

(1) No Owner may exempt himself from liability for Assessments by nonuse of the Common Areas, abandonment of his Lot, or any other means. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessments or set off shall be claimed or allowed for any alleged failure of the Association or Board of Directors to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

(2) The Association is specifically authorized to enter into contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses.

E. Declarant's Obligation for Assessments. During the Class "B" Control Period, the Declarant may annually elect either to pay regular Assessments on all of its unsold Lots or to pay the difference between the amount of Assessments levied on all other Lots subject to Assessments and the amount of actual expenditures by the Association during the fiscal year, which actual expenditures shall not include any reserve fund. Unless the Declarant otherwise notifies the Board of Directors in writing at least 60 days before the beginning of each fiscal year, the Declarant shall be deemed to have elected to pay the difference between the amount of Assessments levied on all other Lots subject to Assessments and the amount of actual expenditures by the Association during the fiscal year. The Declarant's obligations may be satisfied in the

form of cash or by "in kind" contributions of services or materials, or by a combination of these.

F. Computation of Maintenance Assessment. At least sixty (60) days before the beginning of each calendar year, the Board of Directors shall prepare or cause to be prepared a budget covering the estimated Common Expenses.

(1) Maintenance Assessments shall be levied equally against all Lots and shall be set at a level that is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the total funds to be generated through the levy of Maintenance Assessments, the Board of Directors, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years and any assessment income expected to be generated from any additional Lots reasonably anticipated to become subject to Assessment during the Fiscal Year.

(2) The Board of Directors shall send a copy of the budget and notice of the amount of the Maintenance Assessments, and Capital Improvement Assessment, if any, for the following year to each Owner at least 30 days prior to the beginning of the fiscal year for which it is to be effective to the Lot address or other address as agreed to by Owner and the Association. If the Maintenance Assessment for said year does not represent more than a twenty percent (20%) increase from the previous year, it shall become effective on the first day of the fiscal year unless disapproved (a) during the Class "B" Control Period, by the Class "B" Member, or (b) after the Class "B" Control Period, by a majority of the Class "A" Member Representatives at a special meeting called pursuant to the Bylaws, which meeting must occur within 15 days after delivery of the notice of Assessments.

G. Failure to Timely Approve Budget. If the proposed budget is disapproved or the Board of Directors fails for any reason to determine the budget for any year, then until such time as a budget is determined the budget in effect for the immediately preceding year shall continue for the current year.

H. Reserve Budget and Capital Improvement Assessment. The Board of Directors shall annually prepare a Capital Improvement budget that takes into account the number and nature of replaceable assets within the Common Area, the expected life of each asset, and the expected repair, replacement, acquisition, construction or installation cost. The Board of Directors shall set the required Capital Improvement Assessment in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect to both amount and timing by annual Maintenance Assessments over the budget period.

I. Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. During the Class "B" Control Period, any Special Assessments shall require the consent of the Declarant; thereafter, any Special Assessments shall require the consent of a majority of Class "A" Member



Representatives. Special Assessments shall be payable in such manner and at such times as determined by the Board of Directors, and may be payable in installments extending beyond the Fiscal Year in which the Special Assessment is approved.

J. Reimbursement Assessments. The Association shall have the power to levy Reimbursement Assessments against a particular Lot to cover costs incurred in bringing the Lot into compliance with the terms of the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board of Directors shall give the Lot Owner prior written notice and an opportunity for a hearing, in accordance with the Bylaws and Section 19 of this Declaration before levying any Specific Assessments under this Section 6.

K. Lien for Assessments. The Association shall have a lien against each Lot to secure payment of delinquent assessments, as well as interest, subject to the limitations of New Mexico law, late charges and costs of collection (including attorneys' fees).

(1) Such lien shall be superior to all other liens, except:

(a) the liens of all taxes, bonds, assessments, and other levies that by law would be superior; and

(b) the lien or charge of any First Mortgage of Record at the time such lien attaches made in good faith and for value. Such lien, when delinquent, may be enforced by judicial foreclosure.

(2) The Association may bid for the Lot at foreclosure and acquire, hold, lease, mortgage, and convey the Lot. While a Lot is owned by the Association following foreclosure:

(a) no right to vote shall be exercised on its behalf; and

(b) no Assessments shall be levied on it. The Association may sue the Owner(s) for unpaid assessments and other charges authorized under this Declaration without foreclosing or waiving the lien securing the same.

(3) The sale or transfer of any Lot shall not affect any assessment lien or relieve such Lot from the lien for any prior or subsequent Assessments except pursuant to foreclosure of a First Mortgage. A Mortgagee or other purchaser of a Lot who is unrelated to the Owner of the Lot being foreclosed who obtains title pursuant to foreclosure of the mortgage shall not be personally liable for Assessments on such Lot due prior to such acquisition of title. Such unpaid Assessments shall be deemed to be Common Expenses collectible from Owners of all Lots subject to Assessments under Section 6B of this Declaration, including such acquirer, its successors and assigns.

L. Commencement of Assessments.

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(1) The obligation to pay Assessments shall commence as to each Lot on the first day of the month after the first to occur of the following:

(a) the Lot has been made subject to this Declaration pursuant to Section 2A; or

(b) the Board of Directors has first determined a budget and levied assessments pursuant to this Section 6; and

(c) a certificate of occupancy has been issued for the Unit constructed upon the Lot.

(2) The first annual Maintenance Assessment levied on each Lot shall be adjusted according to the number of months remaining in the Fiscal Year at the time assessments commence on the Lot.

M. Failure to Assess. Failure of the Board of Directors to fix Assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay Assessments. In such event, each Owner shall continue to pay Maintenance Assessments or whatever other Assessments as may be due on the same basis as during the last year for which an Assessment was made if any until a new Assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

N. Exempt Properties. Exempt Property shall be exempt from payment or Maintenance Assessments and Special Assessments.

O. Capitalization of Association. Upon acquisition of record title to a Lot beginning with the first Owner other than the Declarant and all other Owners thereafter other than the Declarant, a capitalization fee shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to 1/6 of the annual Maintenance Assessments per Lot for that year. This amount shall be in addition to, not in lieu of, the annual Maintenance Assessments and shall not be considered an advance payment of the Maintenance Assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to this Declaration and the Bylaws.

P. Certificate of Payment. Any Person acquiring an interest in any Lot shall be entitled to a certificate from the Board of Directors setting forth the amount of due but unpaid Assessments and fines relating to the Lot, if any, and such a Person shall not be liable for, nor shall any lien attach to the Lot in excess of the amount set forth in the certificate, except for Assessments that occur or become due after the date of the certificate and any interest, costs, attorneys' fees and any late charges related to such Assessments.

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Q. Rules Regarding Billing and Collection Procedures. The Board of Directors shall have the right to adopt rules and regulations setting forth procedures for the purpose of making the Assessments provided for in this Declaration, and for the billing and collection of the Assessments, provided that the procedures are not inconsistent with the provisions of this Declaration. Any failure of the Association to send a bill to an Owner shall not relieve an Owner of his liability for any Assessment or charge under this Declaration, but the assessment lien therefor shall not be foreclosed or otherwise enforced until the Owner has been given such notice prior to such foreclosure or enforcement as may be required by law or provided for in the Bylaws. Such a notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an assessment period. Successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

R. Enforcement of Lien. An assessment lien may be foreclosed by the Association in any manner provided or permitted for the foreclosure of mortgages or deeds of trust in the State of New Mexico. All of the provisions of this Section 6 relating to the enforcement of an assessment lien provided for in this Declaration shall apply with equal force in each other instance provided for in this Declaration or the Association Rules or Design Guidelines wherein it is stated that payment of a particular Assessment, charge or other sum shall be secured by an assessment lien. Nothing in this Declaration shall be construed as requiring the Association to take any action under this Declaration in any particular instance, and the failure of the Association to take such action at any time shall not constitute a waiver of the right to take the same or similar action at a later time or in a different instance.

S. Pledge of Assessment Rights as Security. The Association shall have the power to pledge the right to exercise its assessment powers and rights provided for in this Declaration as security; provided, however, that any such pledge occurring after the end of the Class "B" Control Period shall require the prior affirmative vote or written assent of a majority of Class "A" Member Representatives.

T. Exemption of Unsold Lots or Parcels. Notwithstanding anything in this Section 6 or in Section 9 of this Declaration to the contrary, during the Class "B" Control Period, no Assessments shall be levied upon the Declarant, or payable with respect to any Lot owned by or leased to the Declarant or by any trustee for any of the aforesaid Persons, until the Lot has been conveyed to an Owner other than the Declarant.

U. Other Charges and Costs Assessable. The Association may levy and assess charges, costs, and fees for matters such as, but not limited to, the following, in such reasonable amount(s) as the Board of Directors may determine in its discretion at any time and from time to time, including reimbursement of charges that are made to the Association by its managing agent or any other Person: copying of Association or other documents; return check fees; facsimiles; long distance telephone calls, notices and demand letters; transfer charges including but not limited to charges related to transfer of Lot ownership or to the leasing of a Lot and the Unit located on a Lot; and

other charges incurred by the Association for or on behalf of any Owner(s). All such charges, costs and fees shall be in addition to the Assessments levied by the Association, but shall be subject to all of the Association's rights with respect to the collection and enforcement of Assessments.

V. Notice of Annual Assessment. At least 30 days before the expiration of each calendar year, the Board of Directors will prepare and distribute to each Owner a proposed budget for the Association's operations during the next ensuing year. In computing the applicable percentage of the new annual Assessment, any increase due to an increase in utility charges, which term includes charges for wet and dry utilities including but not limited to water, sewer, rubbish, gas, electricity, phone services, cable services, high speed data communication services, and satellite services, shall not be included, but shall be automatically passed on as part of the Assessment.

W. Time and Manner of Payment; Late Charges and Interest. The Board of Directors may, in its discretion and without waiving the imposition of a late charge or interest in any other instance, waive the late charge and/or interest in any particular instance. A delinquent Owner shall also be liable for attorney's fees and other related costs incurred by the Association as a result of his delinquency, and if any suit, action or arbitration proceeding is brought to collect and/or foreclose an assessment lien for any such Assessment or charge, then there shall be added to the amount of the Assessment costs of suit and reasonable attorney's fees to be fixed by the court and included in any judgment or award rendered thereon.

7. Maintenance.

A. Common Areas and Public Right of Way. The Association, or its duly delegated representative, shall structurally and cosmetically maintain perimeter walls located solely in Common Areas. Additionally, the Association, or its duly delegated representative, shall maintain and otherwise manage all Common Areas, including but not limited to Common Area landscaping, Common Area walkways, and any improvements on these areas, provided, however, the Association shall not be responsible for providing or maintaining the landscaping on any Common Areas that are part of Lots unless: (i) such landscaping is available for use by all Owners or is within easements intended for the general benefit of the Property; and (ii) the Association assumes in writing the responsibility for such maintenance, or such responsibility is set forth in a Recorded instrument as provided in this Declaration.

(1) The Board of Directors shall use a reasonable standard of care in providing for the repair, management and maintenance of Common Areas so that the Property will reflect a pride of ownership. In this connection the Association may, subject to any applicable provisions relating to Capital Improvement Assessments, in the discretion of the Board of Directors:

(a) Construct, reconstruct, repair, replace or refinish any improvement or portion of the Common Areas;

(b) Replace injured and diseased trees and other vegetation in any Common Areas or in a lot adjoining a dedicated right of way, and plant trees, shrubs and ground cover to the extent that the Board of Directors deems necessary for the conservation of water and soil and for aesthetic purposes;

(c) Place and maintain upon any Common Area such signs as the Board of Directors and Committee may deem appropriate for the proper identification, use and regulation of the Common Area; and

(d) Do such other and further acts that the Board of Directors deems necessary or appropriate to preserve and protect the Common Areas, streetscapes, and the beauty thereof, in accordance with the general purposes specified in this Declaration.

(2) The Board of Directors shall be the sole judge as to the appropriate maintenance of all Common Areas and other properties maintained by the Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the Board of Directors or by its duly delegated representative.

(3) In the event any subdivision plat, deed restriction, the Governing Documents or any Agreement permits or requires the Board of Directors to determine whether or not Owners of certain Lots or the Association will be responsible for maintenance of certain Common Areas or public right-of-way areas, the Board of Directors shall exercise its sole discretion to determine whether or not it would be in the best interest of the Owners and Occupants of the property for the Association or an individual Owner to be responsible for such maintenance, considering cost, uniformity of appearance, location and other factors deemed relevant by the Board of Directors. The Board of Directors may cause the Association to contract with others for the performance of the maintenance and other obligations of the Association under this Section 7 and, in order to promote uniformity and harmony of appearance.

(4) Assessment of Certain Costs of Maintenance and Repair of Common Areas and Public Areas. In the event that the need for maintenance, repair or replacement of Common Areas and other areas maintained by the Association is caused through the willful or negligent act of any Owner or Occupant or the family, guests, or invitees of either, the cost of such maintenance or repairs shall be a Reimbursement Assessment against the Owner and his Lot and secured by an assessment lien. Any charges or fees to be paid by the Owner of a Lot in connection with a contract entered into by the Association with an Owner for the performance of an Owner's maintenance responsibilities shall also be a Reimbursement Assessment and shall be secured by an assessment lien.

(5) Improper Maintenance and Use of Lots. In the event any portion of any Lot is so maintained as to present a public or private nuisance or an unreasonable condition (as determined by the Board of Directors and the Committee) with respect to other Owners or Occupants, or as to detract from the appearance or quality of the



surrounding Lots or other areas of the Property that are affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner that violates this Declaration, or in the event the Owner of any Lot, or portion thereof is failing to perform any of its obligations under the Declaration, or applicable Design Guidelines, the Board of Directors may by resolution make a finding to such effect (with the concurrence of the Committee), specifying the particular condition or conditions that exist, and pursuant to the resolution give notice to the offending Owner that unless corrective action is taken within 10 days, the Board of Directors may cause such action to be taken at the Owner's cost. If, at the expiration of the 10-day period of time, the requisite corrective action has not been taken, the Board of Directors shall be authorized and empowered to cause remedial action to be taken. The cost of any such remedial action shall become an Reimbursement Assessment against the offending Owner and the Owner's Lot and shall be secured by an assessment lien. Notwithstanding the foregoing, if the Board of Directors believes that immediate action is or may be necessary to avoid a risk of serious physical injury to persons or damage to property, the Board of Directors shall be entitled to take whatever action it may believe to be necessary to guard against or prevent such injuries or damage without being required to wait 10 days after giving notice to the affected Owner.

(6) Right of Entry. Representatives and agents of the Association, including, but not limited to property managers and security patrolmen, shall have the right to enter upon all Lots, and Common Areas when responding to alarms or when otherwise reasonably deemed necessary for the protection of persons or property, and neither the Association, nor any representative or agent of the Association, shall have any liability to any person when acting in good faith in effecting such entry.

8. Insurance.

A. Liability Insurance. From and after the date on which title to any Common Area vests in the Association, the Association will purchase and carry a general comprehensive public liability insurance policy for the benefit of the Association and its Members, covering occurrences on the Common Areas. The policy limits will be as determined by the Board of Directors. The Association will use its best efforts to see that such policy will contain, if available, cross-liability endorsements or other appropriate provisions for the benefit of Members, the Members of the Board of Directors, and the management company retained by the Association (if any), insuring each against liability to each other insured as well as third parties. Any proceeds of insurance policies owned by the Association will be received, held in a segregated account and distributed to the Association's general operating account, Members, members of the Board of Directors, the management company and other insured parties, as their interests may be determined.

B. Required Coverages. The Association, acting through its Board of Directors or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not, the most nearly equivalent coverages as are reasonably available:



(1) Blanket property insurance covering "all risks of direct physical loss" on a "special causes of loss form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and within other portions of the Common Area to the extent that the Association has assumed responsibility in the event of a casualty, regardless of ownership. If such coverage is not generally available at reasonable cost, then "broad causes of loss form" (specified perils) coverage may be substituted. All Association property insurance policies shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes;

(2) Commercial general liability insurance on the Common Areas, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees or agents while acting on its behalf. If generally available at reasonable cost, such coverage (including primary and any umbrella coverage) shall have a limit of at least \$2,000,000.00 per occurrence and in the aggregate with respect to bodily injury, personal injury, and property damage.

(3) With respect to any contractors working on the premises or any third parties holding events on the premises, all such individuals shall be required to carry sufficient similar commercial general liability insurance with minimum limits of \$1,000,000.00 combined single limit per occurrence and \$2,000,000.00 general aggregate limit. The commercial general liability policy shall also be endorsed to include the Declarant, its subsidiaries and affiliates and their respective directors, officers, employees, and agents as additional insureds with respect to any claims, losses, expenses or other costs arising out of any Work performed for the Association.

(4) Certificates of insurance evidencing the minimum coverage required in this Declaration by any parties described above (other than the Association) shall be filed with the Association at the time of execution of any Agreement for services or events conducted on the premises and shall be maintained in a current status throughout the term of any such Agreement. Such certificates of insurance shall require the insurer(s) to provide not less than 30 days advance written notice to the Association in the event of any cancellation, non-renewal or material (greater than 25% reduction) change in the policy limits, terms or conditions. Such third parties shall maintain all of their insurance and at the requested levels described above for not less than 5 years following the expiration or termination of any agreement with the Association.

(5) Statutory workers' compensation and employer's liability insurance in the amount of the State of New Mexico's statutory limits to cover all employees engaged in the services.

(6) Earthquake, wind and flood damage coverage, of and to the extent required by law and or appropriate for an Association based in New Mexico.

(7) Automobile liability insurance for all owned, non-owned and hired vehicles with a minimum limit of \$500,000.00 combined single limit per accident; and



(8) Directors and officers liability coverage; and

(9) Commercial crime insurance covering all persons, including persons serving without compensation, responsible for handling Association funds in an amount determined in the Board of Directors' business judgment but not less than an amount equal to 1/4 of the annual Maintenance Assessments on all Lots plus reserves on hand.

(10) All of the coverage required herein shall be maintained with insurers rated B+ or better in the most current edition of Best's Insurance Reports.

(11) Insurance obtained for the Association is not meant to replace any individual's personal liability or property insurance in amounts not less than those stated below.

The Board of Directors, in the exercise of its business judgment, may obtain such additional insurance coverage and higher limits.

Premiums for insurance on the Common Areas shall be Common Expenses.

C. Policy Requirements. The Association shall arrange for an annual review prior to the adoption of the Budget of the sufficiency of its insurance coverage by one or more qualified persons, at least one of whom must be familiar with insurable replacement costs in the metropolitan Albuquerque area. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member insured. The Declarant reserves the right to self-insure, or provide insurance under the Declarant's policy, provided that the cost to replace the insurance when such coverage terminates shall be disclosed to the Membership as a footnote to the budget of the Association.

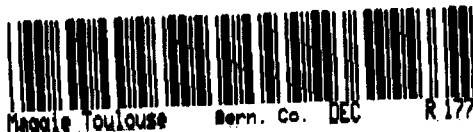
(1) The policies may contain a reasonable deductible, which shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of this Section 8. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board of Directors reasonably determines, after notice and an opportunity to be heard in accordance with the Bylaws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or Occupants, then the Board of Directors may assess the full amount of such deductible against such Owner(s) and their Lots as a Reimbursement Assessment.

(2) All insurance coverage obtained by the Board of Directors shall:

(a) be written with a company authorized and licensed to do business in New Mexico;

(b) be written in the name of the Association as trustee for the benefited parties;

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(c) not be brought into contribution with insurance purchased by individual Owners, their mortgagees, or any occupants of a Lot;

(d) contain an inflation guard endorsement;

(e) include an agreed amount endorsement, if the policy contains a co-insurance clause;

(f) provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Areas as a Member in the Association (provided, this provision shall not be construed as giving an Owner any interest in the Common Areas other than that of a Member);

(g) unless the Board of Directors waives this requirement, all insurance coverage must include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure; and

(h) include an endorsement precluding cancellation, invalidation, or condition to recovery under the policy on account of any act or omission of any one or more individual Owners, unless such Owner is not acting within the scope of its authority on behalf of the Association.

(3) In addition, the Board of Directors shall use reasonable efforts to secure insurance policies that list the Owners (as a class) as additional insureds and provide:

(a) a waiver of subrogation as to any claims against the Association's Board of Directors, officers, employees, and its manager, the Owners and their Occupants, servants, agents, and guests;

(b) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(c) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(d) a cross liability provision; and

(e) a provision vesting in the Board of Directors or their authorized representative, which shall be the Declarant so long as the Declarant's policy provides Association coverage, exclusive authority to adjust losses; provided, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.



D. Owner's Insurance. By virtue of taking title to a Unit and/or a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry blanket "all-risk" property insurance on its Unit(s) and structures thereon providing full replacement cost coverage less a reasonable deductible. Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his Unit, he shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Section 11 of this Declaration. Alternately, the Owner shall clear the Unit of all debris and ruins and maintain the Unit in a neat and attractive, landscaped condition consistent with the Property-wide standard. The Owner shall pay any costs that are not covered by insurance proceeds.

E. Restoring Damaged Improvements. In the event of damage to or destruction of Common Area or other property that the Association is obligated to insure, the Board of Directors or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

(1) Damaged improvements on the Common Areas shall be repaired or reconstructed unless at least 5 of the Class "A" Member Representatives and the Declarant, if the damage occurs during the Class "B" Control Period, decide within 60 days after the loss not to repair or reconstruct. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period shall be extended for up to 60 additional days until such funds or information are available. No Mortgagees shall have the right to participate in the determination of whether the damage or destruction to the Common Areas shall be repaired or reconstructed.

(2) If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive condition.

(3) The Association shall retain any insurance proceeds remaining after paying the costs of repair or reconstruction, or after an agreed upon settlement, for the benefit of the Members, and place the remaining insurance proceeds in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Lot up to the remaining insurance proceeds.

(4) If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Class "A" Member Representatives, levy Special Assessments to cover the shortfall against those Owners responsible for the applicable insurance coverage premiums.

## 9. Damage and Destruction of Common Areas.

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A. Duty of Association. In the event of partial or total destruction of the Common Areas or landscaped right of ways, or any improvements thereon, the Association may restore and repair the same, subject and pursuant to this Section 9. The proceeds of any casualty insurance maintained by the Association may be used to the extent available for such purpose, subject to the prior rights of Mortgagees whose interests may be protected by the policies as determined in the sole discretion of the Association.

B. Vote of Class "A" Member Representatives. If the amount available from the proceeds of any insurance policies for such restoration and repair, together with any uncommitted or unreserved capital of the Association, is less than the estimated cost of restoration and repair, the Common Areas or landscaped right of ways may be replaced or restored unless a majority of Class "A" Member Representatives, at a special meeting held for such purpose, disapprove of such replacement or restoration. If such Class "A" Member Representatives do not disapprove the proposed replacement or restoration, the Board of Directors may levy a Reimbursement Assessment against each Owner and his Lot(s), and cause the damaged or destroyed Common Areas or landscaped right of ways to be repaired or restored. If such Class "A" Member Representatives disapprove of the repair or restoration of the damaged or destroyed improvements on the Common Areas or landscaped right of ways as provided above, the Common Areas or landscaped right of ways so damaged or destroyed shall be cleared and landscaped for Common Area or landscaped right of way use or any other use determined by the Board of Directors, and the costs thereof shall be paid from insurance proceeds (to the extent available).

C. Excess Insurance Proceeds. In the event any excess insurance proceeds remain after any reconstruction by the Association pursuant to this Section 9, the Board of Directors, in its sole discretion, may retain such sums in the general funds of the Association or may distribute all or a portion of such excess to the Owners in the ratio that they would pay a Reimbursement Assessment under this Declaration, subject to the prior rights of Mortgagees whose interest may be protected by the insurance policies carried by the Association and subject to any restrictions under applicable law. The rights of an Owner or the Mortgagee of a Lot to any distribution shall be governed by the provisions of the Mortgage encumbering the Lot.

D. Use of Reimbursement Assessments. All amounts collected as Reimbursement Assessments pursuant to Section 9B of this Declaration shall only be used for the purposes set forth in this Section 9D and shall be deposited by the Association in a separate bank account for such purposes. Such funds shall not be commingled with any other funds of the Association and shall be deemed a contribution to the working capital of the Association by the Owners.

10. Eminent Domain.

A. Representation in Condemnation Proceedings. The Owners hereby appoint the Association through such Persons as the Board of Directors may delegate, to represent all of the Owners in connection with any threatened or actual Taking. The



Board of Directors shall act, in its sole discretion, with respect to any awards being made in connection with the Taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action.

B. Award for Common Areas. Any awards received by the Association on account of the Taking shall be paid to the Association. The Board of Directors may, in its sole discretion, retain any award in the general funds of the Association, expend the funds for restoration and repair of Common Areas or distribute all or any portion thereof to the Owners in the ratio they would pay a Reimbursement Assessment under this Declaration, or as their interests otherwise may appear. The rights of an Owner and the Mortgagee of his Lot as to any distribution shall be governed by the provisions of the Mortgage encumbering such Lot.

11. Architectural and Landscape Control.

A. Appointment of Committee. The Association shall have a Committee consisting of no fewer than 3 nor more than 5 individuals who do not need to be Members, as specified from time to time by resolution of the Board of Directors. The Declarant initially shall appoint the members of the Committee. The Declarant shall retain the right to appoint, augment, replace, or remove any and all members of the Committee from time to time during the Class "B" Control Period. After the end of the Class "B" Control Period, members of the Committee shall be appointed by the Board of Directors. Members appointed to the Committee, other than those appointed by the Declarant, shall not be delinquent in any assessments nor have any uncured violations of the Governing Documents. The Declarant voluntarily may (but shall not be required to) permit Members to appoint one or more members to the Committee at any time during the Class "B" Control Period.

B. Design Guidelines. The Committee shall establish Design Guidelines, which the Committee may, from time to time as approved by the Board of Directors, amend, repeal or augment and shall not be subject to any of the requirements for amendments stated in this Declaration. Existing Units shall be deemed in compliance with the Design Guidelines. Any change in the Design Guidelines during the Class "B" Control Period will be effective only if it is approved by the Declarant. The Design Guidelines are incorporated in this Declaration and shall be deemed to be a part of this Declaration and shall be binding on all Owners, Members and other Persons as if expressly set forth in this Declaration; provided, however, that neither the provisions of this Section 11 nor the Design Guidelines shall apply to buildings and other structures or improvements constructed by the Declarant or its agents or employees, and such buildings and other structures may have an architectural style and present general aesthetics that are quite distinct from the architectural styles and aesthetics elsewhere in the Property or the Project. A copy of the current Design Guidelines shall at all times be a part of the Association's records. The Design Guidelines may include, among other things, those restrictions and limitations set forth below:

(1) Designation of a "Building Envelope" within a Lot, thereby establishing the maximum developable area of the Lot where terrain, size or other



factors require such designation; procedures for assuring conformity of completed improvements to drawings and specifications approved by the Committee; provided, however, as to purchasers and encumbrancers in good faith and for value, unless notice of non-completion or nonconformance identifying the violating Lot and specifying the reason for the notice, executed by the Committee, is Recorded with the County Recorder of the County, and given to the Owner of the Lot within one year following completion of the improvement, or unless legal proceedings shall have been instituted to enforce compliance or completion within said one-year period, the completed improvements shall be deemed to be in compliance with plans and specifications approved by the Committee and in compliance with the architectural standards of the Association and this Declaration, but only with respect to purchasers and encumbrancers in good faith and for value;

(2) Such other limitations and restrictions as the Committee in its reasonable discretion shall adopt, including, but not limited to, the regulation of all landscaping (including, but not limited to, absolute prohibition of certain types of landscaping, trees and plants), construction, reconstruction, exterior addition, change or alteration to or maintenance of any building, structure, wall or fence, including, but not limited to, the nature, kind, shape, height, materials, exterior color, surface texture, and location of any such improvement, exterior artwork and works of art visible from any other Lots or Common Areas, including, but not limited to, sculpture and statues; and

(3) Subjective determinations and/or criteria bearing on compatibility with architecture, style, design, and appearance generally, other residences, the terrain within the property, Visible from Neighboring Properties, or visible from it and such other matters as the Committee may conclude, in good faith but in the exercise of the Committee's abundant discretion, are relevant or appropriate to a harmonious appearance and lifestyle within the Property and the Project.

C. General Provisions Regarding Architectural Control.

(1) The Committee may delegate its responsibilities for reviewing drawings and specifications, except final review and approval as may be required by the Design Guidelines, to one or more of its members or architectural consultants retained by the Committee. Upon any such delegation, the interim approval or disapproval of drawings and specifications by the Committee member or consultants shall be equivalent to interim approval or disapproval by the entire Committee.

(2) The address of the Committee shall be the address established for giving notice to the Association, unless otherwise specified in the Design Guidelines or by written notice to Owners. The Committee's address shall be the place for the submittal of drawings and specifications and the place where the current Design Guidelines shall be kept.

(3) The Design Guidelines shall not apply to, and nothing contained in this Section 11 shall be construed to prevent or impair in any way, any development,

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operation, construction or improvement by the Declarant or any other Person on property that is not made subject to this Declaration.

(4) The establishment of the Committee and the procedures in this Declaration for architectural approval shall not be construed as changing any rights or restrictions upon Owners to maintain or repair their Lots as may otherwise be specified in this Declaration, the Bylaws or the Association Rules.

(5) The Committee, at the request of an Owner (including, but not limited to, the Declarant) may, but shall have no obligation to, (i) change the size, configuration or location of any Building Envelope on the Owner's Lot, or (ii) approve the changing of the natural grade of a Lot, or portions thereof, by cut, fill or similar procedures.

**D. Procedures for Approval.**

(1) Except for Improvements constructed by the Declarant, no Improvements shall be constructed, erected, placed, planted, applied or installed upon any Lot, unless plans and specifications therefore shall have been first submitted to and approved in writing by the Committee.

(2) The Committee or a designated representative may conduct a site visit with the Owner or his designated representative, prior to preparation of any plans or drawings.

(3) Plot plans shall show the location on the Lot of any structures proposed to be constructed, placed, altered or maintained; floor plans and elevations; finished grades different from the existing grades on the Lot; proposed colors, including color schemes for roofs and all exteriors, indicating the materials for the same or such other features as required by the Committee.

(4) No construction, structure, or improvement shall commence or shall be erected, altered, placed or maintained upon any Lot unless and until the final plans, elevations, and specifications therefore have received such written approval as herein provided. All construction, improvements, installations, remodeling, or alterations shall comply strictly with the approved plans and any terms and conditions imposed by the Committee in its written approval. Once approved, no construction, structure, or improvement may vary from the approved plan without further written approval of the Committee. Any person purchasing any portion of the Property subject to this Declaration acknowledges that the breach or violation of this covenant is likely to result in irreparable harm to the rights and interests of other Owners in the Property and that the Declarant, the Committee or the Association, on behalf of such Owners, shall be entitled to injunctive relief, temporary or permanent, in order to prohibit such violation; provided, however, that this provision shall be in addition to any other remedies available under this Declaration or at law or equity.

(5) The Committee is authorized to charge a fee for review of plans including requiring the Owner to pay a deposit. At the time of submission of the plans

and specifications, the Owner may be required to pay a deposit. The Committee shall provide full approval, conditional approval, or disapproval of said plans and specifications in writing within 30 days from the receipt thereof. All conditions of approval and variances shall be confirmed in writing. One set of said plans and specifications with the Committee's approval or disapproval endorsed thereon shall be returned to the Owner and the other copy thereof shall be retained by the Committee. Should the Committee fail either to approve or disapprove any plans or specifications submitted to it within the 30 day period, the plans or specifications shall be deemed rejected. Failure to approve or disapprove any plans or specifications shall not be construed a waiver of the Committee's absolute authority to approve plans and specifications prior to construction, alteration, or placement of improvements and construction shall not commence until approval is obtained in writing. Approval of plans and specifications for all construction, installations, improvements, remodeling or alterations shall be valid only for a period of one year. Failure to commence and/or complete construction within one year following the date of approval shall require reapplication and re-submittal of plans, specifications, and fees to the Committee.

(6) The Committee shall have the right to disapprove any plans, specifications or details submitted to it as aforesaid, in the event, such plans and specifications are not in accord with all the provisions of the Governing Documents. Considerations may include, but shall not be limited to, the following: if a proposed color is not in conformity with the Design Guidelines or other color approved in writing by the Committee; if the proposed structure is not in harmony with the general surroundings of the Lot or the adjacent structure; if the Committee deems the plans and specifications to be contrary to the interest and the welfare and rights of all or any part of the Property. The decision of the Committee in any of these matters shall be final, and no building or improvement of any kind shall be constructed or placed upon any Lot in the Property, without the prior written consent of the Committee.

(7) In addition to the required approvals by the Committee as provided in this Section 11, if more stringent, the construction, erection, addition, deletion, change or installation of any Improvements shall also require the applicant to obtain the approval of all governmental entities with jurisdiction thereover, and issuance of all required permits, licenses and approvals by all such entities. Without limiting the generality of the preceding sentence, issuance of building permit(s) by the City, if required, shall be a precondition to commencement of any construction or alteration of, addition to, or change in any Improvement.

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

F. Variance. The Committee may authorize variances from compliance with any of its guidelines and procedures when circumstances such as unusual topography, natural obstructions, hardship, or aesthetic or environmental considerations require.

Such variances may be granted only when unique circumstances dictate, and no variance shall:

(1) be effective unless in writing; or

(2) preclude the Committee from denying a variance in other circumstances. For purposes of this Section 11, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

G. Limitation of Liability. Review and approval of any application pursuant to this Section 11 is made on the basis of aesthetic considerations only, and the Committee shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, or for ensuring compliance with building codes and other governmental requirements. The Declarant, the Association, the Board of Directors, the Committee, any member of any of the foregoing shall not be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Lot or any failure to approve any Improvements. In all matters, the Committee and its members shall be defended and indemnified by the Association as provided in Section 4E of this Declaration.

H. Enforcement. Any structure or improvement placed or made in violation of this Section 11 shall be deemed to be nonconforming. Upon written request from the Board of Directors or the Declarant, Owners shall, at their own expense and cost, remove such structure or improvement and restore the Lot to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Board of Directors or its designees shall have the right to enter the Lot, remove the violation, and restore the Lot to substantially the same condition as previously existed. All costs, together with the interest at the maximum rate then allowed by law and administration expenses, may be assessed against the Lot and collected as a Reimbursement Assessment.

(1) Unless otherwise specified in writing by the Committee granting approval, all approvals granted under this Declaration shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work, the Association shall be authorized, after notice to the Owner of the Lot(s) an opportunity to be heard in accordance with Section 4U of the Bylaws and Section 19 of this Declaration, to enter upon the Lot and remove or complete any incomplete work and to assess all costs incurred against the Lot and the Owner of the Lot as a Reimbursement Assessment.

(2) The Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Section and the decisions of the Committee.



I. Soils Condition. The Declarant, the Association and the Committee make no warranty or representation concerning the soil and/or the characteristics or structural stability of soils within any Lot, or in the Property. Each Owner shall assess the sufficiency of the load-bearing capacity of his Lot and the effect of possible soil subsidence upon the structures intended to be placed thereon that are, in part, dependent upon the condition of the underlying soils, footing, foundation and structural design and plans used for construction on the Lot. The Declarant, the Association and the Committee shall not be liable should the footing, foundation or structural design or plan of the structures placed on the Property prove insufficient to prevent structural distress or damage to the structures erected thereon by the Owners caused by soil subsidence, settlement, collapse or expansion. Each Owner agrees to cause construction upon his Lot to be in conformity with the recommendations contained within the soils report prepared for that Lot or the Property, available at the office of the Declarant, or recommendations of an independent soils report prepared by a consultant retained by the Owner.

J. Non-Liability for Approval of Drawings and Specifications. Drawings and specifications shall be approved by the Committee as to style, exterior design, appearance and location, and are not approved for engineering design or for compliance with zoning and building ordinances. By approving such drawings and specifications neither the Committee, the Association, the Board of Directors, the Declarant, nor any Member, officer or director of any of the foregoing, assumes any liability or responsibility therefore, or for any defect in any structure constructed from such drawings and specifications. Neither the Committee, the Association, the Board of Directors, the Declarant, nor any Member, officer or director thereof shall be liable to any Owner or other Person for any damage, loss or prejudice suffered or claimed on account of:

- (1) the approval or disapproval of or failure to approve any drawings and specifications, whether or not defective;
- (2) the construction or performance of any work, whether or not pursuant to approved drawings and specifications;
- (3) the development, or manner of development of any property within the Property;
- (4) the change in the size, configuration or location of any Building Envelope or the changing of the natural grade of any Lot; or
- (5) the execution and filing of an estoppel certificate pursuant to the Design Guidelines (whether or not the facts therein are correct) if the action, with the actual knowledge possessed by him, was taken in good faith.

Approval of drawings and specifications by the Committee, or the approval of any change in the size, configuration or location of any Building Envelope, or a change in the natural grade of any Lot is not, and shall not be deemed to be, a representation or



warranty that the drawings, specifications or changes comply with applicable governmental ordinances or regulations including, but not limited to, zoning ordinances and building codes.

K. Inspection and Recording of Approval. Any member or authorized consultant of the Committee, or any authorized officer, director, employee or agent of the Association, may at any reasonable time enter, without being deemed guilty of trespass, upon any Lot, except the interior of any occupied Unit, after reasonable notice to the Owner, in order to inspect improvements constructed or being constructed on such Lot, or any changes in the grade of the Lot, to ascertain that such improvements or changes have been or are being built or changed in compliance with the Design Guidelines and this Declaration. The Committee shall cause such an inspection to be undertaken within 30 days of a request from any Owner as to his Lot. If such an inspection reveals that the improvements or changes located on such Lot have been completed in compliance with this Section 11 and the Design Guidelines, the Committee shall provide the Owner a notice of approval in Recordable form that, when Recorded, shall be conclusive evidence of compliance with the provisions of this Section 11 and the Design Guidelines as to the improvements or changes described in the Recorded notice, but as to such improvements or changes only.

L. Reconstruction of Common Areas. Any reconstruction by the Association or the Declarant after destruction by casualty or otherwise of Common Areas, which is accomplished in substantial compliance with "as built" plans for the Common Areas, shall not require compliance with the procedural provisions of this Section 11 or the Design Guidelines.

M. Emergencies. Notwithstanding the foregoing, in the event of an emergency or the sudden occurrence of unanticipated conditions that threaten the health, safety or physical well-being of Persons or property within the Property, the Board of Directors, the Committee and the Declarant shall have authority (without the prior approvals described above) to take whatever remedial action may be necessary anywhere in the Property to protect Persons and property until such time as applicable approval procedures provided for in this Section 11 can reasonably be utilized.

N. Fines. The Committee may levy a fine in an amount determined by the Committee and approved by the Board of Directors against any Owner and any Lot subject to assessments under this Declaration for failure to obtain required approval from the Committee or for failure to comply with the requirements of such approvals or Section 4 of this Declaration and may require security deposits to assure compliance with Property restoration and other requirements. Security deposits will be returned to Owners upon compliance, as determined in the reasonable discretion of the Committee.

## 12. General Design Guidelines, Uses and Restrictions.

The following covenants, conditions, restrictions and reservations of easements and rights shall apply to all Lots and Common Areas, the Owners of the Lots and all Occupants.

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A. Residential Use. Lots within the Property may be used only for the construction and occupancy of Single Family detached Units, related buildings and typical residential activities incidental thereto, such as the construction and use of a family swimming pool, a permitted tennis court or a Permitted Business Use. All Lots shall be used, improved, and devoted exclusively to Single Family residential use. No Business Use, multifamily, group home or other nonresidential use shall be made of any Single Family residential Lot. Single Family residential Lots may not be further subdivided or combined to build one Unit.

B. Roof Mounted Machinery. All roof mounted machinery, mechanical equipment, vent pipes, duct work, exhaust fans and other protrusions must be painted to match the finish color of the Unit, the Unit trim or the roof covering material so that it blends in and is compatible with the parent structure. On flat roofed pueblo or territorial style Units, the parapets should be high enough to screen these items from the view of a person driving on the public streets. On pitched roof style homes, no roof mounted machinery or mechanical equipment is permitted.

C. Perimeter Walls. Perimeter walls (which include but are not limited to the wall on Los Cantos Avenue along the Calabacillas Arroyo) and internal side yard walls that are adjacent to a street at the end of a block and have been constructed by the Declarant to the standards of the development plan may not be raised, lowered or otherwise modified in any way. If any of these walls are damaged, the Owner shall be required to reconstruct them within 30 business days to the same original height and using the same colors, patterns, textures and materials as the original.

D. Arroyos. Each Unit shall be developed in such a manner as to comply with the standards of any governmental agency having authority to control arroyos and/or drainage, including but not limited to the Albuquerque Metropolitan Arroyo Flood Control Authority or its successor then in force. Public agencies and/or the Declarant or its designee shall have the right to enter upon all public drainage easements for construction and maintenance of drainage facilities.

E. Setback and Building Lines.

(1) Units. Each Unit that shall be erected on any Lot shall be situated on such Lot in accordance with the building and setback lines as specified by the Design Guidelines and or required by Law. In no event shall any Unit be erected and located upon any such Lot in a manner that violates or encroaches upon the building and setback lines as specified by the Design Guidelines or required by law, unless the law allows for such variance and the Committee approves such a variance.

(2) Walls and Fences. All fences and walls shall be subject to the prior written approval of the Committee, and shall comply with all laws. All fences and walls located anywhere on a Lot must comply with sight distance requirements established by City ordinances or other applicable laws. No fence or wall shall be erected, placed, or altered on any Lot nearer to the street than the minimum building setback line unless the same be a retaining wall of masonry construction that does not rise above the



finished elevation of the earth embankment retained, reinforced, or stabilized, except that this restriction shall not apply to fences or walls that have been approved by the Committee pursuant to this Declaration.

F. Terraces, Eaves, and Detached Garages. For the purpose of determining compliance or noncompliance with the foregoing building set back line requirements, all required set backs shall be measured from the outside edge of the walls of Units and other structures at their closest point to the Lot line. Terraces, stoops, eaves, wing walls, and steps extending beyond the outside wall of a structure shall not be considered a detached garage or accessory outbuilding unless approved, in writing, by the Committee; provided all such detached structures must not encroach upon any side or rear setback line or upon the Lot of an adjacent Owner or upon any easement as set forth in this Declaration.

G. Signs, Flags, Flagpoles and Statues. No sign or emblem of any kind may be kept or placed upon any Lot or mounted, painted or attached to any Unit, wall or other improvement upon such Lot so as to be visible from public view or mounted on any vehicle or trailer parked or driven within the Property or carried by any person or by any other means displayed within the Property except the following:

(1) For Sale or For Rent Signs. An Owner may erect one sign not exceeding 2 feet by 30 inches in total area, fastened only to a stake in the ground and extending not more than 4 feet above the surface of the ground. Such a sign may be erected only on the property being advertised for sale or rent.

(2) Declarant's Signs. Signs or billboards may be erected by the Declarant.

(3) Political Signs. Political signs may be erected upon a Lot by the Owner of such Lot advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal provided that such signs will not be erected more than 45 days in advance of the election to which they pertain and are removed within 2 days after the election.

(4) School and Business Logos. Emblems or bumper stickers advertising a resident's school or business mounted upon vehicles parked or driven within the Property.

(5) Such signs as may be required by legal proceedings, or prohibition of which is precluded by law.

(6) Such signs as may be required for traffic control and regulation of Common Areas.

(7) As may be approved by the Declarant, street and directional signs.

(8) Security monitoring signs – one per lot; security monitoring window emblems – maximum of one per window.

(9) American Flags and Flagpoles. Within the front yard area, but set back at least 15 feet from the front property line, homeowners may display a standard sized American flag from a wall mounted standard or from a residentially scaled flag pole, not to exceed 18 feet in height. Proper flag etiquette must be observed (flag not torn or faded, right side up, lighted at night etc.).

(10) Except as stated in this Section 12 regarding American flags and Builder signs, as used by the Declarant, no advertising flagpoles, standards, flags, banners, balloons, billboards, flashing lights or lighted panel signs are allowed to be placed anywhere within the Property or in the public right-of-ways or landscape areas immediately adjacent to the Property.

(11) Statues. Statues, lawn ornaments and yard decorations of any size or type must be placed in a location that is not Visible from Neighboring Property, unless a waiver is granted by the Committee.

H. Builders Signs.

(1) Builders' signage, advertising and sales facilities used during initial homebuilding in the Project shall comply with the following:

(a) Temporary construction signs shall be limited to one sign per lot and shall not exceed 30" X 24". The sign shall be free standing and its design and location shall be subject to review and approval of the Committee.

(b) Signs shall be single faced, panel type, with a maximum area of 30" X 24". No additional signs may be attached to the main sign or suspended below it.

(c) Only the following information may appear on a construction sign:

Builder's name and phone number  
Architect's name and phone number  
Owner's name  
Address  
"For Sale"  
"Available"

(d) Construction, "For Sale" and "Available" signs must be removed at the time the house is substantially complete or when the Committee directs the sign to be removed.

(e) All Builders shall be limited to not more than two off-lot advertising signs that shall be limited to a maximum area of 32 square feet in total surface area each. These signs shall be complementary to the standard established for the neighborhood and shall be subject to the review and approval of the Committee.

The Declarant or the Association or its agents will have the right to remove any sign, billboard or other advertising structure that does not comply with the foregoing requirements; and in so doing, will not be subject to any liability in connection with such removal.

I. Antennas. Except as may otherwise be permitted by the Committee, subject to the Design Guidelines, no exterior radio antennas, television antennas, or other antennas, satellite dish, or audio or visual reception device of any type shall be placed, erected, or maintained on any Lot except inside a Unit or placed in a location where it will not be visible to a person driving on the public streets; provided, however, that any such devices may be erected or installed by the Declarant during its sales or construction upon the Lots; and provided further, however, that the requirements of this Section shall not apply to those "antennas" (including certain satellite dishes) that are specifically covered by the Telecommunications Act of 1996 and/or applicable regulations, as amended from time to time. As to "antennas" (including certain satellite dishes) that are specifically covered by the Telecommunications Act of 1996 and/or applicable regulations, as amended, the Association shall be empowered to adopt rules and regulations governing the types of "antennas" (including certain satellite dishes) that are permissible under this Declaration and, to the extent permitted by the Telecommunications Act of 1996 and/or applicable regulations, as amended, establishing reasonable, nondiscriminatory restrictions or requirements relating to appearance, safety, location and maintenance. Notwithstanding the above, a satellite dish antenna 39" in diameter or smaller may be installed: (i) on the rear of the Unit or on the enclosed garage located on a Lot; and (ii) at an elevation no higher than 36" above the eaves of the roof. The satellite dish antenna should be in the least conspicuous location on the roof when viewed from the street in front of the Unit from where an acceptable quality signal can be received, or in the rear yard of the Lot with landscape screening and with approval of the Committee.

J. Gas Containers. Propane and butane and other compressed or liquid gas containers larger than 20 pound capacity are prohibited, unless a larger size container is approved in writing by the Committee.

K. Clothes Hanging Devices. No clothes hanging devices exterior to a Unit are to be constructed on the Lot except those of a temporary nature that are screened from view from the front of the Lot.

L. Basketball Backboards. Basketball backboards must be on a rear yard patio not visible from any street.

M. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except: (i) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures, or other improvements; or (ii) that which the Declarant, Builders, government, utility providers or the Association may require for the construction, operation and maintenance of the Property.



**N. Party Walls and Fences.**

(1) For purposes of this Declaration, Party Walls and Party Fences shall mean those walls and fences, including firewalls between two attached Units and garden privacy walls on a common Lot line, which are generally characterized by one of the following:

(a) any wall or fence that lies over the line dividing one piece of real property from another piece of real property owned by a different Person, with some portion of the wall or fence falling on each side of the dividing line;

(b) any wall or fence that lies immediately adjacent to and abutting (but not over) such a dividing line so that the edge of the wall or fence closest to the dividing line falls at or forms the dividing line; or

(c) any wall or fence that forms part of one continuous structure running across more than one Lot without a physical break or separation occurring at property lines.

(2) Except as otherwise provided in this Declaration, the rights and duties of Owners with respect to Party Walls and Party Fences between Lots shall be as follows:

(a) The Owners of contiguous Lots who have a Party Wall or Party Fence shall both equally have the right to use such wall or fence, provided that such use by one Owner does not interfere with the use and enjoyment of the wall or fence by the other Owner.

(b) In the event that any Party Wall or Party Fence is damaged or destroyed through the act of an Owner or any Occupants, agents, guests or invitees of the Owner, or members of the Owner's family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the Party Wall or Party Fence without cost to the Owner of the adjoining Lot in a diligent and timely manner but in no event to exceed 90 days from the date of the damage or destruction. Any dispute over an Owner's liability for such damage shall be resolved as provided in Section 18 of this Declaration, but any liability imposed on an Owner under this Declaration shall not prevent the Owner from seeking indemnity therefore from the Persons causing such damage.

(c) In the event any Party Wall or Party Fence is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining Owner, or any Occupants, agents, guests or invitees of the Owner or members of the Owner's family, it shall be the obligation of all Owners whose Lots adjoin the Party Wall or Party Fence to rebuild and repair it at their joint expense, with the expense being allocated among the Owners in accordance with the frontage of their Lots on the Party Wall or Party Fence in a diligent and timely manner but in no event to exceed 90 days from the date of the damage or destruction.



(d) Notwithstanding anything to the contrary in this Declaration, there shall be no impairment of the structural integrity of any Party Wall or Party Fence without the prior consent of all Owners of any interest in the Party Wall or Party Fence, whether by way of easement, fee or otherwise.

(e) Subject to the Declarant's exemption in Section 14G of this Declaration, any dispute between Owners with respect to the construction, repair or rebuilding of a Party Wall or Party Fence, or with respect to the sharing of the cost thereof, shall be submitted to the Board of Directors or mediated in accordance with Section 18 of this Declaration.

Anything in the foregoing to the contrary notwithstanding:

(f) In the case of Party Walls and Party Fences between Common Areas and Lots, or constructed by the Declarant or the Association on Common Areas within a Lot, the Association shall be responsible for all maintenance thereof, subject to the provisions of this Section 12N(2)(f), except that each Owner of a Lot shall be responsible for patching, painting or otherwise maintaining the portion of any Party Fence or Party Wall facing his Lot or the portion of his Lot that is not a portion of the Common Area.

Walls, fences, and covered or elevated porches and/or patios must be pre-approved by the Committee.

O. Walls. Retaining walls shall not be removed. All walls must be constructed of concrete block, poured in place concrete, or stabilized adobe in conformity with the Design Guidelines or as approved in writing by the Committee. Any retaining wall or property line wall constructed or modified on side lot lines adjacent to another Lot after a Unit is built and purchased must have the prior written approval of the adjacent Lot Owner and submitted to the Committee for approval with initial submittal for approval of the house plans in terms of the following:

(1) All side yard property line walls will be constructed out of concrete block, stuccoed and/or painted so as to be compatible with the entryway.

(2) Profile of the wall including height and length dimensions.

(3) Bid estimates for the wall and how costs will be shared between Lot Owners (usually 50/50).

(4) It is understood that if the Declarant or a Builder is the Lot Owner, the same process of contacting the Owner stated in this Section 12O will remain in force.

(5) Landscape or privacy walls may be constructed of stucco to match the house or of rock with prior Committee approval.





P. Sidewalks. All sidewalks will conform to City specifications and regulations. If an Owner or Occupant or its representative, agent or employee, causes damage to any sidewalk located on or adjacent to such Owner's or Occupant's Lot, the Owner or Occupant must repair or replace the sidewalk so that it will be returned to its original condition.

Q. Parking.

(1) No storage or long term parking of boats, campers, trailers, recreational or commercial vehicles is permitted on any Lot, except as may be stored within an enclosed garage or in side and rear yard areas where they would not be visible to a person driving on the public streets. Short term, infrequent parking (not to exceed 24 hours) of these vehicles is permitted for loading, unloading, cleaning or maintenance.

(2) No parking of inoperable motorized vehicles of any kind shall be allowed on the streets within the Property or on any Lot in an area where they would be visible to a person driving on the public streets, including but not limited to, vehicles with expired license plates, unregistered vehicles, or vehicles on jacks.

(3) No vehicles, including but not limited to recreational, commercial or personal vehicles, trailers, implements or apparatus may be driven or parked in the Common Areas or on any easement unless such vehicle, trailer, implement or apparatus is in use for maintaining such area or easement, provided, however, that this restriction will not apply to driveways or streets intended for vehicular use.

(4) Motorized vehicles in daily use may only be parked on a paved areas. Vehicles will not be permitted to park on any unpaved area at any time.

R. Garbage. No garbage or trash shall be kept, maintained or contained in or upon the Property so as to be visible from another Lot or the Common Areas or the street except temporarily, in containers approved by Association Rules, for pickup. No incinerators shall be kept or maintained on the Property and no trash or garbage shall be burned on the premises. No refuse pile, garbage, compost pile or unsightly objects shall be allowed to be placed, accumulated or suffered to remain anywhere on the Property. No cans, bags, containers or receptacles for the storing or disposal of trash, garbage, refuse, rubble, or debris will be stored, kept, placed or maintained on any Lot where visible from any street except solely on a day designated for removal of garbage and rubbish and on which days only such cans, bags, containers, and receptacles may be placed in front of a residence and beside a street for removal but will be removed from view before the following day. Materials incident to construction of improvements may be stored on Lots during construction by the Declarant. Notwithstanding the foregoing, the Committee may (but shall not be obligated to) designate one or more locations within the Property to be centralized collection points for recycling of trash, garbage, or similarly reusable materials.

S. Removal of Debris. In the event any Owner fails to remove debris or unsightly material, the Declarant or the Association may remove said debris or unsightly material and assess the cost of removal, including a reasonable overhead charge, against the Owner as a Reimbursement Assessment.

T. Air-Conditioning Units. No air-conditioning apparatus will be installed on the ground in front of a residence nor will any air-conditioning apparatus be attached to any front wall or any window of a residence. Evaporative coolers are not permitted.

U. Sight Distance at Intersections. No fence, wall, hedge or shrub planting that obstructs sight lines at elevations between 2 and 6 feet above the roadways will be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them, at points 25 feet from the intersection of the street property lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight line limitations will apply on any Lot within 10 feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree will be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

V. Commercial or Institutional Use. No Lot, and no building erected or maintained on any Lot, will be used for any Business Use, except as permitted in Section 15 of this Declaration. Nothing in this Section 12V shall prohibit an Owner's use of a Unit for conducting a Permitted Business use.

This Section 12V shall not apply to restrict the Declarant's activities in the Property, nor shall it restrict the activities of persons approved by the Declarant involved with the development and sale of property in the Property. Additionally, this Section 12V shall not apply to any Association activity relating to operating and maintaining the Property, including, if any, the Property's recreational and other amenities.

Leasing a Unit for a period of at least 6 months is not a Business Use within the meaning of this subsection.

W. Detached Buildings. No detached accessory buildings, including, but not limited to, detached garages (other than provided herein) and storage buildings, will be erected, placed or constructed upon any Lot without the prior consent of the Committee. Every outbuilding, inclusive of such structures as a storage building or greenhouse will not be visible from the street.

X. Window Treatment. No aluminum foil, reflective film or similar treatment will be placed on windows or glass doors. Temporary window treatments must be removed within 45 days from close of escrow if a sale of a Lot and completed Unit to an Owner.

Y. Athletic and Recreational Facilities. Outdoor athletic and recreational facilities such as playscapes, swing sets and sport courts of a permanent nature will not be placed on any Lot within the Property between the street right-of-way and the front of



a house unless approved by the Committee pursuant to Section 11 of this Declaration. Portable basketball goals may be temporarily placed on or adjacent to the driveway, but within the lot, when in use. Unused portable basketball goals must be stored out of view from the front of the lot.

Z. Security. The Association is not responsible for security of any Unit and each Owner and Occupant of a Lot, and their respective guests and invitees, and each is responsible for their own personal safety and the security of their property. The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to enhance the level of safety or security that each person provides for himself and his property. Neither the Association nor the Declarant shall in any way be considered insurers or guarantors of safety or security within the Property, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

AA. Security Waiver of Liability. No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to the Property, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing all Occupants, guests, agents and licensees of its Lot that the Association, its Board of Directors and committees and the Declarant are not insurers or guarantors of security or safety and that each Person within the Property assumes all risks of personal injury and loss or damage to property, including Lots, Units, and the contents of Lots, resulting from acts of third parties.

BB. Construction Activities. This Declaration will not be construed so as to unreasonably interfere with or prevent normal construction activities during the remodeling of or making of additions to improvements by a Lot Owner and/or contractor (including the Declarant) upon any Lot within the Property. Specifically, no such construction activities will be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with diligence and conforms to usual construction practices in the area. If construction upon any Lot does not conform to usual practices in the area as determined by the Committee in its sole good faith judgment, the Committee will have the authority to obtain an injunction to stop such construction. In addition, if during the course of construction upon any Lot, there is an excessive accumulation of debris of any kind that is offensive or detrimental to the Property or any portion of the Property, then the Committee may contract for or cause such debris to be removed, and the Lot Owner will be liable for all expenses incurred in connection with the removal.

CC. Prohibited Structures. The following structures are prohibited on any Lot:

(1) Guest houses (except as initially constructed by the Declarant or approved by the Declarant as part of the initial construction of a Unit on a Lot);

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(2) Dog runs and animal pens of any kind, if such structures are visible from an adjoining street;

(3) Temporary structures, including, without limitation, any trailer, tent, shack, garage, barn, motor home or mobile home or other outbuilding, and no prefabricated or relocated structure shall be used on any Lot at any time as a residence, either temporarily or permanently. This restriction shall not be interpreted to limit the right of the Declarant or any Builder to use trailers or outbuildings as sales offices, selection center offices, construction offices or material storage facilities.

**DD. Occupants Bound.** The Governing Documents apply to all occupants of and visitors to any Lot. Every Owner shall cause anyone occupying or visiting his Lot to comply with the Governing Documents and shall be responsible for all violations and losses to the Common Areas caused by such Persons, notwithstanding the fact that such Persons also are fully liable and may be sanctioned for any violation.

**EE. Storage of Goods.** Storage (except in approved structures or containers) of furniture, fixtures, appliances, machinery, equipment, or other goods and chattels on the Common Areas (except by the Association), or, if not in active use, any portion of a Lot that is visible from outside the Lot is prohibited. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot, except: (i) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction or modification) of a building, appurtenant structures or other Improvements; and (ii) that which the Declarant or the Association may permit or require for the development, operation and maintenance of the Property.

**FF. Pool Equipment.** All pool equipment stored on any Lot shall be screened so as to be neither Visible from Neighboring Property nor able to be seen through any view fence.

**GG. Unightly or Unkempt Conditions.** All portions of a Lot outside enclosed structures shall be kept in a clean and tidy condition at all times. No rubbish or debris of any kind shall be placed or permitted to accumulate within, upon or adjacent to any Lot so as to render any Lot or any portion of a Lot, or activity on a Lot, unsanitary, unsightly, offensive or detrimental to any other portion of the Property.

(1) Woodpiles or other material shall be stored in a manner so as not to be Visible from Neighboring Property or street and not to be attractive to rodents, snakes, and other animals and to minimize the potential danger from fires.

(2) No nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other portion of the Property.

(3) No activities shall be conducted upon or adjacent to any Lot or within improvements constructed on any Lot that are or might be unsafe or hazardous to any person or property.



(4) No open fires shall be lighted or permitted, except in a contained outdoor fireplace or barbecue unit while attended and in use for cooking purposes.

HH. Repair of Building. No building or structure on the Property shall be permitted to fall into disrepair. Each such building and structure shall at all times be kept by the Owner in good condition and repair and adequately painted or otherwise finished. In the event any building or structure is damaged or destroyed, then, subject to the approvals required by Section 8 of this Declaration, such building or structure shall be promptly repaired or rebuilt, or shall be removed within 12 months of the incident and the portion of the Property upon which such improvements were located shall be cleared and restored to a presentable and safe condition.

II. Violation of Law. No Owner shall permit anything to be done or kept in or upon his Lot or in or upon any Common Areas that will result in the violation of any law or other applicable requirement of governmental authorities.

JJ. Animals. No animals, including, but not limited to, horses or other domestic farm animals, fowl or poisonous reptiles of any kind, may be kept, bred or maintained in any Lot or in or upon any Common Area, except a reasonable number of commonly accepted household pets as determined in the Board of Directors' discretion. No animals shall be kept, bred or raised within the Property for commercial purposes. In no event shall any domestic pet be allowed to run free away from its Owner's Lot. Pets being walked outside a Lot will always be on a leash. All City and County animal and animal control ordinances shall be complied with. Pets that are permitted to roam free, or, in the Association's sole discretion, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to other Owners or Occupants of any portion of the Property shall be removed upon the Board of Directors' request at the Owner's expense. If the Owner fails to honor such request, the Board of Directors may cause the pet to be removed at the Owner's expense.

KK. Nuisances. No Owner shall permit or suffer anything to be done or kept about or within his Lot, or on or about the Property, which will obstruct or interfere with the rights of the Declarant, other Owners, Occupants or authorized Persons to use and enjoy the Common Areas, or annoy them by unreasonable noises or otherwise, nor shall an Owner commit or permit any nuisance. The foregoing shall include a prohibition against speakers, horns, whistles, bells or other devices, except security devices used solely for security purposes, that are audible from neighboring Lots. No Owner shall engage in any activity that materially disturbs or destroys the vegetation, wildlife, or air quality within the Property or that results in unreasonable levels of sound or light pollution. Nothing shall be done or maintained on any part of a Lot that emits foul or obnoxious odors outside the Lot or creates noise or other conditions that tend to disturb the peace, quiet, safety, comfort, or serenity of the occupants and invitees of other Lots. No noxious, illegal, or offensive activity shall be carried on upon any portion of the Property that in the Board of Directors' reasonable determination tends to cause embarrassment, discomfort, annoyance, or nuisance to Persons using the Common Area or to the occupants and invitees of other Lots.



Normal construction activities and parking in connection with the building of improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration unless they are in violation of the Design Guidelines or requirements of the Committee. The Board of Directors, in its sole discretion and power, but subject to the provisions of this Declaration, shall have the right to determine the existence of any unreasonable annoyance or nuisance under this Declaration.

LL. Vehicles.

(1) Campers, Boats and Recreational Vehicles. No campers, boats, marine craft, hovercraft, boat trailers, travel trailers, motor homes, camper bodies, golf carts, and other types of recreational vehicles and non-passenger vehicles, equipment, implements or accessories may be kept on any Lot unless the same are fully enclosed within a garage located on such Lot and/or said vehicles and/or accessories are screened from view from the front of the Lot by a screening structure or fencing not less than 5 feet in height, approved by the Committee, and said vehicles and accessories are in operable condition. The Committee will have the absolute authority to determine from time to time whether a vehicle and/or accessory is operable and fully enclosed and/or screened. Upon an adverse determination by the Committee, the vehicle and/or accessory will be removed and/or otherwise brought into compliance with this Section 12LL. No dismantling or assembling of motor vehicles, boats, trailers, recreational vehicles, or other machinery or equipment will be permitted in any driveway or yard adjacent to a street. This Section 12LL shall not apply to emergency vehicle repairs. Notwithstanding the foregoing, for the purposes of cleaning, loading, unloading, and short-term parking, RVs not exceeding 20' may be parked on the Lot's driveway for a period not exceeding 24 hours no more frequently than once every 30 days.

(2) Commercial Vehicles. No commercial vehicle with a gross vehicle weight ratio greater than 1 ton will be parked on any street right-of-way or Lot except within an enclosed structure that prevents view of the commercial vehicle from adjacent Lots and streets, unless such vehicle is temporarily parked and in use for the construction, maintenance or repair of a residence in the immediate vicinity. No trucks or vehicles of any size that transport inflammatory or explosive cargo may be kept on the Property at any time. No vehicles or similar equipment may be parked on the landscaped areas of any Lot or Common Area, except as provided by Section 12Q of this Declaration.

(3) Motor Vehicles. No vehicles or similar equipment will be parked or stored in an area visible from any street except passenger automobiles, passenger vans, motorcycles, pick-up trucks, and pick-up trucks with attached bed campers that are in operating condition and have current license plates and are in daily use as motor vehicles on the streets and highways of the State of New Mexico. No abandoned, derelict or inoperable vehicles may be stored or located on any Lot.

(4) Unused Vehicles. No unused automobiles or vehicles of any kind shall be stored or parked on any lot except in a closed garage. An "unused vehicle" shall be defined as any vehicle that has not been driven under its own power of a period



of 30 consecutive days or longer. In the event any unused vehicle remains parked on any tract or Lot within the Property boundaries, the Declarant or the Association shall have the right to remove the same after 48 hours notice to the owner of the unused vehicle, the expenses to be charged against the owner of the unused vehicle, and such charges shall become Reimbursement Assessments against the Lot Owner.

MM. Leasing. For purposes of this Declaration, "leasing" is defined as regular, exclusive occupancy of a Unit by any Person other than the Owner, for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or compensation. A Lot may be leased only in its entirety (e.g., separate rooms within the same Unit may not be separately leased). No fraction or portion may be leased. All leasing is subject to Section 17 of this Declaration.

(1) No structure on a Lot other than the primary Unit shall be leased or otherwise occupied for residential purposes, except that structures used for ancillary purposes, such as an "in-law suite" or detached "guest house," may be occupied, but not independently leased. There shall be no subleasing of a Unit or assignment of leases except with the Board of Directors' prior written approval.

(2) All leases shall require that tenants and all occupants of the leased Lot are bound by and obligated to comply with the Governing Documents. The restrictions on lease terms set forth in this Section 12MM shall not apply to Lots owned by the Declarant.

(3) A copy of the lease, receipt signed by tenant acknowledging receipt of the Governing Documents and agreement to abide by the Governing Documents and address and contact information of the property owner together with such other additional information as the Board of Directors may require, shall be given to the Board of Directors or its designee by the Owner within 10 days of execution of the lease. The Board of Directors may adopt reasonable use restrictions and rules regulating leasing and subleasing and the activities of Tenants and subtenants.

(4) No transient tenants may be accommodated in a Unit. All leases, including approved subleases, shall be in writing and shall be for an initial term of at least 6 months, except with the Board of Directors' prior written consent.

(5) The Association has the authority to charge additional fees, including but not limited to penalties, fines and/or increased assessments and/or reimbursement costs, to the Owner of a Residential Lot for non-compliance by his/her tenant with the terms of this Declaration, and such may be collected in accordance with the terms of the Declaration including but not limited to the procedures set forth herein for the collection of Assessments.

NN. Subdivision of a Lot and Time-Sharing. Lots may not be subdivided or their boundary lines changed; provided, the Declarant may subdivide, change the boundary line of, and replat any Lot(s) it owns, and, for so long as the Declarant owns any portion of the Property, convert Lots into Common Areas or Common Areas to Lots



at any time prior to the transfer of title to the Association. Timesharing, fraction-sharing, or similar programs whereby the right to exclusive use of the Lot rotates among members of the program on a fixed or floating time schedule over a period of years is prohibited, except by the Declarant, while the Declarant owns any property within the Property.

OO. Lights. No spotlights, flood lights, neon lamps, mercury lights or other high intensity lighting shall be placed or utilized upon any Lot that, in any manner, will allow light to be directed or reflected on the Common Areas, or any part of the Common Areas, or any other Lot, except as may be expressly permitted by the Association Rules or the Design Guidelines. All exterior lighting shall be maintained and installed to minimize light pollution.

PP. Exterior Holiday Decorations. Lights or decorations may be erected on the exterior of Units in commemoration or celebration of publicly observed holidays provided that such lights or decorations do not unreasonably disturb the peaceful enjoyment of adjacent Owners by illuminating bedrooms, creating noise or attracting sightseers. All lights and decorations must be removed within 30 days after the holiday has ended. Decorations or lights may not be displayed more than 6 weeks in advance of the holiday. The Association will have the right, upon 30 days' prior written notice, to enter upon any Lot and remove exterior lights or decorations displayed in violation of this provision. The Association, and the individuals removing the lights and decorations, will not be liable to the Owner for trespass, conversion or damages of any kind except in the case of intentional misdeeds and gross negligence.

QQ. Garage Doors.

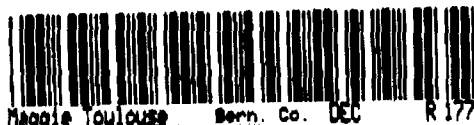
(1) Garages. Garages may be used as a Builder's sales offices prior to permanent occupancy of the Unit; and sales offices will be converted to garages prior to permanent occupancy. With the exception of periods when garages are used by Builders as sales offices, all garages will be maintained for the storage of automobiles, and no garage may be enclosed or otherwise used for habitation, office, or business purposes.

(2) Garage doors will be kept closed at all times except when in immediate use.

(3) No carport will be permitted on a Lot, unless approved by the Committee.

RR. Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind will be permitted upon or in any Lot, nor will oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas will be erected, maintained or permitted upon any Lot. No tank for the storage of oil or other fluids may be maintained on any of the Lots above the surface of the ground.

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SS. Mineral Exploration. No Lot or other Property shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, gas, earth or any earth substance of any kind, except for the drilling, operation and maintenance of any testing, inspection or other water wells approved by the Declarant.

TT. Fires. Other than barbecues, in properly constructed barbecue pits or grills, and fire pits in compliance with the Association Rules and the Design Guidelines, or as otherwise expressly permitted in the Association Rules, no open fires shall be permitted on the Property nor shall any other similar activity or condition be permitted.

UU. No Obstructions to Drainage. No Owner shall erect, grade, construct, maintain, permit or allow any wall or other improvement or other obstruction that would interrupt the drainage of the land or Lot as intended by the approved grading and drainage plan for the portion of the Property within which any Lot is located or within an area designated by a recorded plat, or other recorded instrument, as a "drainage easement" except that, with the prior consent of the applicable governmental agency and the Committee, nonpermanent structures, including walls, may be erected in those areas that contain only underground closed conduit storm drainage facilities.

VV. Establishment and Maintenance of Landscaping. Within 24 months from the date of closing, and thereafter, each Owner's back yard must have no exposed dirt and must be landscaped with rock, grass, concrete, decking, and/or plantings as approved by the Committee pursuant to Section 11 of this Declaration. Each Owner shall keep all shrubs, trees, hedges, grass and plantings of every kind located on his Lot(s) (including setback areas, easements and Common Areas) neatly trimmed, shall keep all such areas properly cultivated and free of trash, weeds and other unsightly material and shall maintain all paved, concrete and other synthetically surfaced areas, including, but not limited to, driveways, roadways and parking areas, in good condition and repair. Artificial grass is allowed, if well maintained and with the prior written approval of the Committee.

(1) All dead vegetation, including trees, shall be removed and replaced by the Owner within 30 days. Plantings are to be trimmed and cut by the Owner as necessary at regular intervals to maintain them in a neat and attractive manner. All landscaping to be installed by an Owner in any location on any Lot shall be first approved by the Committee pursuant to Section 11 of this Declaration.

(2) All landscaping located on any Lot will be properly maintained at all times by the Lot Owner. Each Lot Owner will keep all shrubs, trees, grass, and plantings of every kind on his Lot cultivated, pruned, free of trash, and other unsightly material. All improvements upon any Lot will at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Lot Owner. The Declarant, the Association, and the Committee will have the right at any reasonable time to enter upon any Lot to replace, maintain, and cultivate shrubs, trees, grass, or other plantings as deemed necessary; and to paint, repair, or otherwise maintain any improvements in need thereof, and to charge the cost thereof to the Lot Owner.

WW. Diseases and Insects. No Owner shall permit any thing or condition to exist upon the Property that shall induce, breed or harbor infectious plant disease or noxious insects.

XX. Restriction on Further Subdivision, Property Restrictions and Rezoning.

(1) No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner, and no portion less than all of any such Lot, nor any easement or other interest in the Lot, shall be conveyed or transferred by any Owner, without the prior written approval of the Board of Directors, which approval must be evidenced on the plat or other instrument creating the subdivision, easement or other interest. However, this restriction shall not apply where part of a Lot is transferred to an adjacent Lot Owner for the purpose of increasing the size of the adjacent Lot. This provision shall not, in any way, limit the Declarant from (a) re-platting, subdividing or separating into Lots any property at any time owned by the Declarant, or (b) Recording an instrument to fix the location of any easement reserved by the Declarant in this Declaration not previously depicted with certainty on a plat, map or other instrument of Record.

(2) No further covenants, conditions, restrictions or easements shall be Recorded by any Owner (except the Declarant) or other Person against any Lot without the provisions thereof having been first approved in writing by the Board of Directors and the Declarant (until the end of the Class "B" Control Period occurs and the Declarant no longer owns any Property subject to this Declaration) for consistency with this Declaration and the general plan of development for the Project reflected by this Declaration and the development plan. Any covenants, conditions, restrictions or easements Recorded without such approval being evidenced thereon shall be null and void.

(3) No application for rezoning of any Lot or Parcel, and no application for any variance or use permit, shall be filed with any governmental authority by any Owner (except the Declarant) unless the proposed use of the Lot has been approved by the Board of Directors and the proposed use otherwise complies with this Declaration.

(4) An Owner may own more than one Lot, which, if contiguous, may be combined into a single Lot with the consent of the City and the Board of Directors and the Declarant (until the Declarant no longer owns any Property subject to this Declaration). However, any such combination of Lots, except as provided in this Declaration, shall not reduce or alter the voting rights obtained by ownership of each Lot nor shall it reduce or otherwise alter the amount that would have been assessed against the Owner of such Lots pursuant to the terms hereof in the absence of combination. The Owner of such Lots will be entitled to one Membership in the Association for each Lot that was combined (so long as Memberships may be held by Owners under this Declaration). The combined Assessments attributable to each of the former separate Lots shall be attributable to the entire combination of Lots and the entire combination shall be subject to an assessment lien.



YY. Utility Service. No lines, wires, or other services for the communication or transmission of electric current or power or electromagnetic impulses, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon the Property unless they are contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Committee. Notwithstanding the foregoing but subject to any applicable requirements of the City, the Committee may authorize the erection of microwave towers and similar structures on the Common Areas for centralized reception, transmission and retransmission of microwave and similar signals. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Committee. No individual water supply system or sewage disposal system will be permitted on any Lot, including, but not limited to, water wells, cesspools or septic tanks.

ZZ. Overhead Encroachments. No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way, intersection, adjacent Lot, or Common Area from ground level to a height of eight feet without the prior approval of the Committee.

AAA. Development Activity. Notwithstanding any other provision of this Declaration, the Declarant and its successors and assigns, will be entitled to conduct on the Property all activities normally associated with and convenient to the development of the Property and the construction and sale of Units and other uses on the Property. Notwithstanding any provision in this Declaration, including the Association Rules to the contrary, the Declarant and Builders may construct and maintain upon portions of the Common Areas and other property owned by the Declarant or the Builders such facilities, activities, and things as, in the Declarant's opinion and consistent with the Design Guidelines, may reasonably be required, convenient, or incidental to the construction or sale of Lots. Such permitted facilities, activities, and things shall include, without limitation, business offices, signs, flags (whether hung from flag poles or attached to a structure), model Lots, sales offices, holding or sponsoring special events, and exterior lighting features or displays. In addition, if reasonably required, convenient, or incidental to construction or sales activities, the Declarant and Builders may park vehicles in areas other than garages or driveways, including on streets. The Declarant and Builders shall have easements for access to and use of such facilities at no charge. Builders' rights under this Section 12 of this Declaration are subject to the Declarant's approval.

BBB. Health, Safety and Welfare. In the event any uses, activities, and facilities are deemed by the Board of Directors to be an unreasonable annoyance or a nuisance, or to adversely affect the health, safety or welfare of Owners or Occupants, the Board of Directors may make such rules restricting or regulating their presence on the Property as part of the Association Rules or may direct the Committee to make rules governing their presence on Lots as part of the Design Guidelines. Any such rules shall be consistent with the provisions of this Declaration.



CCC. Model Homes. The provisions of this Declaration which prohibits nonresidential use of Lots and regulates parking of vehicles shall not prohibit the construction and maintenance of model homes by Persons engaged in the construction of Units on the Property and parking incidental to the visiting of such model homes so long as the location of such model homes is approved by the Committee, the opening and closing hours are approved by the Board of Directors, and the construction, operation (including means of access thereto, amount of lighting and number and appearance of signs) and maintenance of such model homes otherwise comply with all of the provisions of this Declaration and the Association Rules. The Committee may also permit Lots and other areas to be used for parking in connection with the showing of model homes so long as such parking and parking areas are in compliance with the ordinances of the County and any rules of the Committee. Any homes constructed as model homes shall cease to be used as model homes at any time the Owner or Occupant thereof is not actively engaged in the construction and sale of single family residences on the Property or the Project and no home shall be used as a model home for the sale of homes not located on the Project. Notwithstanding the foregoing, the provisions of this Section 12CCC shall at all times be subject and subordinate to the provisions of Section 12KK of this Declaration.

DDD. Safe Condition. Without limiting any other provision in this Section 12, each Owner shall maintain and keep his Lot at all times in a safe, sound and sanitary condition and repair and shall correct any condition or refrain from any activity that might interfere with the reasonable enjoyment by other Owners and Occupants of their respective Lots or the Common Areas.

13. Easements and Reservations.

A. Use of Common Areas. Each Owner shall have the nonexclusive right to use the Common Areas in common with all other Owners as required for the purposes of access and ingress to and egress from (and use, occupancy and enjoyment of) any Lot owned by the Owner or Common Areas available for the Owner's use. This right to use the Common Areas for purposes of access and ingress and egress shall, subject to the Association Rules, extend to each Owner, Occupant and the agents, servants, tenants, family members and invitees of each Owner, and shall be appurtenant to each respective Lot, subject to and governed by the provisions of the Governing Documents and such reasonable limitations and restrictions as may from time to time be contained therein.

B. Wall or Fence Easement. There is hereby created an affirmative easement in favor of the Declarant, the Association, and their employees and agents, upon, over and across each Lot affected, for reasonable ingress, egress, installation, replacement, maintenance and repair of a perimeter wall, fence or other boundary control for the Property or a Lot or any Common Area.

C. Declarant Easement. There is hereby created an affirmative, nonexclusive easement appurtenant to those portion(s) of any Additional Property that, by amendment hereto, the Declarant specifies as benefited by this easement (whether



or not ever annexed or ever withdrawn from being Additional Property), for ingress, egress and the installation and maintenance by the Declarant (and its agents, employees and invitees) of utilities and drainage facilities over all Common Areas including, but not limited to private streets and for the Declarant (and such agents, employees and invitees) to go over, under and across, and to enter and remain upon all Common Areas for all purposes reasonably related to the Declarant's rights and obligations under the Declaration, and the Declarant's development, operation, maintenance, management, administration, advertisement, sale, rental and use of the Property and any portion(s) of the Additional Property that the Declarant specifies by amendment as subject to this Declaration.

D. Association Easement. There is hereby created an affirmative, nonexclusive easement in favor of the Association for ingress and egress over all the Additional Property for the purpose of enabling the Association and its contractors, employees, representatives and agents to implement the provisions of this Declaration.

E. Revegetation Easement. There is hereby created an affirmative, nonexclusive easement in favor of the Association, and their contractors and employees, to go upon any Lot to plant or seed, and to provide temporary maintenance for vegetation and landscaping of the Association's choice on any areas of the Lot in order to: (i) replant areas that were cleared, or partially cleared, of vegetation in the past for some reason; or (ii) maintain the aesthetic integrity of the Property; and to provide temporary water to such vegetation at the expense of the party causing the revegetation to be performed or at the expense of the Owner, as a Reimbursement Assessment, if the area was cleared by the Owner or Occupant of such Owner's Lot, or the invitee, guest, contractor, or other authorized visitor of either in violation of this Declaration or the Design Guidelines.

F. Roads. Access roads are dedicated and reserved as shown on the recorded plats of the Property. No additional access roads or driveways, public or private, shall be constructed directly from any Lot or tract to any dedicated right of way, other than as shown on the plats of the Property.

G. Mineral Rights Reservation. All rights to minerals, water, oil and natural gas underlying the property are reserved to the Declaration, except the Declaration waives the right of entry onto the surface of any Lot for purposes of extracting minerals, water, oil and natural gas.

H. Easements. In addition to the easements granted in this Section 13H, the Board of Directors is authorized and empowered to grant upon, across or under real property owned or controlled by the Association such permits, licenses, easements and rights-of-way for sewer lines, water lines, underground conduits, storm drains, television cable and other similar public or private utility purposes, security lines, roadways or other purposes as may be reasonably necessary and appropriate for the orderly maintenance, preservation and enjoyment of the Common Areas or for the preservation of the health, safety, convenience and welfare of the Owners, provided that any damage to a Lot resulting from such grant shall be repaired by the Association at its expense.



14. Rights of Mortgagees.

A. General Provisions. Notwithstanding and prevailing over any other provisions of the Governing Documents, the following provisions shall apply to and benefit each holder of a First Mortgage (and, in the case of Sections 14D and 14F of this Declaration, to the holder of any Mortgage) upon a Lot.

B. Subordination of Lien. Any assessment lien against a Lot shall be subordinate to the lien of a prior Recorded First Mortgage on the Lot, acquired in good faith and for value, except to the extent it secures the amount of any unpaid Assessment (together with any interest, costs, reasonable attorneys' fees and any late charges related thereto) that accrues from and after the date on which a First Mortgagee comes into possession of or acquires title to the Lot, whichever occurs first. If the assessment lien for unpaid Assessments that become payable after Recordation of the First Mortgage and prior to the date the First Mortgagee comes into possession of or acquires title to the Lot is not extinguished to the extent it secures said unpaid Assessments by the process by which the First Mortgagee acquired title to the Lot, neither the First Mortgagee nor a third-party purchaser who acquires title through foreclosure of a Mortgage and the subsequent foreclosure or trustee's sale (or through any equivalent proceedings), shall be liable for the unpaid Assessments. Upon written request to the Association by the First Mortgagee or purchaser who acquires title through foreclosure of a Mortgage and the subsequent foreclosure or trustee's sale (or through any equivalent proceedings), the assessment lien shall be released in writing by the Association to the extent it secures such unpaid Assessments or Reimbursement Assessments, if the proceeds of the foreclosure sale do not yield a price sufficient to pay any and all assessments. Nevertheless, if the Owner against whom the original Assessment or Reimbursement Assessment was made is the purchaser or redemptioner, the lien shall continue in effect and may be enforced by the Association, or by the Board of Directors, for the respective Lot's Assessment or Reimbursement Assessment including those due prior to the final conclusion of any such foreclosure or equivalent proceedings. Further, any such unpaid Assessment or Reimbursement Assessment shall continue to exist as the personal obligation of the defaulting Owner of the respective Lot to the Association, and the Board of Directors may use reasonable efforts to collect the same from the Owner even after he is no longer the Owner of the Lot. Any unpaid Assessments or Reimbursement Assessments that are extinguished pursuant to this Section 14B may also be reallocated by the Board of Directors among all Owners as part of the Common Expenses. Except as above provided (and except for liens for taxes and other public charges that by applicable law are made prior and superior), any assessment lien shall be prior and superior to any and all charges, liens or encumbrances that hereafter in any manner may arise or be imposed on any Lot.

C. No Personal Liability. A First Mortgagee shall not in any case or manner be personally liable for the payment of any Assessment or charge, nor the observance or performance of any covenant, restriction, or rule and regulation of the Association, or any provision of the Articles or the Bylaws, or any management agreement, except for those matters that are enforceable by prohibitory injunction or other equitable actions, not requiring the payment of money, except as specifically provided in this Section 14.



D. Enforcement After Foreclosure Sale. An action to recover Assessments imposed after the foreclosure sale or to abate the breach of any of the covenants, conditions, restrictions, servitudes and reservations in this Declaration may be brought against any purchaser who acquires title through foreclosure of a Mortgage and the subsequent foreclosure or trustee's sale (or through any equivalent proceedings), and the successors in interest to any such purchaser, even though the breach existed prior to the time the purchaser acquired an interest in the Lot.

E. Exercise of Owner's Rights. During the pendency of any proceedings to foreclose a First Mortgage (including any period of redemption), the First Mortgagee, or a receiver appointed in any such action, may, but shall not be required to, exercise any or all of the rights and privileges of the Owner in default including, but not limited to, the right to vote as a Member of the Association in the place and stead of the defaulting Owner if the First Mortgagee or receiver gives the Association written notice of its claimed rights and such evidence as the Board of Directors may reasonably request demonstrating the existence of the claimed rights.

F. Subject to Declaration. At such time as a Mortgagee or third party purchaser comes into possession of or becomes Record Owner of a Lot, the Mortgagee shall be subject to all of the terms and conditions of this Declaration including, but not limited to, the obligation to pay (and be personally liable for) all Assessments and charges accruing thereafter, and the obligation to cure any physical conditions on the Lot that constitute a default under or violation of this Declaration or the Design Guidelines in the same manner as any other Owner, whether or not the condition existed before the Mortgagee came into possession of or became the Record Owner of the Lot.

G. Exemption of the Declarant From Restriction. Notwithstanding anything to the contrary in this Declaration, none of the covenants, conditions, restrictions, easements or other provisions in this Declaration shall be construed or deemed to limit or prohibit any act of the Declarant, its employees, agents and contractors, or parties designated by it in connection with:

- (1) the construction, administration, management, completion, sale or leasing of Lots, Common Areas, the Property, any Additional Property, or
- (2) the administration, management, development or other activities with respect to facilities outside the Property.

15. Limitation on the Declarant's Liability.

Notwithstanding anything to the contrary in this Declaration, each Owner, by accepting title to any portion of the Property and becoming an Owner, and each other Person acquiring an interest in the Property including, but not limited to Mortgagees, acknowledges and agrees that neither the Declarant (including, but not limited to, any assignee of the interest of the Declarant under this Declaration) nor any related entity (or any partner, shareholder, trustee, officer, director, principal or similar Person holding



an interest or position in any such assignee of the interest of the Declarant) shall have any personal liability to the Association, or any Owner, Member, or Mortgagee or other Person, arising under, in connection with, or resulting from (including, but not limited to, resulting from action or failure to act with respect to) this Declaration, the Association or the Committee except to the extent of such Person's interest in the Property; and, in the event of a judgment, no execution or other action shall be sought or brought thereon against any other assets, nor be a lien upon such other assets, of the judgment debtor.

16. Amendment.

A. Writing Required. Amendments to this Declaration shall be made by an instrument in writing. The amendment when adopted shall bear the signature of the president or a vice president of the Association and shall be attested by the secretary or an assistant secretary of the Association, who shall state whether the amendment was properly adopted, and shall be acknowledged by them as officers of the Association. Amendments once properly adopted shall be effective upon Recording in the appropriate governmental offices, or at such later date as may be specified in the amendment.

B. Required Approvals.

(1) The provisions of this Declaration may not be amended at any time (including after the end of the Class "B" Control Period) without the written consent of the Declarant. The Declarant may, but shall not be obligated to, release any or all of its consent rights under this section by Recorded instrument.

(2) Before the conveyance of the first Lot to a Person other than a Builder, the Declarant may unilaterally amend this Declaration.

(3) After the conveyance of the first Lot to a Person other than a Builder but before the end of the Class "B" Control Period, the Declarant may unilaterally amend this Declaration:

(a) to bring any provision into compliance with any applicable governmental statute, rule, regulation or judicial determination;

(b) to enable any reputable title insurance company to issue title insurance coverage on the Lots;

(c) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on the Lots, provided that any such amendment may not adversely affect the title to any Lot unless the Owner consents to the amendment in writing;

(d) to accommodate formation of the PID, provided such amendment does not result in materially increased cost to any Owner;

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(e) to correct errors, omissions or inconsistencies;

(f) to add Additional Property, provided the Declarant obtains the consent of the Owner of the Additional Property being added, and provided that nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any Additional Property;

(g) to withdraw any portion of the Property from the coverage of this Declaration, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Property. Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn; provided that, if any of the withdrawn property is Common Area, the Association shall consent to such withdrawal; or

(h) for any other purpose, provided such amendment is not unequivocally contrary to the overall, uniform scheme of development for the Property and provided such amendment does not result in materially increased cost to any Owner,

(4) After the end of the Class "B" Control Period, amendments may be adopted only with the affirmative vote or written consent of 90% of the Class "A" Member Representatives and with the affirmative vote or written consent of the Declarant, so long as the Declarant has not released Declarant's consent rights by Recorded Instrument. Notwithstanding the preceding sentence, in any vote by the Class "A" Member Representatives, the percentage of votes necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under the clause or provision.

C. Legislative Change. Without limiting the Declarant's reserved right to amend this Declaration as provided in Section 16B(2) of this Declaration except as expressly limited thereby, the Declarant specifically reserves the right to amend all or any part of this Declaration to such an extent and with such language as may be requested by the Federal Housing Administration ("FHA") or the Veterans Administration ("VA") and to further amend to the extent requested by any other federal, state or local governmental agency, department, board or commission that requests such an amendment as a condition precedent to such entity's approval of this Declaration (for example, but not as a limitation, to obtain authorization from state or federal authorities to sell or offer to sell any portion(s) of the Property within the state or in interstate commerce), or by any federally or state chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s) or any portions thereof. It is the desire of the Declarant to retain control of the Association and its activities for so long as the Declarant desires to do so. If any amendment requested pursuant to the provisions of this Section 16C of this Declaration, or if any federal, state or other legislation hereafter enacted, diminishes or alters such control, the Declarant shall have the right to prepare, provide for and adopt as an amendment hereto, other and different control provisions to achieve said control or equivalent control.



D. Acceptance of Amendment Provision. Every Owner and any Mortgagee of a Lot, by acceptance of a deed or other conveyance of a Lot, thereby agrees that this Declaration may be amended as provided in this Section 16.

17. Accommodation of Public Improvement District.

A. Resale Moratorium. For a period of twenty-four months beginning on the date this Declaration is Recorded in the real property records of Bernalillo County, New Mexico (the "Recording Office"), no Owner may resell any part of the Property or the Additional Property to any Person who has not signed and delivered the PID Consent Documents (defined below) to Declarant. The Declarant may, at its option, unilaterally extend the moratorium described in this paragraph for two additional six-month periods by recording a notice of extension of the moratorium in the Recording Office before the end of the current moratorium period. If the Declarant does not extend any moratorium as described in this paragraph, the moratorium will expire at the end of the current period. The Declarant may terminate any moratorium early by recording in the Recording Office a notice that the moratorium period has ended. The recording of a notice of formation of the Saltillo Public Improvement District will automatically terminate any moratorium.

B. Exemption from Moratorium. An Owner will be exempt from the moratorium if the Owner obtains from the resale purchaser a signed and, as applicable, notarized Notice of Special Levy, Consent to Formation of Saltillo Public Improvement District, General Durable Limited Power of Attorney and Signature Page to Petition for Approval of Saltillo Public Improvement District (collectively, the "PID Consent Documents"), all in the form attached to this Declaration as Exhibit "B".

C. Notice of PID Formation. At any time for a period of thirty-six months (the "Formation Period") beginning on the date of the recording of this Declaration in the Recording Office, the Declarant may unilaterally record a notice of formation of the Saltillo Public Improvement District to give notice to subsequent purchasers of the Property of the formation of the Saltillo Public Improvement District and special levies associated with the same.

D. Restriction on Leasing. Notwithstanding any other provisions of this Declaration, no Owner may lease any part of the Property or the Additional Property to any other Person before the expiration of the Formation Period or the recording of a notice of formation of the Saltillo Public Improvement District, whichever comes first. An Owner will be exempt from this restriction if the Owner obtains from each member of the lessee's household age 18 or older a signed Consent to Formation of Saltillo Public Improvement District in the form attached to this Declaration as Exhibit "C". **Violation of this Paragraph 17D will subject the Owner to a penalty of \$1,000 per day, which penalty shall be a binding personal obligation of such Owner, enforceable at law, and shall be a lien on such Owner's Lot enforceable as provided in this Declaration.**



18. General Provisions.

A. Notices. Notices to the Association provided for in the Governing Documents shall be in writing and shall be addressed to the Association at the address specified by the Board of Directors. The Association may designate a different address or addresses for notice by giving written notice to all Owners. If applicable law, this Declaration or a resolution of the Board of Directors requires notice of any meeting or of any action or proposed action by the Association, the Board of Directors or any committee, to be given to any Owner or Occupant then, unless otherwise specified in this Declaration or in the resolution of the Board of Directors, or in the Bylaws, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within the County. This Section 18A shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

B. Captions and Exhibits; Construction. Captions given to various Sections of this Declaration are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions of this Declaration. Any exhibits referred to in this Declaration are incorporated as though fully set forth where such reference is made. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Property as provided in this Declaration.

C. Severability. If any provision of the Governing Documents, or any section, clause, sentence, phrase or word, or the application of the Governing Documents in any circumstance, is held invalid, the validity of the remainder of the Governing Documents, and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances, shall not be affected thereby, and the remainder of the Governing Documents shall be construed as if such invalid part were never included in the Governing Documents.

D. Rule Against Perpetuities. If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue until 21 years after the death of the last survivor of the now-living descendants of New Mexico Governor Bill Richardson and New Mexico Senators Pete Domenici and Jeff Bingaman.

E. Mortgage of Lots and Parcels. Each Owner shall have the right, subject to the provisions of this Declaration, to make separate Mortgages for his respective Lot. No Owner shall have the right or authority to make or create or cause to be made or created any Mortgage or other lien or security interest, on or affecting the Property or any part of the Property, except only to the extent of his Lot.

F. Power of Attorney. Unless otherwise specifically restricted by the provisions of this Declaration, in any instance in which the Association is empowered to take any action or do any act including, but not limited to, action or acts in connection with the Common Areas or sale of the Common Areas, which may at any time be



deemed to require the act of an Owner or Member, the Owners and Members and each of them hereby constitute and appoint the Association (acting through the Board of Directors) as their attorney-in-fact, as may be appropriate, for the purposes of taking such action or doing such acts including, but not limited to, executing, acknowledging and delivering any instruments or documents necessary, appropriate or helpful for such purposes. It is acknowledged that this power of attorney is irrevocable and coupled with an interest and by becoming an Owner or a Member of the Association or by the acceptance of a deed for a Lot or by signing a contract for purchase of a Lot or by succeeding in any other manner to the ownership of a Lot, or any interest therein, or a Membership in the Association, each Owner and Member shall be deemed and construed to have ratified and expressly granted the above power of attorney.

G. Gender. Masculine, feminine and neuter references herein each shall include the others as the context requires.

H. Interpretation. Except for judicial construction, the Association, by its Board of Directors, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by the provisions of this Declaration.

I. References to Declaration in Deeds. Deeds to and instruments affecting any Lot or any part of the Property may contain the provisions of this Declaration by reference to this Declaration; but regardless of whether any such reference is made in any deed or instrument, all of the provisions of this Declaration shall be binding upon the grantee-Owner or other person claiming through any instrument and his heirs, executors, administrators, successors and assigns as though set forth at length in such instrument.

J. New Mexico Law. The Governing Documents will be construed in accordance with New Mexico law.

K. Right To Use Common Area for Special Events. As long as the Declarant owns any Property, the Declarant shall have the right to use all Common Areas, including recreational facilities, to sponsor special events for charitable, philanthropic, and social purposes as determined by the Declarant in its sole discretion. Any such event shall be subject to the following conditions:

(1) The availability of the facilities for the period of time requested by the Declarant, provided that the request is not submitted to the Association more than 6 months prior to the special event.

(2) The Declarant shall pay all costs and expenses incurred and shall indemnify the Association against any loss or damage resulting from the special event (as per the insurance requirements for such events set forth in this Declaration) other than customary use charges that shall be waived; and

(3) The Declarant shall return the facilities and personal property owned by the Association and used in conjunction with the special event to the Association in the same condition as existed prior to the special event.

(4) The Declarant shall have the right to assign its rights contained in this Section 18K to charitable organizations or foundations selected by the Declarant. The Declarant's right to use the Common Areas for special events shall be enforceable by injunction, by any other remedy in law or equity, and by the terms of this Declaration.

(5) The Declarant's right to use the Common Areas for special events shall be enforceable by injunction, by any other remedy in law or equity, and by the terms of this Declaration.

L. Enforcement. Each Lot Owner shall comply strictly with the covenants, conditions, restrictions, and easements set forth in this Declaration. In the event of a violation or breach, or threatened violation or breach, of any of this Declaration, the Declarant, the Committee, the Association, or any Lot Owner, jointly or severally, shall have the right to proceed at law or in equity for the recovery of damages, reasonable monetary fines and other sanctions for violations of this Declaration, for injunctive or other equitable relief, or all of the foregoing. If any Owner or the Association is the prevailing party in any litigation involving this Declaration, then that party also has a right to recover all costs and expenses incurred (including reasonable attorney's fees and paralegal fees together with any applicable sales or use tax thereon). Failure by the Declarant, the Committee, the Association or any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

In addition to the above rights, the Association and the Committee shall have a Right of Abatement if the Owner fails to take reasonable steps to remedy any violation or breach within 30 days after written notice sent by certified mail. A right of abatement, as used in this Section 18L means the right of the Association or Committee, through its agents and employees, to enter at all reasonable times upon any Lot or Structure, as to which a violation, breach or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove or repair such violation, breach, or other condition that may exist thereon contrary to the provisions hereof, without being deemed to have committed a trespass or wrongful act by reason of such entry and such actions; provided such entry and such actions are carried out in accordance with the provisions of this Section 18L. The cost thereof, including the costs of collection and reasonable attorneys' fees, with interest thereon at the Default Rate of Interest, shall be a binding personal obligation of such Owner, enforceable at law, and shall be a lien on such Owner's Lot enforceable as provided in this Declaration.

M. Term; Termination. Unless terminated as provided in this Section 18M, this Declaration shall have perpetual duration. If New Mexico law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive periods of 20 years each, unless terminated as provided in this



Declaration. This Declaration may be terminated by the Declarant without the approval or consent of any other Person before conveyance of the first Lot to a Person other than a Builder. After the conveyance of the first Lot to a Person other than a Builder but before the end of the Class "B" Control Period, this Declaration may not be terminated. After the Class "B" Control Period, this Declaration may be terminated upon the consent of 90% of Class "A" Member Representatives. If the necessary votes are obtained, the Board of Directors shall cause to be Recorded with the County Clerk of the County, and/or other appropriate governmental offices, a certificate of termination. Thereupon, this Declaration, as of the date of Recordation of the certificate of termination (or such later date as may be specified in the certificate of termination), shall have no further force and effect, and the Association shall be dissolved. This Declaration may not be terminated at any time (including after the end of the Class "B" Control Period) without the written consent of the Declarant. The Declarant may, but shall not be obligated to, release any or all of its consent rights under this section by Recorded instrument.

N. The Declarant's Disclaimer of Representations. Notwithstanding anything to the contrary in this Declaration, the Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of the Property and the Association can or will be carried out, or that any land now owned or hereafter acquired by the Declarant is or will be subjected to this Declaration, or that any such land (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such land is once used for a particular use, such use will continue in effect.

O. Zoning and Plan. Each Owner, by accepting title to a Lot and becoming an Owner, and each other Person, by acquiring any interest in the Property, acknowledges awareness that the Project is an extensive project, the development of which is likely to extend over many years, and agrees, so long as he is the Owner of the Lot, or holds any other interest in the Property, not to protest or otherwise object to: (i) zoning or changes in zoning or to uses of, or changes in density of the Property; or (ii) changes in the development plan or any conceptual plan for Property, provided, in either case, the zoning, use, density, or conceptual, development or plan revision is or would be lawful (including, but not limited to, lawful by special use permit, variance or the like) and is not inconsistent with what is permitted by this Declaration (as amended from time to time). Notwithstanding anything to the contrary in this Section 18O, the provisions of this Section 18O shall be enforceable only to the extent not in violation of any applicable provision of law.

19. Dispute Resolution and Limitation on Litigation.

A. Agreement to Avoid Litigation. The Declarant, the Association, its officers, directors, and committee members, all Persons subject to this Declaration, any Builder, and any person or persons not otherwise subject to this Declaration who agree to submit to this Section 19 (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that with regard to those claims, grievances or disputes described in Section 19B of this



Declaration they shall use the procedures set forth in Section 19C of this Declaration in a good-faith effort to resolve such claims.

B. Claims. Unless specifically exempted below, all claims, grievances and disputes arising out of or relating to the interpretation, application or enforcement of the Governing Documents, or the rights, obligations and duties of any Bound Party under the Governing Documents or relating to the design or construction of improvements on the Properties, shall be subject to the provisions of Section 19D of this Declaration, except those stated in Section 19C of this Declaration.

C. Exclusions. Notwithstanding the above, the following shall not be Claims and shall not be subject to the provisions of Section 19D of this Declaration:

(1) Any suit by the Association or the Declarant against any Bound Party to enforce the provisions of Section 6 of this Declaration;

(2) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Sections 12 (except for Section 12K2(b)) and 13 of this Declaration;

(3) any suit between Owners that does not include Declarant or the Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Governing Documents;

(a) any claim that the Committee has improperly approved plans for construction of improvements pursuant to Section 11 of this Declaration;

(b) any suit in which any indispensable party is not a Bound Party; and

(c) any suit that otherwise would be barred by any applicable statute of limitations.

(d) any fine, penalty or imposition made against an Owner pursuant to Section 4U of the Bylaws by the Board of Directors, which shall be governed by the appeal procedures in Section 4U of the Bylaws.

D. Mandatory Procedures.

(1) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (collectively, the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

(a) the nature of the Claim, including the Persons involved and Respondent's role in the Claim.

(b) the legal basis of the Claim (i.e., the specific authority upon which the Claim arises);

(c) Claimant's proposed remedy; and

(d) that Claimant will meet with Respondent to discuss, in good faith, ways to resolve the Claim.

E. Negotiation and Mediation. The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good-faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board of Directors may appoint a representative to assist the Parties in resolving the dispute by negotiation.

F. Unresolved Claims. If the Parties do not resolve the Claim within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) (the "Termination of Negotiations"), Claimant shall have 30 additional days to submit the Claim to mediation under the auspices of an independent agency providing dispute resolution services in the City ("Mediation") or to appeal the matter to the Board of Directors or District Court for a final decision.

G. If Claimant does not submit the Claim to the Board of Directors, the District Court, or Mediation within 30 days after Termination of Negotiations or does not appear for the Mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

H. Any settlement of the Claim through mediation shall be documented in writing by the mediator and executed by the Parties. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation process, or within such time as determined by the mediator, the mediator shall issue a notice of termination of the mediation proceedings (the "Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit on the claim.

I. Allocation of Costs of Resolving Claims. Each Party shall bear its own, costs of mediation, including any attorneys' fees incurred, and each Party shall share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the arbitration proceeding (the "Post Mediation Costs").

J. Enforcement of Resolution. After resolution of any Claim through negotiation or mediation, if any Party fails to abide by the terms of any agreement, then any other Party may file suit to enforce such agreement. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs





incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees and court costs.

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IN WITNESS WHEREOF, the Declarant has caused this instrument to be duly executed.

SALTILLO COMMUNITIES LLC, a New Mexico limited liability company

By: SAPPHIRE, LLC, a New Mexico limited liability company, Member

By: [Signature]  
Name: Vincent Pizzonia  
Title: Member

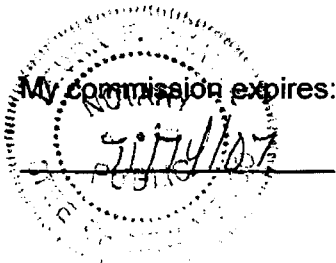
By: [Signature]  
Name: S. H. Gray  
Title: Member/Manager

By: [Signature]  
Rex/Wilson, Member

STATE OF NEW MEXICO  
COUNTY OF Sandoval BERNALILLO LC

This instrument was acknowledged before me on April 16, 2007, by Vincent Pizzonia as Member of Sapphire, LLC, a New Mexico limited liability company, member of Saltillo Communities LLC, a New Mexico limited liability company.

[Signature]  
Notary Public



STATE OF NEW MEXICO  
COUNTY OF BERNALILLO <sup>Sandoval</sup>

This instrument was acknowledged before me on April 16, 2007, by Scott Grady, as Member/Manager of Sapphire, LLC, a New Mexico limited liability company, member of Saltillo Communities LLC, a New Mexico limited liability company.

[Signature]  
Notary Public

My commission expires:

7/14/07

STATE OF NEW MEXICO  
COUNTY OF BERNALILLO

This instrument was acknowledged before me on April 3, 2007, by Rex Wilson, Member of Saltillo Communities LLC, a New Mexico limited liability company.

[Signature]  
Notary Public

My commission expires:

4-29-08

OFFICIAL SEAL  
PAM DOERING  
Notary Public  
State of New Mexico  
My Commission Expires 4-29-08



**Exhibit "A"**

Certain tracts of land situate within Sections 27, 33, and 34, Township 10 North, Range 4 East, NMPM, City of Albuquerque, Bernalillo County, New Mexico, as the same are shown and designated on the following:

1. Plat for Unit 1 filed in the Office of the Bernalillo County Clerk on June 1, 2006, as Document No. 2006079956, Book 2006C, Page 1706.
2. Plat for Unit 2 filed in the Office of the Bernalillo County Clerk on June 08, 2006, as Document No. 2006083764, Book 2006C, Page 181.

**Exhibit "B"**  
**(PID Consent Documents)**



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Maggie Toulouse

Bern. Co. DEC

R 177.00 BK-R136 Pa-1517

**NOTICE OF SPECIAL LEVY  
SALTILLO PUBLIC IMPROVEMENT DISTRICT  
CITY OF ALBUQUERQUE  
COUNTY OF BERNALILLO, NEW MEXICO**

TO: THE PROSPECTIVE PURCHASER OF THE REAL PROPERTY KNOWN AS:

UPC: \_\_\_\_\_ TRACT: \_\_\_\_\_ LOT: \_\_\_\_\_

THIS IS A NOTIFICATION TO YOU PRIOR TO YOUR ENTERING INTO A CONTRACT TO PURCHASE THIS LOT. THE SELLER IS REQUIRED TO GIVE YOU THIS NOTICE AND TO OBTAIN A COPY SIGNED BY YOU TO INDICATE THAT YOU HAVE RECEIVED AND READ A COPY OF THIS NOTICE.

This lot will be subject to a special levy, which is in addition to the regular property taxes and any other charges and benefit assessments on the parcel. This special levy will only be imposed on parcels within the Saltillo Public Improvement District of the City of Albuquerque (the "District"). If you fail to pay this levy when due each year, the lien of this special levy may be foreclosed upon, and the property may be sold, six months after written notice of delinquency.

The special levy will be used to provide public facilities that are likely to particularly benefit the property. YOU SHOULD TAKE THIS LEVY AND THE BENEFITS FROM THE PUBLIC FACILITIES AND ENHANCED SERVICES FOR WHICH IT PAYS INTO ACCOUNT IN DECIDING WHETHER TO BUY THIS PROPERTY.

The maximum initial annual special levy that may be levied against this parcel to pay for public facilities ("Maximum Annual Special Levy A") is \$850 during the 2007-2008 fiscal year. This special levy for public facilities will be levied each year until all authorized facilities are built and all special levy bonds are repaid, but in any case not more than 30 fiscal years after the bonds have been issued. Commencing in fiscal year 2008-2009 and each year after that, the special levy amounts may increase by no more than two percent (2%) annually, except that the amount of special levy actually imposed may increase by up to ten percent (10%) as a result of the delinquency or default by the owner of any other parcel within the Public Improvement District.

The authorized facilities that are being paid for by the special levy, and by the money received from the sale of bonds that are being repaid by the special levy, are:

- Storm drainage and flood control systems, including collection, transport, diversion, detention pond and discharge;
- Improvements to McMahan Boulevard;
- Residential roads inside the District, including pavement, sidewalk, and curb and gutter;



- Planning, design, engineering, construction, testing, construction management, inspection, fees and related incidental expenses; and
- Earthwork and grading improvements.

Not all of these facilities have yet been constructed or acquired, and it is possible that some may never be constructed or acquired.

**WHEN THE SALTILLO PUBLIC IMPROVEMENT DISTRICT GENERAL PLAN IS COMPLETE, YOU MAY OBTAIN A COPY FROM THE GOVERNING BOARD OF THE DISTRICT OR FROM YOUR TITLE COMPANY. THERE MAY BE A CHARGE FOR THIS DOCUMENT NOT TO EXCEED THE ESTIMATED REASONABLE COST OF PROVIDING THE DOCUMENT.**

**I (WE) ACKNOWLEDGE THAT I (WE) HAVE READ THIS NOTICE AND RECEIVED A COPY OF THIS NOTICE PRIOR TO ENTERING INTO A CONTRACT TO PURCHASE OR DEPOSIT RECEIPT WITH RESPECT TO THE ABOVE-REFERENCED PROPERTY. I (WE) UNDERSTAND THAT I (WE) MAY TERMINATE THE CONTRACT TO PURCHASE OR DEPOSIT RECEIPT WITHIN THREE DAYS AFTER RECEIVING THIS NOTICE IN PERSON OR WITHIN FIVE DAYS AFTER IT WAS DEPOSITED IN THE MAIL BY GIVING WRITTEN NOTICE OF THAT TERMINATION TO THE OWNER, SUBDIVIDER, OR AGENT SELLING THE PROPERTY.**

DATE: \_\_\_\_\_, 2007.

Signature: \_\_\_\_\_  
Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_  
Printed name: \_\_\_\_\_

**CONSENT TO FORMATION  
OF THE SALTILLO PUBLIC IMPROVEMENT DISTRICT**

Pursuant to the New Mexico Public Improvement District Act (the "Act") and applicable ordinances of the City of Albuquerque (the "City Ordinances"), the undersigned property buyer (the "Buyer") consents to the formation and completion of the Saltillo Public Improvement District (the "District") and agrees:

1. Area of District. The proposed District consists of approximately 220 acres of land located within Saltillo, a master-planned community within the corporate boundaries of the City of Albuquerque. The proposed District is described by the legal description on the attached Exhibit "A".

2. Ownership. On or about the date of this Consent to Formation of the Saltillo Public Improvement District (the "Consent"), Buyer is entering or has entered an agreement to purchase the real property that is described in the attached Exhibit "B", which real property is located within the proposed District.

3. Purpose. The District is proposed to be formed for the purpose of funding costs of certain public improvements in Saltillo to be more fully described in Saltillo Communities LLC's Petition for Formation of the Saltillo Public Improvement District (the "Petition").

4. Consent. The Buyer, with full knowledge of its rights consented to or waived hereunder, hereby expressly:

(a) Consents to the Petition;

(b) Consents to the approval by the City Council of the City of Albuquerque, New Mexico, to a formation resolution of the District;

(c) Waives any requirement for notice, publication or posting of a District formation resolution pursuant to Section 5-11-4 NMSA 1978 or other provisions of the Act or the City Ordinances;

(c) Waives all protest rights under Section 5-11-5 NMSA 1978 or other provisions of the Act or the City Ordinances;

(d) Consents to the rates and methods by which the special levies for the District shall be levied, extended, and collected; provided the maximum amount of the special levy bonds issued for the District does not exceed \$6,000,000 and the maximum initial yearly assessment per single-family lot does not exceed \$850;

(e) Waives the requirement for a formation election pursuant to Section 5-11-7 NMSA 1978 or other provisions of the Act or the City Ordinances; and





(f) Agrees to execute, at Closing, such additional documents as are reasonably necessary to cause or complete formation of the District, including a power of attorney and a signature page to the Petition.

5. Benefit to Buyer. The Buyer acknowledges that the public improvements contemplated for the District specifically benefit the Buyer's property.



DATED: \_\_\_\_\_, 2007.

PROPERTY BUYER:

\_\_\_\_\_

Signature

\_\_\_\_\_

Signature

ADDRESS

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



**EXHIBIT A**

**(Legal Description of Proposed District)**

Certain tracts of land situate within Sections 27, 33, and 34, Township 10 North, Range 4 East, NMPM, City of Albuquerque, Bernalillo County, New Mexico, as the same are shown and designated on the Plat for Unit 1 filed in the Office of the Bernalillo County Clerk on June 1, 2006, as Document No. 2006079956, Book 2006C, Page 1706 and the Plat for Unit 2 filed in the Office of the Bernalillo County Clerk on June 08, 2006, as Document No. 2006083764, Book 2006C, Page 181.



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Maggie Toulouse Bernal. Co. DEC

**EXHIBIT B**  
**(Legal Description of the Real Property  
Being Purchased by Buyer)**



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Bern. Co. DEC

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GENERAL DURABLE LIMITED POWER OF ATTORNEY

The undersigned home buyer(s) do hereby appoint Saltillo Communities LLC, a New Mexico limited liability company (the "Agent"), of Bernalillo County, New Mexico, as my/our agent and attorney-in-fact to act in my/our name and on my/our behalf in doing the following:

1. To sign my/our name in connection with a Petition for the formation of the Saltillo Public Improvement District to be submitted to the City of Albuquerque (the "Petition").

2. To sign my/our name in connection with any documentation to be submitted in connection with the Petition that, in the Agent's view, is necessary or convenient to the processing and approval of the Petition.

3. To do all acts as are necessary or convenient, in the Agent's view, in connection with the processing and approval of the Petition.

4. This power of attorney is coupled with an interest and shall be irrevocable.

5. The term of this General Durable Limited Power of Attorney shall commence on \_\_\_\_\_, 200\_\_\_\_, and shall expire twenty-four months after that date.

6. This General Durable Limited Power of Attorney is intended to create a durable general power of attorney as provided in Section 45-5-501 NMSA 1978. If either or both of us are at any time incompetent, incapacitated, or unable to act on our own behalf because of any physical or mental infirmity or mysterious disappearance, duress or for any other reason, the authority of the Agent will continue in effect; the authority of the Agent will not lapse by reason of the appointment of a guardian or conservator of my person or my property.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, at \_\_\_\_\_  
County, New Mexico.

HOME BUYER: \_\_\_\_\_

HOME BUYER: \_\_\_\_\_



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Bk-R138 Pg-1517

STATE OF NEW MEXICO

COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_,  
200\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires:  
\_\_\_\_\_

STATE OF NEW MEXICO

COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_,  
200\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires:  
\_\_\_\_\_



The undersigned home buyer(s) have received a copy of this Petition; have been given the opportunity to see and read all exhibits to this Petition; and irrevocably consent to this Petition and the formation of the District.

HOME BUYER(S):

Lot(s) purchased: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Lot(s) purchased: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Exhibit "C"**  
**(Consent to Formation of Saltillo Public Improvement District (Lessee))**



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Bern. Co. DEC

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Bk-A136 Pa-1517



**CONSENT TO FORMATION  
OF THE SALTILLO PUBLIC IMPROVEMENT DISTRICT  
(Lessee)**

Pursuant to the New Mexico Public Improvement District Act (the "Act") and applicable ordinances of the City of Albuquerque (the "City Ordinances"), the undersigned property lessee (the "Lessee") consents to the formation and completion of the Saltillo Public Improvement District (the "District") and agrees:

1. Area of District. The proposed District consists of approximately 220 acres of land located within Saltillo, a master-planned community within the corporate boundaries of the City of Albuquerque. The proposed District is described by the legal description on the attached Exhibit "A".

2. Ownership. On or about the date of this Consent to Formation of the Saltillo Public Improvement District (the "Consent"), Lessee is entering or has entered an agreement to lease the real property that is described in the attached Exhibit "B", which real property is located within the proposed District.

3. Purpose. The District is proposed to be formed for the purpose of funding costs of certain public improvements in Saltillo to be more fully described in Saltillo Communities LLC's Petition for Formation of the Saltillo Public Improvement District (the "Petition").

4. Consent. The Lessee, with full knowledge of its rights consented to or waived hereunder, hereby expressly:

(a) Consents to the Petition;

(b) Consents to the approval by the City Council of the City of Albuquerque, New Mexico, to a formation resolution of the District;

(c) Waives any requirement for notice, publication or posting of a District formation resolution pursuant to Section 5-11-4 NMSA 1978 or other provisions of the Act or the City Ordinances;

(c) Waives all protest rights under Section 5-11-5 NMSA 1978 or other provisions of the Act or the City Ordinances;

(d) Consents to the rates and methods by which the special levies for the District shall be levied, extended, and collected; provided the maximum amount of the special levy bonds issued for the District does not exceed \$6,000,000 and the maximum initial yearly assessment per single-family lot does not exceed \$850;

(e) Waives the requirement for a formation election pursuant to Section 5-11-7 NMSA 1978 or other provisions of the Act or the City Ordinances; and



5. Benefit to Lessee. The Lessee acknowledges that the public improvements contemplated for the District specifically benefit the Lessee's property.

[SIGNATURES NEXT PAGE]



DATED: \_\_\_\_\_, 200\_\_.

PROPERTY LESSEE:

\_\_\_\_\_

Signature

\_\_\_\_\_

Signature

\_\_\_\_\_

Signature

ADDRESS

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



**EXHIBIT A**  
**(Legal Description of Proposed District)**

Certain tracts of land situate within Sections 27, 33, and 34, Township 10 North, Range 4 East, NMPM, City of Albuquerque, Bernalillo County, New Mexico, as the same are shown and designated on the Plat for Unit 1 filed in the Office of the Bernalillo County Clerk on June 1, 2006, as Document No. 2006079956, Book 2006C, Page 1706 and the Plat for Unit 2 filed in the Office of the Bernalillo County Clerk on June 08, 2006, as Document No. 2006083764, Book 2006C, Page 181.

**EXHIBIT B**  
**(Legal Description of the Real Property  
Being Leased by Lessee)**

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