



**DECLARATION OF**  
**COVENANTS, CONDITIONS AND RESTRICTIONS**  
**FOR**  
**HAWKS LANDING**

This Declaration of Covenants, Conditions and Restrictions for HAWKS LANDING (“Declaration”) is executed this 11<sup>th</sup> day of September, 2019, by The Lowe Company, a New Mexico corporation (“Grantor”).

**RECITALS**

A. Grantor is the owner of the following described real property located in Bernalillo County, New Mexico (the “Subdivision”):

Lots numbered One (1) through Thirty-three (33) of HAWKS LANDING, within the Elena Gallegos Grant Projected Section 14, Township 11 North, Range 4 East, N.M.P.M., Bernalillo County, New Mexico, as shown and designated on the plat of said Subdivision filed in the office of the County Clerk of Bernalillo County, New Mexico, on September 3, 2019, in Plat Book 2019C, Page 81, Document No. 2019074769.

B. Grantor hereby reserves unto itself and grants to Panorama Homes, Inc., a New Mexico corporation (“Panorama”), and Scott Patrick Homes, Inc., a New Mexico corporation (“Scott Patrick”), the “Declarant Rights” arising under the terms and provisions of this Declaration as said term is used herein. For purposes of this Declaration, and in accord with New Mexico Statute Annotated § 47-16-2.H., Grantor, Panorama and Scott Patrick are collectively referred to herein as the Declarants and each a Declarant, and are each designated a Declarant under and by virtue of this Declaration.

C. Declarants intend that the Subdivision shall be held, sold, and conveyed subject to the terms and provisions hereof, which terms and provisions shall run with the land, for the purpose of protecting the value, desirability, attractiveness and character of the Subdivision. This Declaration shall be binding on all parties having any right, title or interest in the Subdivision, or any part thereof, and shall inure to the benefit of such parties and their successors and assigns.

D. Declarants have formed or caused to be formed the Hawks Landing Community Association, a New Mexico nonprofit corporation (hereinafter called the “Association”), which is hereby delegated the powers of maintaining the Common Areas; administering and enforcing this Declaration and the Association’s Articles, By-Laws and Rules and Regulations; and collecting and disbursing assessments and charges imposed for such purposes.

NOW, THEREFORE, the Declarants hereby declare that the Subdivision and each part thereof, shall be owned, held, transferred, sold, conveyed, encumbered, used, and occupied subject to this Declaration.

**ARTICLE 1**  
**DEFINITIONS**

The following terms when used in this Declaration shall have the following meanings (unless prohibited by the context):

1.1 “**Articles**” shall mean the Articles of Incorporation of the Association, as filed with the New Mexico Secretary of State, and as they may be amended from time to time.

1.2 “**Assessments**” shall mean periodic payments that Owners must pay to fund the Common Expenses and Reserves for the Association. Where appropriate, Assessments shall also include Special Enforcement Assessments that may be imposed pursuant to this Declaration. Further, when addressing an Owner’s account for Assessments, the term shall include any unpaid Assessments and any unpaid fines, penalties, costs and expenses related thereto including the Association’s costs and expenses of collection of the unpaid Assessments including its attorney’s fees.

1.3 “**Association**” shall mean the Hawks Landing Community Association, a New Mexico nonprofit corporation, and its successors and assigns.

1.4 “**Association Documents**” shall mean the Association’s Articles of Incorporation, By-Laws and Owners’ Association Rules and Regulations as the same may, from time to time, be amended and exist.

1.5 “**Board**” shall mean the Board of Directors of the Association.

1.6 “**By-Laws**” shall mean the By-Laws of the Association, as they may be amended from time to time.

1.7 “**Common Areas**” shall mean those areas of the Subdivision which are owned or maintained by the Association for the common use and enjoyment of the Owners. The Common Areas shall include, without limitation, those areas described in Article 3 of this Declaration.

1.8 “**Common Expenses**” shall mean all expenses and obligations of the Association including but not limited to allotments to any reserve fund established for the Association.

1.9 “**Declarants**” shall mean The Lowe Company, a New Mexico corporation; Panorama Homes, Inc., a New Mexico corporation; and Scott Patrick, Inc., a New Mexico corporation; and their respective successors and assigns in interest.

1.10 “**Declaration**” shall mean this Declaration of Covenants, Conditions, and Restrictions for Hawks Landing as the same may be amended from time to time.

1.11 **“Dwelling”** shall mean any structure built upon a Lot for the purpose of allowing natural persons to reside therein.

1.12 **“First Mortgage”** shall mean valid, subsisting, Recorded first lien of mortgage or deed of trust of record in the office of the County Clerk for Bernalillo County, New Mexico, encumbering a Lot.

1.13 **“Law”** shall include any statute, ordinance, rule, regulation, or order validly created, promulgated or adopted by the United States, by the State of New Mexico, by the City of Albuquerque, by Bernalillo County, or by any of agencies, officers, municipalities, or political subdivisions thereof, and from time to time applicable to the Subdivision or to any activities on or about the Subdivision.

1.14 **“Lot”** shall mean one of the Lots, and the term excludes the Common Areas and any streets, rights of way or other areas of land shown in the Plat as land dedicated for public ownership and maintenance. Where appropriate, the term “Lot” shall include the Dwelling and other Structures located on a Lot.

1.15 **“Lots”** shall mean Lots Numbered 1 through 33 as shown on the Plat.

1.16 **“Member”** shall mean shall mean every person or entity who is an Owner and who shall by reason thereof be a member of the Association.

1.17 **“Owner”** shall mean the record owner, whether one or more persons or entities, and if more than one person or entity, then to them collectively, of the fee simple title to any Lot, and, for purposes of this Declaration and the Association By-Laws, each Lot shall be deemed to have one (1) Owner. The Declarants and Builders are Owners for all purposes under this Declaration, to the extent of each Lot owned by a Declarant or Builder, and are made subject to all terms and provisions contained in this Declaration except where expressly provided otherwise. Notwithstanding the preceding definition, “Owner” shall not mean or refer to any person or entity who or which holds title to a Lot merely as security for the performance of an obligation owed to such party by another; provided, “Owner” shall include a record owner of the fee-simple title to a Lot who or which has acquired such title at a judicial sale or by a conveyance in lieu of foreclosure.

1.18 **“Owners’ Association Rules”** shall mean those rules and regulations that the Board of the Association may from time to time adopt, promulgate, amend, revoke, and enforce to govern the use and maintenance of the Association’s properties and the Association’s policies and procedures.

1.19 **“Person”** shall mean an individual, corporation, partnership, trust, or any other legal entity; provided, for a trust, the trustee(s) of the trust having authority to bind the trust shall be considered the Person hereunder and shall, if an Owner, own the Lot as trustee(s) for the benefit of the beneficiaries of the trust.

1.20 **“Plat”** shall mean the Plat of HAWKS LANDING as the same is shown and designated on the plat thereof filed in the office of the County Clerk of Bernalillo County, New Mexico, on September 3, 2019, in Book 2019C, Page 81, as may be amended from time to time.

1.21 **"Recording"** or **"Recorded"** shall mean the filing for record in the Public Records of Bernalillo County, New Mexico, or such other place as from time to time is designated by Law for providing constructive notice of matters affecting title of real property in Bernalillo County, New Mexico.

1.22 **"Reserves"** shall mean funds set aside by the Association to pay for projected repairs or replacements of Common Areas and other Subdivision improvements.

1.23 **"SHHA"** shall mean the Sandia Heights Homeowners Association, a New Mexico nonprofit corporation, and its successors and assigns.

1.24 **"Special Enforcement Assessments"** shall mean an assessment, fine or charge including a charge for reimbursement of expenses, inclusive of attorney's fees and costs, that an Owner must pay to the Association as a result of a violation of this Declaration or of a provision of this Declaration applicable to a specific Owner or Lot.

1.25 **"Structure"** shall mean any thing or object, the placement of which upon Lot may affect the appearance of such Lot, including by way of illustration and not limitation, any building, or part thereof, garage, porch, shed, greenhouse, bathhouse, kennel, animal pen or run, covered or uncovered patio, swimming pool, fence, curbing, paving, wall, sign, signboard, temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement to such Lot, and any excavation, grading, fill, ditch, diversion, dam, or other thing or device which affects or alters the flow of any waters from, upon or across any Lot.

1.26 **"Subdivision"** shall mean the Hawks Landing subdivision as shown and delineated on the Plat.

1.27 **"Zoning Requirements"** shall mean those certain conditions and restrictions referenced herein which are required by the Bernalillo County Planning Commission and/or Sandia Peak Utility Company as a condition of their approvals for development of the Subdivision. Future amendments to the Zoning Requirements may result in the amendment of this Declaration as may be approved by the Board. References to the Zoning Requirements in this Declaration may not be all-inclusive, and are not intended to limit or modify the terms and provisions of this Declaration.

## ARTICLE 2 GENERAL PROVISIONS

2.1 **Board of Directors, Officers, Committees and Managers.** The affairs of the Association shall be conducted by the Board in accordance with this Declaration, the Articles, the By-Laws and the Owners' Association Rules, and by such officers, committees and managers as the Board may elect or appoint from time to time in accordance with the Articles and By-Laws. The Board shall determine the compensation to be paid to any manager or other employee of the Association.

**2.2 Membership in the Hawks Landing Community Association.** Every Person who or which is a record Owner shall be a Member of the Association, including, without limitation, any record Owner who acquired such title at a judicial sale or by a conveyance in lieu of foreclosure. However, any Person who or which holds title to a Lot merely as security for the performance of an obligation owed such Person by another Person shall not be a Member. If more than one Person owns a Lot, then, for purposes of this Declaration and the Association's Articles and By-laws, each Lot shall be deemed to have one Owner. The rights of membership in the Association, including the right to vote, the right to participate in Association affairs, and/or the right to use and enjoy the Common Areas, may be suspended by the Board for any period during which certain delinquencies of an Owner continue, as is provided in the provisions herein and in the Articles and By-Laws or in the Owners' Association Rules. Membership in the Association shall be appurtenant to and may not be separated from the ownership of an Owner's Lot.

**2.3 Additional Mandatory Membership in the Sandia Heights Homeowners Association.** Declarants intend to assign, in due time, certain rights and obligations of this Declaration with respect to the enforcement of use covenants and restrictions and with respect to the Association's Architectural Control Committee ("ACC") to the Sandia Heights Homeowners Association ("SHHA"). This is in accordance with Declarants' agreement with SHHA and the Bernalillo County Planning Commission for the benefit of the Subdivision and the Sandia Heights community as a whole. Declarants hereby have the authority to grant such assignment(s). Beginning on the effective date of the initial assignment of certain rights and obligations of the Association hereunder to the Sandia Heights Homeowners Association, every Member of the Association shall also be required to be a member of the Sandia Heights Homeowners Association. If a Member is not a member in good standing of the Sandia Heights Homeowners Association, said Member's rights arising under this Declaration and the Association's Articles and By-laws including the right to vote as a Member of the Association and the right to participate in Association affairs may be suspended by the Board. Declarants are exempt from the SHHA membership requirement. Should the SHHA not accept all assignment(s) of rights and obligations arising under this Declaration when offered to the SHHA, or should the SHHA reassign all such rights and obligations to the Association or otherwise terminate all of its rights and obligations hereunder after acceptance, then membership in the SHHA, at the election of the Board, may no longer be required by this Declaration.

**2.4 Member Voting Rights.** Member voting rights in the Association shall be in accordance with the provisions of this Declaration and the Articles and By-Laws.

**2.5 Creation of the Lien and Personal Obligation for Assessments.** Declarants, for each Lot, hereby covenant, and each Owner of any Lot by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in any such deed or other conveyance, hereby covenant and shall be deemed to have covenanted and agreed to pay to the Association (i) Assessments for the Common Expenses of the Association; (ii) Assessments for the operation, maintenance, repair, improvement or replacement of the Common Areas; and (iii) Special Enforcement Assessments as set forth in Article 6 of this Declaration. All such assessments, together any fee, charge, fines or penalties assessed with respect thereto, with interest thereon and costs of collection thereof, including attorney's fees incurred by the Association in connection the enforcement of this Declaration or the collection of any Assessment, fee, charge, fine, or other cost, as are hereinafter provided, shall be a charge and a continuing lien upon the Lot against which each such

assessment is made or fee, charge, fine, penalty or other cost assessed. All such Assessments including the fees, charges, fines, penalties, or other costs, together with interest thereon, related thereto, shall also be the personal obligation of the Owner of such Lot at the time the assessment or fee, levy, fine or other cost is assessed. Any subsequent purchaser of a Lot shall be jointly and severally liable with the selling Owner to the Association for all Assessments Obligations which are unpaid at the time the purchasing Owner takes title to the subject Lot as evidenced by the Recorded deed or other document transferring title to the Owner.

**2.6 Owner Assessments.** The Board shall adopt a budget of the estimated Common Expenses for the Association for each fiscal year, including any contribution to be made to a reserve fund, which budget shall serve as the basis for determining the Assessments. The Assessment shall be levied at a uniform amount for each assessable Lot, except for Lots owned by the Declarants shall qualify for a twenty-five percent reduction. Within a reasonable period following the meeting of the Board at which they adopt the budget for the year in question, the Board shall deliver or mail to each Owner a copy of the budget and a statement of the amount of Assessments to be levied against such Owners Lot(s) for that year. In the event the Board fails to adopt a budget for any fiscal year prior to commencement of such fiscal year, then until and unless such budget is adopted, the budget (and the amount of the assessments provided for therein) for the year immediately preceding shall remain in effect. If the Board determines that the funds budgeted for the fiscal year are, or will, become inadequate to meet all Common Expenses for any reason, the Board, by special meeting, may amend the budget and increase the Assessment for that fiscal year and the revised Assessment shall commence on the date designated by the Board. Neither the budgets nor any Assessments levied pursuant thereto shall be required to be approved by the Owners. Assessments shall be due and payable as determined by the Board.

**2.7 Capital Contribution Fee.** To ensure that the Association shall have adequate funds for its Common Expenses, each Owner, other than Declarants, who purchase or otherwise obtain title to a Lot shall pay to the Association a per-Lot new Member Capital Contribution Fee equal to the sum of Four Hundred Fifty and No/100 Dollars (\$450.00). The Board may increase the Member Capital Contribution Fee from time to time, not more often than once every five (5) years, for inflation. Declarants may defer the collection of the Capital Contribution Fee to qualified builders who are purchasing multiple Lots for the intended purpose of constructing Dwellings thereon. The Member Capital Contribution Fee due with respect to any Lot shall constitute a lien on such Lot enforceable under the terms of this Declaration in accordance with the terms for collection of Assessments hereunder, and such payment shall become due at the earlier of (i) the close of escrow on the sale/purchase/transfer of the Lot or (ii) upon the Recording of the deed or other document transferring title to the Lot to an Owner. Member Capital Contribution Fee funds paid to the Association pursuant to this Section may be used by Association for payment of Common Expenses including costs and expenses in the administration of the Association or for or Reserves for the Common Areas. Payments pursuant to this Section shall be nonrefundable and shall not be offset or credited against or considered as advance payment of other Assessments levied by the Association to an Owner.

**2.8 Effect of Nonpayment of Assessments; Remedies of Association.** The Association shall have a lien on each Lot for (i) all Assessments Obligations levied against the Lot or the Owner thereof, and (ii) any other amounts payable to the Association pursuant to this Declaration or pursuant to applicable

Association Documents subject to any limitations imposed by any Law. Such lien(s) shall be prior and superior to all other liens affecting the Lot in question, except (i) taxes, bonds, water and sewer charges, assessments and other governmental levies which, by Law, are granted a statutory first priority lien, and (ii) the maximum lien amount, as said term is defined in N.M. Stat. Ann. § 48-7-9, of any First Mortgage made in good faith and for value. The Association's lien arising under this Declaration may be foreclosed in the manner provided by Law for the foreclosure of mortgages or deeds of trust in New Mexico including by power of sale. The sale or transfer of any Lot pursuant to foreclosure or any proceeding in lieu thereof shall extinguish the lien of the Association arising hereunder as to Assessments which became due prior to such sale or transfer (unless the Owner against whom the original Assessments were made is the purchaser at the foreclosure sale, in which event such lien shall remain in full force and effect); provided, such foreclosure sale or transfer is Recorded not later than twelve (12) months following the date the unpaid Assessments first accrued. Such foreclosure sale or transfer in lieu of foreclosure shall not relieve the Owner of its personal obligation for any unpaid Assessments, nor shall it relieve the Lot from liability for any Assessments becoming due after such foreclosure sale or transfer in lieu thereof. Recording of this Declaration constitutes Recorded notice and perfection of the liens established hereby, and further recordation of any notice of lien or claim by the Association of a lien for unpaid Assessments shall not be required, whether to establish or perfect such lien or to fix the priority thereof, or otherwise (although the Board shall have the option to record written notices of claims of lien in such circumstances as the Board may deem appropriate). The Board may invoke any or all of the sanctions provided for herein or in this Declaration, or any other reasonable sanction, to compel payment of any Assessment (or installment thereof), or any other amount payable to the Association under this Declaration, which is not paid when due (a "Delinquent Amount"). Such sanctions include, but are not limited to, the following:

- a. Interest and Late Fees. Any Assessment, fee, fine, penalty, charge, cost or expense due hereunder with respect to a Lot or from an Owner, not paid within 10 days after the due date, shall bear interest from the due date until paid at the rate equal to the greater of (a) eighteen percent (18%) per annum, or (b) the Judgment Rate of Interest established pursuant to N.M. Stat. Ann. § 56-8-4 as amended from time to time. The Board may from time to time establish a lower rate of interest for any Assessment, fee, fine, charge or expense due hereunder; provided, such shall not be deemed to waive the Association's right to collect interest as provided above if the lower rate of interest is challenged by an Owner. In addition, the Board may, pursuant to Owners' Association Rules adopted by the Board, assess a late fee on any Assessment, fee, fine, penalty, cost, charge or expense due hereunder with respect to a Lot or from an Owner, not paid within 10 days after the due date, in such amount(s) as the Board may, by Owners' Association Rules adopted by the Board, determine as appropriate from time to time, subject to any limitations imposed by Law. In addition to any Common Expense or Special Enforcement Assessment assessed an Owner, any fee, fine, penalty, charge, cost or expense due hereunder with respect to a Lot or from an Owner is considered part of an Assessment and is and shall be secured by the lien of the Association arising under this Declaration, collectable in accordance with all rights and remedies granted the Association herein.

- b. Suspension of Rights. The Board may suspend for the entire period during which a Delinquent Amount remains unpaid the obligated Owner's voting rights, rights to participate as a member of the Association in the affairs of the Association, rights to use and enjoy the Common Areas, and other membership rights as provided in this Declaration or in the Association Documents.
- c. Collection of Delinquent Amount. The Board may institute an action at law for a money judgment or any other proceeding to recover the Delinquent Amount to the fullest extent permitted by Law and, in connection therewith, recover any late fees, interest, fines and penalties, and all costs and expenses of collection (including reasonable attorneys' fees and paralegal fees plus any applicable sales or gross receipts tax thereon).
- d. Recording of Notice. Subject to applicable Law, the Board may, at its option, record a notice of lien covering the Delinquent Amount including, with respect to the delinquent Assessment, interest, late fees, fines, penalties, charges, costs or expenses due hereunder including costs and expenses of collection (including reasonable attorneys' fees and paralegal fees plus any applicable sales or gross receipts tax thereon), and each Owner, by accepting title to a Lot subject to this Declaration, consents to such Recording. The Board may establish a fixed fee to reimburse the Association or its representative for the cost of Recording a notice of lien, for processing and/or administering the delinquency, and for recording a notice of satisfaction of the lien. **Notwithstanding the foregoing, this Declaration constitutes notice of the Association's lien and lien rights pursuant to New Mexico Statute Annotated § 47-16-6.C.**
- e. Foreclosure of the Association's Lien. The Association may foreclose its lien arising under this Declaration against a Lot in accordance with the laws and procedures established in New Mexico for a judicial foreclosure or by foreclosure by power of sale and may, at its election, seek to recover any deficiency from the Owner responsible for the assessment, fine, charge, fee or other unpaid expense. The right of redemption with respect to the foreclosure of the Association's lien, judicially or by power of sale, shall be **one (1) month in lieu of nine (9) months.** The Trustee for any such foreclosure by power of sale shall be Old Republic Title Company of New Mexico, or such Trustee as the Board of the Association may determine; provided, such Person shall meet the qualification of a Trustee under N.M. Stat. Ann. §48-10-6.
- f. All remedies granted to the Association under this Declaration shall be cumulative and in addition to remedies available to the Association by Law (including the common law adopted in the State of New Mexico).

2.9 **Owners' Association Rules.** By a vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend, and repeal the Owners' Association Rules including those that apply to, restrict, and govern, the use of the Lots and Common Areas by any Member; provided, however, that the Owners' Association Rules shall not be inconsistent with this Declaration or the Articles or By-Laws of the Association. Adoption, amendment, and repeal of Owners' Association Rules must be approved by Declarants while Declarants own any Lot(s) in the Subdivision.



2.10 **Amendments of Declaration.** Except as otherwise stated in this Declaration, this Declaration may be amended, modified or terminated by the Owners of Lots in the Subdivision. Some provisions herein are required conditions of Bernalillo County or other governmental authorities specifically for this Subdivision and may not be amended, modified or terminated without first obtaining approval from the appropriate governmental authority. This Declaration may be amended at any time by the affirmative vote of the then record Owners of not less than two-thirds (2/3<sup>rds</sup>) of the Lots in the Subdivision, which shall be effective upon the Recording of an Amendment to this Declaration; provided, any rights or provisions granted by this Declaration, the Articles, and the By-Laws, may not be amended, modified or terminated without Declarants' prior written approval while Declarants own any Lot(s) in the Subdivision. Notwithstanding any provision of this Section to the contrary, the Declarants hereby reserve and shall have the right to amend this Declaration, from time to time, for a period of five (5) years from the date of its Recording to make such changes, modifications, and additions therein and thereto as may be requested or required by FHA, the VA, or any other governmental agency or body generally or as a condition to, or in connection with such agency's or body's agreement to make, purchase, accept, insure, guaranty, or otherwise approve loans secured by mortgages on the Lots; provided, any such amendment does not destroy or substantially alter the general plan or scheme of development of the Subdivision nor the restrictions contained in the Plat. Any such amendment shall be executed by the Declarants and shall be effective upon being Recorded. Every Owner and any mortgagee of a Lot, by acceptance of a deed or other conveyance therefore, thereby agrees that this Master Declaration may be amended as provided in this Section. No approval or joinder of the Association, any other Owners, any mortgagee of a Lot, or any other Person shall be required or necessary for any such amendment. Should the provisions in this Section for Amendments of Declaration contradict provisions of the Articles, By-Laws, or other Association Documents, the provisions in this Section shall prevail.

2.11 **Transfer of Right, Title, Interest and Estate.** Any and all of the right, title, interest and estate given to or reserved by the Declarants herein or on the Plat may be transferred to any Person by appropriate instrument in writing duly executed by the Declarants and Recorded. Whenever the Declarants are referred to herein, such shall be deemed to include Declarant's(s') respective successors and assigns.

2.12 **Duration.** This Declaration is to run with the land and shall be binding on all parties and all persons claiming under them until the year 2040, at which time said Declaration shall be automatically extended for successive periods of ten (10) years unless a decision to not renew this Declaration has been approved by vote, in person or by proxy, of at least two-thirds (2/3) of the total of votes of all Members cast at any regular or special meeting of the Members duly called and convened and held prior to the date of automatic renewal.

2.13 **Severability.** Invalidation of any one or more of the provisions, restrictions, conditions, or covenants of this Declaration by judicial determination or otherwise shall in no way affect any other provision, restriction, condition, or covenant of this Declaration, all of which shall be and remain in full force and effect.

**ARTICLE 3**  
**COMMON AREAS**

3.1 Declarants may convey one or more lots or tracts, or any portion thereof, to the Association as a Common Area for the benefit of the Owners.

3.2 The Association shall be responsible for managing and maintaining all Common Areas for the Subdivision. SHHA shall have no responsibility for the Common Areas.

3.3 The Common Areas shall include, without limitation:

- a. the landscaping and irrigation within the public right-of-ways along the internal streets and around the perimeter of the Subdivision for which the County of Bernalillo or NM Department of Transportation may require Association to maintain;
- b. perimeter walls that are not adjacent to Lots (i.e. the north side of Hawks Perch Avenue); and
- c. all other Common Areas as determined by the Association.

3.4 Common Areas shall not include the perimeter walls that are adjacent to Lots, and shared walls that are between Lots, which shall be the responsibility of the adjacent Lot Owner(s) to install and maintain.

3.5 Common Areas shall not include public areas and facilities which shall be owned by or dedicated to governmental authorities such as streets, sidewalks, water and sewer lines, and storm drains, except for such times during which governmental authorities may require the Association to maintain additional Common Areas.

3.6 The Association shall have the right to regulate the use of the Common Areas and prohibit or limit access to certain Common Areas for reasons of public safety or preservation.

3.7 The Board, acting for the Association, shall establish Reserves for the future periodic repair or replacement of the major components of the Common Areas. Reserves may be funded from Assessments, Capital Contribution Fees, or other revenue of the Association.

**ARTICLE 4**  
**ARCHITECTURAL CONTROL COMMITTEE**

4.1 Architectural Control for Hawks Landing shall be under the authority of the Architectural Control Committee (the "ACC"). The ACC shall be managed by committee members appointed by the Declarants until such time that all Lots owned by the Declarants have been sold. Once Declarants' Lots have all been sold, Architectural Control administration and enforcement will be assigned to the Sandia Heights Homeowners Association ("SHHA") as discussed in Article 2.3. Should the SHHA decline the

responsibility for administration and enforcement of Architectural Control, then the ACC shall be managed by committee members appointed by the Association's Board.

4.2 BEFORE ANYONE SHALL COMMENCE CONSTRUCTION, INCLUDING WITHOUT LIMITATION, SITE PREPARATION, CLEARING OF NATURAL VEGETATION OR EXCAVATION, LANDSCAPING, INSTALLATION, REMODELING OR ALTERATION OF ANY BUILDING, SWIMMING POOL, WALL, FENCE, TANK OR OTHER STRUCTURE WHATSOEVER, ON ANY LOT, PLANS SHALL BE SUBMITTED TO THE ACC THAT INCLUDE THE FOLLOWING REQUIREMENTS; PROVIDED, HOWEVER, THAT THE FOLLOWING NOT BE THE SOLE BASIS FOR CONSIDERATION, BY THE ACC:

- a. Plot plans showing the location on the Lot of any Structures proposed to be constructed, placed, altered, or maintained thereon; floor plans and elevations therefor; proposed colors, including color schemes for roofs and all exteriors surfaces, with specifications for the kind and grade of materials proposed for all exterior surfaces of such Structures.
- b. Two complete sets of the final plans and specifications for said work.
- c. All other documents deemed necessary by the ACC.

4.3 For construction of new homes or any other Structure on a Lot an application review fee and construction deposit of \$2,000 shall be due and payable to the Association at the time plans are submitted to the ACC for approval. The Board may from time to time approve a reduced application fee for non-Dwelling Structures. Declarants may grant exception to this deposit requirement to qualified builders who are purchasing multiple Lots. Part of the fee/deposit may be used for professional services required to properly evaluate requests, if deemed necessary by the ACC, and part may be used as assurance of applicant's intent to comply with the provisions of the Declaration and Owners' Association Rules, and adhere to the submitted plans as approved by the ACC. The fee/deposit may be used by the ACC to cure problems of noncompliance with the Declaration and/or the Owners' Association Rules if they are not corrected by the Owner/Builder upon fifteen (15) days written notice to do so. Upon completion of construction, the ACC shall perform a final inspection of the work to ensure that it was built in accordance with the ACC-approved plans and is in compliance with the Declaration and Owners' Association Rules. Once the ACC approves the completed work, the balance of the construction deposit, less fees, shall be refunded to the Owner. Should the application be disapproved or withdrawn from the ACC prior to construction with no intention of re-submittal, the balance of the construction deposit, less fees, shall be refunded to the Owner.

4.4 No landscaping, construction, Structure, or other improvement of a Lot shall commence or shall be erected, altered, placed or maintained upon any Lot unless and until the final plans, elevations, and specifications therefor have received such written ACC 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 ACC in its written approval. Once approved, no construction, structure, or improvement may vary from the approved plan without further written approval of the ACC.

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 Subdivision and that the Declarants, the ACC 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 hereunder or at law or equity.

4.5 The ACC shall provide full approval, conditional approval, or disapproval of said plans and specifications in writing within thirty (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 ACC's approval or disapproval endorsed thereon shall be returned to the owner and the other copy thereof shall be retained by the ACC. Should the ACC fail either to approve or disapprove any plans or specifications submitted to it within said thirty (30) day period, failure to do so shall not be construed as a tacit approval of said plans and specifications, nor shall such failure to approve or disapprove constitute a waiver of the ACC's absolute authority to approve plans and specifications prior to construction, alteration, or placement of improvements. Approval of plans and specifications for all construction installations, improvements, remodeling, or alterations shall be valid only for a period of one (1) year. Failure to commence and complete construction within one (1) year following date of approval shall require reapplication and resubmittal of plans and specifications to the ACC, along with a new construction deposit for the new review fee, and re-approval thereof by the ACC.

4.6 The ACC 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 this Declaration. Considerations may also include, but shall not be limited to, if the proposed structure is not in harmony with the general surroundings of such lot or the adjacent structure, and if the structure shall unduly interfere with the view from nearby residences. The decision of the ACC in any these matters shall be final and no building or improvement of any kind shall be constructed or placed upon any Lot in the Subdivision without the prior written consent of the ACC.

4.7 Declarants shall be exempt from the ACC approval process required by this Article 4.

4.8 Neither the Association, the ACC, its members, nor the Declarants shall be responsible in any manner whatsoever for any defect in any plans or specifications submitted nor as revised by the ACC or the Declarants, or for any work done pursuant to the requested changes of said plans and specifications.

4.9 Construction of any structure or improvement shall be continuous and proceed in an orderly fashion without interruptions, and any structure or improvement on any lot shall be completed in a reasonable time, not to exceed twelve (12) months from the commencement of construction. Commencement of construction shall mean the first on-site work for construction, including, but not by way of limitation, excavation the purpose of foundation.

4.10 Materials and equipment necessary for construction, and all debris resulting from clearing or construction, shall be confined to the Lot and shall not be permitted on any other Lots, Common Areas or roadways. During construction a receptacle must be on site to contain all trash and debris.

4.11 In the event that any structure is destroyed, wholly or partially, by fire or any casualty, such structure shall be promptly rebuilt or repaired to conform to this Declaration or shall be removed from the Lot.

4.12 In the event any owner fails to remove debris or unsightly material discussed in this Section, the ACC may remove said unsightly material and charge the cost of removal, including a reasonable overhead charge, together with interest, as an Assessment against the Lot. If such Assessment is not paid within thirty (30) days after written notice to the owner demanding payment, the Assessment shall become delinquent and bear interest from the date of said notice until paid at the rate stated in Section 2.8.(a) above. Sanctions for the Delinquent Amount shall be in accordance with the provisions of this Declaration.

## ARTICLE 5 PERMITTED USES AND RESTRICTIONS

5.1 The Lots (being Lots Numbered 1 through 33 as shown on the Plat) are hereby designated as residential lots. Hawks Landing is zoned A-1 with a Special Use Permit for a Planned Development Area. No structures shall be erected, altered, placed or permitted to remain on any Lot other than single-family Dwellings and Structures related thereto except that this provision shall not prevent an Owner from combining two (2) adjoining Lots, by replat, into one (1) Lot, in which case said Lot shall be treated for all purposes under this Declaration as a single Lot. In no event may any Lot be subdivided into two (2) or more parcels of land.

5.2 The heated living area within the principal Dwelling Structure on each Lot is restricted to a minimum of 1,800 square feet on Lots 1 thru 23 and a minimum of 1,500 square feet on Lots 24 thru 33, as said Lots are shown and delineated on the Plat.

5.3 On Lots 1 thru 24 as said Lots are shown on the Plat, no Structures shall be erected, altered, placed or permitted to exceed nineteen feet (19') in height measured from finished grade per the Subdivision's Grading and Drainage Plan. Chimneys and roof screen walls for mechanical equipment, not including flues, shall not exceed twenty-three feet (23') in height measured from finished grade per the Subdivision's Grading and Drainage Plan.

5.4 On Lots 25 thru 33, no Structures shall be erected, altered, placed or permitted to exceed twenty-six feet (26') in height measured from finished grade per the Subdivision's Grading and Drainage Plan.

5.5 The height restrictions established under this Declaration may not be exceeded even if Bernalillo County is willing to grant an Owner a height variance.

5.6 One (1) detached accessory Structure, incidental to a Dwelling on a Lot and containing living quarters of no greater than 600 square feet, is permitted on each Lot, except no detached accessory Structures containing living quarters are permitted on Lots 1, 15 and 16. A detached accessory Structure,

incidental to a Dwelling on a Lot, containing living quarters shall not have a full kitchen (shall not have a stove or cooktop). [Per the Zoning Requirements]

5.7 All Dwellings and accessory Structures shall be flat roof with parapets, excepting that non-flat tile roof accents, not to exceed 25% of the total roof area for house, garage and patio roofed areas, may be used. Roof material color will be grey, black, tan or brown. Shingled roofs and white roofs are prohibited.

5.8 All Dwellings and accessory Structures shall have synthetic stucco, and the primary building colors shall be limited to tan, brown, or earth tone colors approved by the ACC. Lap siding, brick siding, wood siding, vinyl siding, and metal siding materials are prohibited.

5.9 All Lots shall contain an enclosed garage. No carports are permitted. Garage doors must be integrated with the design of the attached Dwelling in material and massing. Garage doors shall be limited to a height of nine feet (9') and shall match the stucco color of the principal Dwelling. Other garage door colors that harmonize with the primary building colors in the Subdivision may be approved by the ACC at their sole discretion. Translucent and transparent garage doors are prohibited. Garage doors with a limited amount of windows may be allowed if preapproved by the ACC; provided, embellished elements including stained glass, etched glass, colored glass or decorative metal pieces may not be permitted except as approved by the ACC. Connected garage doors shall match each other in make, design and color. Garages shall be used only for parking vehicles and storage, with the stalls designed in the garage for vehicle storage left available for vehicle storage, and shall not be used or converted for dwelling space. Garage doors shall be kept closed at all times except to the limited extent reasonably necessary for use. No on-street parking of vehicles owned by the Owner or occupants of a Lot is allowed. Guest vehicles may not remain parked in a visible area for longer than 48 hours at a time in any seven-day period.

5.10 Exterior door colors, window trim colors, and all other exterior trim colors on Dwellings and accessory Structures shall harmonize with the primary building colors in the Subdivision and require prior written approval of the ACC prior to installation or changing of colors.

5.11 Patios, decks and porches shall be designed as an integral part of the architecture of the principal Dwelling on a Lot.

5.12 Mechanical equipment for heating and cooling and any other visible equipment shall be screened from view, whether on grade or located on the roof. This requirement does not apply to solar equipment.

5.13 Solar equipment will be considered for approval by the ACC based on the merit of its design and the manner in which it is constructed so as not be visible, to the extent such does not unreasonably obstruct the operation of the solar equipment, from other Dwellings in the Subdivision. Roof-mounted solar equipment will be difficult to conceal; however, if the color and structure are done in good taste, this type of installation can be considered for approval. The ACC may require shielding of solar equipment so that such is not visible from the street or other Dwellings where such does not unreasonably obstruct the operation of the solar equipment.

5.14 Satellite dishes and other antennae must be installed in a location that reasonably conceals its visibility from the street and other Lots (i.e., on a very short stand behind a parapet on the roof, or concealed behind a wall) unless it is impossible to receive signals from said location. In that event, the receiving device may be placed in a location that is visible from the street and other Lots which location is approved by the ACC. The ACC may require, for such approval, as much screening as possible to conceal the satellite dish or antennae from the street and other Lots while not substantially interfering with the reception of the satellite dish or antennae. No dish or antennae may exceed in height limitation for the Lot's Dwelling. Satellite dishes and other antennae larger than forty (40) inches in diameter require the prior written approval of the ACC, which approval may be denied in the sole discretion of the ACC provided that such discretion is exercised in accordance with applicable Law. No exterior antennas, aerials, satellite dishes or other apparatus shall be permitted on a Lot that transmits television, radio, satellite or other signals. This Section shall be interpreted to be as restrictive as possible while not violating the Telecommunications Act of 1996.

5.15 All front yards must be landscaped with natural plants and/or southwestern type landscape on or before completion and/or occupancy of the house. Lawns shall be in an enclosed area. In keeping with the long standing commitment of the Sandia Heights community for water conservation, it is recommended that Owners restrict lawns to a maximum of 500 square feet on any Lot.

5.16 In order to protect the views of each Owner in the Subdivision, TREES SHALL NOT BE ALLOWED ON ANY LOT. If there are any ambiguous or questionable distinctions for what may be a tree, shrub or other similar plant, it shall be at the sole discretion of the ACC to allow or disallow any large plantings, including tall shrubs, which may impact on the view of other Owners; it being the intent of this restriction that no shrubs or hedges shall be planted or maintained which unduly interfere with the view from other Dwellings in the Subdivision.

5.17 Subdivision perimeter walls and Lot boundary walls must be constructed of smooth or split-faced Desert Rose #280 CMU block manufactured by Utility Block Company (or equivalent block with exact color match), and shall be maintained by the adjacent Owners. Any costs associated with shared boundary walls between Lots shall be divided equally between the adjacent Lot Owners. Retaining walls shall not be removed or moved. Additions, modifications and removal of walls shall be approved by the ACC.

5.18 Courtyard walls and all other privacy walls (excluding perimeter and Lot boundary walls) must be constructed of synthetic-stuccoed cement block matching the color of the principal Dwelling on the Lot, or split-face Desert Rose #280 CMU block manufactured by Utility Block Company (or equivalent block with exact color match). Other construction materials for walls and fences shall not be permitted except as approved by the ACC. All walls, fences, patios, courtyards, and porches shall be approved by the ACC.

5.19 Storage sheds/units require ACC approval. They shall match the color of the principal Dwelling on the Lot as closely as possible, not exceed seven feet (7') in height above the finished grade of the principal Dwelling, and be set back at least five feet (5') from the side property Lot lines except as approved by the ACC. Metal, rubber and plastic sheds/units are prohibited.

5.20 All utilities shall be brought onto the Lot via trenches adjacent to the driveway unless otherwise approved by the ACC.

5.21 No Dwelling, Structure, landscaping or other improvements on a Lot shall be permitted by the Owner of the Lot to fall into disrepair, and each such Dwelling, Structure, landscaping or other improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished.

5.22 Owners shall maintain the landscaping on their Lot(s) in a neat, clean and attractive condition consistent in appearance with other well maintained, improved Lots within the Subdivision. Each Lot shall be kept free of debris, weeds, and dead vegetation at all times.

5.23 No trailers, boats, recreational vehicles, campers, camper shells, mobile homes, large trucks, or commercial type vehicles shall be visibly parked or stored on any Lot except in enclosed garages except when engaged in transport to and from a Lot. For the purpose of this Section, a 3/4-ton or smaller vehicle commonly known as a pickup truck shall not be deemed a large truck.

5.24 No motor vehicle or trailer of any type shall be constructed, reconstructed or repaired on any street or any Lot in such a manner as will be visible from neighboring Lots.

5.25 Play structures up to seven feet (7') in height above the finished grade of the principal Dwelling on a Lot are permitted. Play structures over seven feet (7') in height above the finished grade of the principal Dwelling on a Lot require ACC approval. Play structures, including trampolines, must be placed in a location hidden from street view and the view of neighboring Dwellings.

5.26 Basketball backboards and hoops are prohibited.

5.27 Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed, or maintained on any Lot, unless they are concealed and are not visible from the street or neighboring Lots.

5.28 Equipment, service yards, woodpiles or storage piles shall be kept screened by adequate planting, fencing or other acceptable screening techniques so that they are concealed and are not visible from the street or neighboring Lots.

5.29 Displaying the American and New Mexico State flags is permitted subject to the following restrictions: (a) Displaying any other flags that the Association is required to allow in accordance with applicable Law shall also be permitted, (b) Freestanding flagpole installations require prior ACC approval, (c) freestanding flagpoles must be set back at least fifteen feet (15') from the front property Lot line, at least ten feet (10') from the rear property Lot line, at least five feet (5') from the side property Lot lines, not exceed eighteen feet (18') in height above the finished grade measured at the front property Lot line, and must have either an internal halyard supporting mechanism, or no halyard, so as to minimize the noise emitted by the supporting structure, (d) a removable flag staff may be mounted on the front or rear of the



principal Dwelling on a Lot placed in a wall mounted bracket provided the height of the flag does not exceed the height limits for Structures on the subject Lot as provided herein and the wall mounted staff does not exceed six feet (6') in length, (e) all flags shall be no more than fifteen square feet (15 sq. ft.) in area, (f) proper flag etiquette must be observed in accordance with US Flag Code (4 U.S.C. § 1 et seq.), (g) the ACC may apply reasonable restrictions to flag installations or displays that present a safety risk, or in some way interferes with a neighbor's enjoyment of their property, (h) if lighting is used for nighttime display, it shall be in accordance with the North Albuquerque Acres and Sandia Heights Light Pollution Ordinance, as well as the provisions provided by this Declaration, and the Association may adopt further Owners Association Rules governing the display and lighting of flags on the Lots, and (i) no other flags may be displayed except as approved by the ACC (and sports team flags are prohibited). Soiled, damaged or tattered flags shall not be flown.

5.30 No signs of more than five square feet (5 sq. ft.) shall be maintained within the Subdivision after completion of the original development and sale of the Lots unless specifically approved by the ACC. All signs, other than a typical "for sale" or "for rent" sign, must be approved by the ACC. Declarants shall be exempt from this requirement as long as they own Lot(s) in the Subdivision.

5.31 All exterior lighting within the Lots shall be maintained and installed to minimize light pollution in accordance with the **North Albuquerque Acres and Sandia Heights Light Pollution Ordinance** of the Bernalillo County Code. All exterior light fixtures shall be (i) designed and operated as cutoff or shielded aimable fixtures so that no fugitive light crosses into adjacent lots, (ii) equipped with and controlled by light and motion sensors or automatic timing devices, and (iii) shall remain off between 11:00 p.m. and sunrise except for illuminating walkways or driveways. No neon arc lamps or mercury lights shall be permitted.

5.32 Street lights on the Lots are prohibited. No spotlights, flood lights or other high intensity lighting shall be placed upon or utilized upon any Lot. Exterior light fixtures shall be of a "down lighting" style using low intensity bulbs to restrict light pollution.

5.33 Christmas and New Year's decorations may be put up after November 15th, and shall be removed no later than January 15th. Decorations associated with other holidays (e.g., Memorial Day, Independence Day, Chinese New Year, etc.) may be displayed during the period commencing 10 days before the holiday, and ending 10 days after the holiday. Decorations must be in good taste and not create a nuisance within the Subdivision. Decorations may not be placed within the Common Areas except where done by the Association.

5.34 No Lot may be further subdivided, nor may a portion of any Lot be sold except to adjacent Lot Owner and solely for the purpose of increasing the size of an adjacent Lot (in such event, the two Lots shall be replatted as one (1) Lot and a copy of such replat, once approved by the County or the governmental agency having jurisdiction, provided to the ACC for its records)

5.35 Access roads and utility easements are dedicated and reserved as shown on the recorded plat of the Subdivision. No additional access roads or driveways, either public or private, shall be constructed directly

from any lot or tract to Tramway Boulevard or Tramway Lane, other than those as shown on the plat of the Subdivision.

5.36 If and when the Subdivision, which is the subject of these affirmative covenants, meets the statutory annexation requirements enabling annexation of the property to the City of Albuquerque, such Subdivision shall be so annexed and become a part of the City. At such time of annexation, if ever, all Lot Owners may be required to pay their proportionate share of bringing the water and sewer systems servicing the Subdivision for compliance with all applicable standards imposed by the appropriate governmental authorities, with the cost share for such to be prorated on a Lot by Lot basis without regard to Lot size. [Per the Zoning Requirements]

**5.37 All Owners of Lots must subscribe to the garbage and security service provided by Sandia Heights Services LLC ("Sandia Services"), its successors and assigns so long as (i) Sandia Services provides these services to the residents of Hawks Landing, and (ii) the residents of the Subdivision are charged fees on a non-discrimination basis as compared to the fees charged to all of the other customers of Sandia Services.**

5.38 A water backflow preventer and pressure reducing valve is required to be installed on the customer side of the water meter on each Lot upon construction of the home, which shall be owned and maintained by each Owner. [Per the Zoning Requirements]

5.39 No trash or garbage shall be burned on a Lot or within the right-of-way fronting a Lot. Garbage shall be placed in covered containers. Said containers must be concealed from public view, either inside the confines of the Structures on a Lot such as a Dwelling's garage, or behind a wall or structural enclosure, at all times other than during regularly scheduled pickup times so that it is not visible from the street or from neighboring Lots. Such containers shall be removed from the street right-of-way and placed back in the concealed area where such are kept by 8 pm on the day the trash or garbage is picked up by the refuse company. The Association, by Owners' Association Rules, may adopt further rules governing the use and concealment of trash/garbage containers within the Subdivision.

5.40 It shall be the responsibility of Owners of Lots, vacant or otherwise, to keep said Lots, and all easement areas encompassed within the exterior boundaries of said Lots, clear of trash, unused building and/or landscaping materials, rubbish, weeds, and noxious materials.

5.41 No trailer, tent, shack, garage or other vehicle or outbuilding shall be used as a Dwelling, temporarily or permanently.

5.42 No unused automobiles or vehicles of any kind except hereinabove provided shall be stored or parked on any Lot except in a closed garage. An "unused automobile or vehicle" shall be defined as any vehicle which has not been driven under its own power for at least eight hours of use within a period of 30 consecutive days. In the event any unused automobile or vehicle remains parked on any tract or Lot within the Subdivision, the Declarants or the Association shall have the right to remove the same after 48 hours'

notice to the Owner thereof, the expenses to be charged against the Owner thereof, and such charges shall become a lien upon the recording of a notice of lien and shall be enforceable.

5.43 No animals shall be kept on any Lot except domestic cats and dogs. Keeping of these animals will be in accordance with applicable Laws. Owners and other Persons who walk their dogs or cats within the Subdivision shall do such using a leash for each animal and shall carry with them a bag or other container to remove feces which the animal dispels during the walk, with such to be discarded properly in the Owner's trash or refuse receptacle.

5.44 Home offices for the use of occupants of the Dwelling are permitted; provided, that they are not discernible from outside of the Dwelling and customers, clients or patients are not received at the Dwelling or other Structures on the Lot, and the product(s) of any such occupation may not be displayed in the yard of the Owner's Lot. Specifically, but not limiting, home day cares are not permitted.

5.45 No noxious or offensive activity of any kind shall be carried on upon any Lot, nor shall anything be done on any Lot which shall constitute an annoyance or nuisance to the neighborhood. Without limiting the generality of any of the foregoing provisions, no speakers, horns, whistles, bells or any other devices, except security devices used exclusively for security purposes whose sound volume does not exceed applicable Law and any Owner Association Rules adopted with respect thereto, shall be located, used or placed on any Lot which are audible from other Lots.

5.46 No firearms of any kind are permitted to be discharged within the Subdivision for recreational purposes.

5.47 Declarants reserve the right to operate model home(s) in the Subdivision for an indefinite period of time. Any builder desiring to construct and display a model home (i.e., homes constructed for the sole purpose of showing and sale promotion by a Builder-Buyer and which, generally, are made available and open to the public) must obtain approval for such from the ACC prior to commencing such building construction relative to hours when the model home is open to the public for viewing, public parking, signage, and other matters.

5.48 Disturbances occur to the engineered grading and drainage plan for the Subdivision and, in particular, for each Lot occurs during the construction of a Dwelling or other Structure and/or the landscaping of a Lot. It is Owner's responsibility, after any construction upon or improvement to an Owner's Lot, to maintain, not to alter, and to re-establish if necessary, drainage on the Lot in accordance with the Lot's approved drainage and grading plan in order to protect Owner's Dwelling and other Structures, as well as the neighboring Dwellings and Structures, from damage caused by improper grading of the subject Lot.

**ARTICLE 6**  
**ENFORCEMENT OF DECLARATION**

6.1 The Declarants, the Association and its assigns, and any Owner of a Lot in the Subdivision, shall have the right to enforce by proceeding, at law or in equity, for damages or for injunction or both, all restrictions, covenants, conditions, rights and duties imposed, allowed, or granted by the provisions of this Declaration. In any such proceedings, the prevailing parties shall be entitled to recover cost and expenses, including reasonable attorney's fees (which term shall include paralegal fees billed to the party by the party's legal counsel).

6.2 Except in cases where damage or injury to persons or property is imminent as a result of a violation of this Declaration, or as otherwise described in this Declaration or other governing documents of the Association, the Special Enforcement Assessment procedure will be as follows:

a. For a complaint of violation to be valid, it must either be (i) be received by the Association in writing from an Owner or occupant of a Lot; (ii) be reported by a member of the Board or the ACC; or (iii) be observed by a Board authorized representative whose purpose is to enforce this Declaration.

b. Notice of the reported violation shall be mailed to the alleged violator to the address of the Lot owned by such person, unless the Association has previously been notified in writing to use some other address.

c. The violator shall be given fourteen (14) days from the date of mailing to correct the violation. The Board authorized representative may approve a reasonable extension at the homeowner's written request.

d. The notice shall describe (i) the nature of the alleged violation; (ii) the proposed sanction to be imposed; (iii) a period of not less than fourteen (14) days within which the alleged violator may present a written request for a hearing; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within fourteen (14) days of the notice.

e. Sanctions will be imposed as follows:

**FIRST NOTICE:** An initial notice of the violation shall be mailed via regular mail to the Owner requesting compliance within (14) days. **NO FINE.**

**SECOND NOTICE:** If the violation still exists, and an extension has not been granted, a second notice requesting compliance within fourteen (14) days shall be mailed via certified mail to the Owner. A **\$100.00 FINE** will be assessed and due immediately from Owner with the second notice, and collected in the same manner as Assessments.

**THIRD NOTICE:** If the violation still exists, and an extension has not been granted, the Association may proceed with any one or all of the following actions: (i) a third notice requesting

compliance within fourteen (14) days shall be mailed via certified mail to the Owner; (ii) take legal action against the Owner; and/or (iii) remedy the violation. **A \$250.00 FINE will be assessed and due immediately from Owner with the third notice. All costs associated with taking legal action or remedying the violation shall be due and payable immediately from the Owner and collected in the same manner as Assessments.**

**CONTINUING VIOLATIONS:** If the violation continues without resolution after the third notice, **in addition to the FINES stated above, a FINE OF \$100.00 for continuing violations may be assessed not more often than once every fourteen (14) days until the violation is resolved**, which shall be due and payable immediately from the Owner and collected in the same manner as Assessments.

f. If a violation for which notice is given is resolved, but then another recurrence of the same violation occurs within six (6) months of the original violation, additional notices and fines shall begin at the point in time where notice of the original violation ended (for example, if a first and second notice was sent during the original violation before resolution, the recurrence of the same violation within six months will result in an immediate third notice, subject to the fines and remedies imposed for third notices).

g. If a hearing is requested within the allotted (14) day period, the hearing shall be held before the Board or Board-designated representative(s) at their earliest convenience. The alleged violator shall be given a reasonable opportunity to be heard. After a hearing, based on the circumstances, the Board or Board-designated representative(s) may decide to reverse a notice of violation and/or fine.

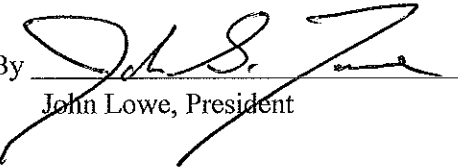
h. If the Sandia Heights Homeowners Association ("SHHA") accepts the assignment(s) of certain rights and obligations discussed in Article 2.3, SHHA may adopt the Special Enforcement Assessment procedure set forth in this Article 6.2 (including subparts a-g); modify the Special Enforcement Assessments procedure; or choose to replace the Special Enforcement Assessments procedure set forth herein with SHHA's procedures for addressing purported covenant violations.

6.3 No delay or omission on the part of the Declarants, the Association, or any of their respective agents, successors or assigns, in exercising any right, power or remedy herein provided for in the event of any breach of the conditions, covenants, restrictions or reservations contained in this Declaration, shall be construed as a waiver thereof or acquiescence therein; and no right of action shall accrue, nor shall any action be brought or maintained by anyone whatsoever against the Declarants, the Association, or any of their respective successors or assigns, for or on account of, failure or neglect to exercise any right, power or remedy herein provided for in the event of breach of said covenants, conditions, restrictions, or reservations.

6.4 If any provision contained in this Declaration is found to violate any Law, then the provision found to violate a Law shall be interpreted to preserve as much of the original provision as allowed by such Law.

IN WITNESS WHEREOF, this Declaration has been executed as of the day and year first written above.

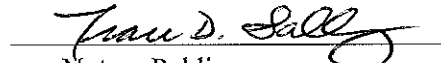
THE LOWE COMPANY  
a New Mexico corporation

By   
John Lowe, President

STATE OF NEW MEXICO    )  
  )ss.  
COUNTY OF BERNALILLO    )

This instrument was acknowledged before me on September 11<sup>th</sup>, 2019, by John Lowe, President of The Lowe Company, a New Mexico corporation.



  
Notary Public