



**RESTRICTIONS**

**OF**

**MILAGRO MESA SUBDIVISION**

**A Declaration of Restrictions, Covenants and Conditions for the Creation and  
Maintenance of a Planned Residential Development**

TABLE OF CONTENTS

ARTICLE 1 - Definitions ..... 1

    Section 1.01: Architectural Control Committee..... 2

    Section 1.02: Association..... 2

    Section 1.03: Board..... 2

    Section 1.04: Builder..... 2

    Section 1.05: Common Area..... 2

    Section 1.06: Easement Area..... 2

    Section 1.07: Fiscal Year..... 3

    Section 1.08: Grantor..... 3

    Section 1.09: Grantor Control Period..... 3

    Section 1.10: Improvements..... 3

    Section 1.11: Lot..... 3

    Section 1.12: Mortgage..... 4

    Section 1.13: Owner..... 4

    Section 1.14: Plat..... 4

    Section 1.15: Subdivision..... 4

    Section 1.16: Subdivision Restrictions..... 4

ARTICLE 2 - Property Subject to Subdivision Restrictions ..... 5

    Section 2.01: Initial Development..... 5

    Section 2.02: Subsequent Development..... 5

ARTICLE 3 - Permitted and Prohibited Uses of Property ..... 6

    Section 3.01: Permitted Uses of Property Within the Subdivision..... 6

    Section 3.02: Prohibited Uses of Subdivision..... 6

    Section 3.03: Common Area/Easement Area..... 9

    Section 3.04: Encroachment Easements..... 9

ARTICLE 4 - Membership in the Association and Voting Rights ..... 10

    Section 4.01: Membership..... 10

    Section 4.02: Classes of Membership..... 10

    Section 4.03: Voting Rights..... 10

    Section 4.04: Voting Rules..... 10

ARTICLE 5 - Organization, Powers and Duties of the Association ..... 11

    Section 5.01: Organization..... 11

    Section 5.02: Powers and Authority of the Association..... 12

    Section 5.03: Liability of Members of Board..... 15

    Section 5.04: Duties and Obligations of the Association..... 15

ARTICLE 6 - Funds, Assessments and Delinquency ..... 17

    Section 6.01: Creation of Lien and Personal Obligation for Assessments..... 17

    Section 6.02: Operating Fund..... 18

    Section 6.03: Maintenance Assessment..... 18

Section 6.04: Delinquency Assessment. . . . .	18
Section 6.05: Assessments for Capital Improvements and Indebtedness. . . . .	19
Section 6.06: Reserves as Trust Funds. . . . .	19
Section 6.07: Delinquency. . . . .	19
Section 6.08: Notice of Lien. . . . .	20
Section 6.09: Foreclosure Sale. . . . .	20
Section 6.10: Curing a Default. . . . .	20
Section 6.11: Cumulative Remedies. . . . .	21
Section 6.12: Certificate of Payment. . . . .	21
Section 6.13: Commencement of Annual Assessments. . . . .	21
ARTICLE 7 - Duties and Responsibilities of Owners . . . . .	21
Section 7.01: Owner's Responsibility to Repair. . . . .	21
Section 7.02: Joint Maintenance by Owners. . . . .	21
Section 7.03: Parking Areas, Vehicles. . . . .	22
Section 7.04: Maintenance of Landscaping. . . . .	22
Section 7.05: Observance of Subdivision Restrictions. . . . .	22
Section 7.06: Rights of Action. . . . .	22
ARTICLE 8 - Construction and Architectural Control . . . . .	23
Section 8.01: Architectural Control Committee: . . . . .	23
Section 8.02: Construction of Improvements. . . . .	23
Section 8.03: Design Guidelines . . . . .	24
Section 8.04: Estoppel Certificate. . . . .	25
Section 8.05: Liability. . . . .	25
ARTICLE 9 - Protection of Security Interests . . . . .	26
Section 9.01: Application of Assessments to Mortgagees. . . . .	26
Section 9.02: Limitation of Enforcement Against Mortgagee. . . . .	26
Section 9.03: Rights of Mortgagee to Information. . . . .	26
Section 9.04: Application of Subdivision Restrictions. . . . .	26
Section 9.05: Collection of Assessments. . . . .	26
ARTICLE 10 - Limitation of Subdivision Restrictions on Grantor . . . . .	27
Section 10.01: Limitation of Subdivision Restrictions on Grantor. . . . .	27
Section 10.02: Use of Subdivision Name. . . . .	27
Section 10.03: Architectural Control. . . . .	28
Section 10.04: No Amendment or Repeal. . . . .	28
ARTICLE 11 - Miscellaneous Provisions . . . . .	28
Section 11.01: Amendment or Repeal; Duration. . . . .	28
Section 11.02: Enforcement; Non-Waiver; No Forfeiture. . . . .	29
Section 11.03: Construction; Compliance with Laws; Severability; . . . . .	30
Singular and Plural; Titles. . . . .	30
Section 11.04: Lot Splitting; Consolidation. . . . .	30

Section 11.05: Obligations of Owners; Avoidance; Termination. . . . .	31
Section 11.06: No Partition or Severance of Interests. . . . .	31
Section 11.07: Notices; Documents; Delivery. . . . .	31
Section 11.08: Ownership of Property. . . . .	32
Section 11.09: Transfer of Common Area. . . . .	32

## **MILAGRO MESA SUBDIVISION RESTRICTIONS**

### **A Declaration of Restrictions, Covenants and Conditions for the Creation and Maintenance of a Planned Residential Development**

THIS DECLARATION is made as of November 7, 2017, by **DOUBLE M PROPERTIES, INC., a New Mexico corporation**, with respect to that certain real property situate in Sandoval County, New Mexico and more particularly described as follows:

Lots 12 through 36, inclusive, in Block 1, Lots 1 through 19, inclusive, in Block 2, Lots 36 through 46, inclusive, in Block 2, and Lots 12 through 20, inclusive, in Block 3, and Tracts E, F, G, H and I, Milagro Mesa Subdivision as the same is shown on the Plat thereof recorded in the Sandoval County, New Mexico Real Estate Records on November 6, 2017, in Book 3, Page 4157, as Document No. 2017P01149 (City of Rio Rancho Plat Book 27, pages 59 & 60).

It is hereby declared that all of the described real property is subject to this Declaration which is for the purpose of creating and maintaining a planned residential development on the described real property and for the improvement and protection of the value, desirability and attractiveness of the described real property.

The planned residential development shall originally consist of sixty-four (64) single family dwellings with each dwelling to be located on an individually owned lot on public streets, with portions of certain lots subject to easements for the benefit of the community, and with portions of the property being owned by the Association of Lot Owners for the benefit of the Lot Owners.

This Declaration shall run with the described real property and shall be binding upon and inure to the benefit of Grantor, the Association, each Owner of the described real property or any part of it, and each successor in interest of Grantor, the Association, and any such Owner.

## **ARTICLE 1 - Definitions**

Unless the context otherwise specifies or requires, the terms defined in this Article 1 shall have the meanings as defined in this Article for the purposes of these Restrictions.

**Section 1.01: Architectural Control Committee.**

The terms "Architectural Control Committee" or "Committee" shall mean the architectural control committee created pursuant to Article 8.

**Section 1.02: Association.**

The term "Association" shall mean Milagro Mesa Homeowners' Association, Inc., a New Mexico non-profit corporation described in the Article entitled, "Organization, Powers and Duties of the Association," and any predecessor or successor unincorporated association.

**Section 1.03: Board.**

The term "Board" shall mean the Board of Directors of the Association and the governing body of any predecessor or successor unincorporated association.

**Section 1.04: Builder.**

The term "Builder" means a licensed New Mexico homebuilder which purchases a Lot for the construction of a home for sale to a homeowner.

**Section 1.05: Common Area.**

The term "Common Area" shall mean portions of the Subdivision which have been or will be conveyed to the Association for the benefit of the Lot Owners. The Common Area within the Subdivision is Tracts E, F, G, H, and I as shown on the Plat.

**Section 1.06: Easement Area.**

The term "Easement Area" shall mean certain interests in real property including Improvements thereon owned or controlled by the Association or owned by the public or the Lot Owners but maintained by the Association for the common use and enjoyment of the Association members. The Easement Areas to be maintained by the Association shall be the exterior of all walls, or fences constructed on Lot lines abutting public rights-of-ways or abutting Common Area.

**Section 1.07: Fiscal Year.**

The term "Fiscal Year" shall be the calendar year; but a different Fiscal Year may be adopted by the Association by By-Law or Board Resolution.

**Section 1.08: Grantor.**

The term "Grantor" shall mean Double M Properties, Inc., a New Mexico corporation, its successors and assigns, who are assigned, in writing, all or part of Grantor's powers and responsibilities for all or a specific area or portion of the Subdivision and who accept such powers and responsibilities in writing. All such assignments and agreements to accept the obligations of Grantor shall be recorded, filed with the Board and placed with the records of the Association. Each person or entity named as Grantor in an assignment may exercise the rights of Grantor provided by these Restrictions for the area assigned, but no general power, such as the power to annex, shall be partially assigned, except for an assignment of all rights under this Declaration.

**Section 1.09: Grantor Control Period.**

"Grantor Control Period" means until the earlier of: (i) sixty (60) days after conveyance of seventy-five percent (75%) of the Lots that are part of the Subdivision, and any additional Lots that may be added to the Subdivision to Owner Members ; (ii) two (2) years after all Grantors have ceased to offer Lots for sale in the ordinary course of business; (iii) two (2) years after a development right to add new Lots was last exercised; or (iv) the date that the Grantor or the Grantor's designee, after written notice to the Association, records an instrument voluntarily terminating all rights to appoint Board members.

**Section 1:10: Improvements.**

The term "Improvements" shall include, without limitation, buildings, out-buildings, (including sheds and storage buildings), roads, driveways, parking areas, fences, retaining walls, privacy walls or fences, subdivision exterior walls or fences, stairs, decks, windbreaks, poles, antennas, signs, utility or communication installations (whether above or underground), and any structure and excavation of any type or kind.

**Section 1.11: Lot.**

The term "Lot" shall mean each of the sixty-four (64) lots designated as Lots 12 through 36, inclusive in Block 1, Lots 1 through 19, inclusive and Lots 36 through 46,

inclusive in Block 2, and Lots 12 through 20, inclusive, in Block 3, on the Plat together with the Improvements located on each such Lot, and any lots subsequently annexed into the Association.

**Section 1.12: Mortgage.**

The term Mortgage shall mean a deed of trust, as well as a mortgage, and the term "Mortgagee" shall mean a beneficiary under or a holder of a deed of trust, as well as a Mortgagee.

**Section 1.13: Owner.**

The term "Owner" shall mean the persons or entities, including Grantor, holding the beneficial ownership of the fee, including the purchaser under a contract of sale, and shall not include persons holding only a security interest or a seller under a contract of sale. For the purposes of the Article entitled, "Permitted and Prohibited Uses of Property," unless the context otherwise requires, "Owner" shall include the family, invitees, licensees and tenants of any Owner.

**Section 1.14: Plat.**

The term "Plat" shall mean the Plat for Milagro Mesa Subdivision as recorded in the Sandoval County, New Mexico real estate records on November 6, 2017 in Book 3, Page 4157, as Document No. 2017P01149.

**Section 1.15: Subdivision.**

The term "Subdivision" shall mean the Planned Residential Development subdivision created by and subject to this Declaration.

**Section 1.16: Subdivision Restrictions.**

The term "Subdivision Restrictions" shall mean, with respect to all property within the Subdivision, the limitations, easements, restrictions, covenants, and conditions set forth in this Declaration, as this Declaration may from time to time be amended. The term "This Declaration" and the title to this Declaration shall have the same meaning as "Subdivision Restrictions."



## **ARTICLE 2 - Property Subject to Subdivision Restrictions**

### **Section 2.01: Initial Development.**

All of the property described on page 1 of this Declaration, except for property dedicated to the City of Rio Rancho (the "City").

### **Section 2.02: Subsequent Development.**

Grantor may, pursuant to the following provisions of this section, from time to time and in its sole discretion and without necessity of any approvals, annex real property owned by Grantor or other persons with the permission of such other persons. The annexation of any such property shall become effective when Grantor shall have recorded the following:

- a. A declaration, which may consist of more than one document and which shall, among other things, (i) describe the real property which is to be annexed, (ii) set forth or refer to such additional or other limitations, restrictions, covenants and conditions, applicable to such property, (iii) describe any areas to be included within the Common Area or Easement Areas, and (iv) declare that such property is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved, subject to The Restrictions of Milagro Mesa Subdivision; and
- b. A subdivision plat with respect to the real property described in said declaration.

Upon annexation becoming effective, the property covered by annexation shall become and constitute part of Milagro Mesa Homeowners' Association and the Association shall have and shall accept and exercise jurisdiction over such property as a part of the Milagro Mesa Community.

The annexation declaration, with respect to all or any part of the property described by it, shall provide for any or all of the following which shall become part of these Restrictions as applicable to such property:

- (1) Such new land classifications, restrictions, covenants or conditions with respect to the use as Grantor deems

appropriate for the development of such property; and

(2) With respect to the land classification provided for by these Restrictions, such additional or different limitations, restrictions, covenants and conditions with respect to use as Grantor deems appropriate for the development of such property; provided, however, that such additional or different limitations, restrictions, covenants and conditions applicable to Common Area and Easement Area lying within such annexed property shall not discriminate between Owners.

### **ARTICLE 3 - Permitted and Prohibited Uses of Property**

#### **Section 3.01: Permitted Uses of Property Within the Subdivision.**

a. Improvements and development within the Subdivision shall be limited to residential single-family dwellings, either attached or detached having a minimum of 1400 square feet of heated living area, associated parking, garages, roads and access ways, landscaped areas, and all public or private service and utility facilities related to such uses, including, but not limited to, drainage, sewer, gas, water, electric and communication facilities. No dwelling shall be used as a boarding house or divided into apartments or rooms for rental purposes. This subsection does not prevent the rental or lease of the whole dwelling by the Owner thereof, but any such rental or lease must be by a written agreement which requires the tenant to observe these Restrictions. No dwelling may be leased or rented for a period of less than one hundred-eighty (180) days.

b. Grantor shall, so long as Grantor is the owner of any Lot, have all of the rights of use set out in the Article entitled, "Limitation of Subdivision Restrictions on Grantor."

#### **Section 3.02: Prohibited Uses of Subdivision.**

a. In no event shall any Lot be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth, or be used in any other way inconsistent with the Subdivision Restrictions.

b. No illegal, noxious or offensive activity shall be carried on within the Subdivision. No light shall be emitted from any Lot which is unreasonably bright to cause unreasonable

glare to any residences. No sound shall be emitted on or from any Lot which is unreasonably loud or annoying. No odor shall be emitted from any Lot which is noxious or offensive to others. Nothing shall be done or placed which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to Owners in the enjoyment of their dwellings.

c. No signs whatsoever, including, but without limitation, commercial or similar signs, visible from other Lots, shall be erected or maintained upon any Lot, except:

1. Such signs as may be required by legal proceedings or are useful for such proceedings.

2. During the time of construction of any structure or other Improvement, job identification signs having a maximum face area of twenty-four (24) square feet per sign and of the type usually employed by contractors, subcontractors, and tradesmen.

3. Appropriate safety, directional, and identification and safety signs installed by Grantor, the City, the Association, or required by law.

4. Customary "for sale" or "for rent" signs.

5. Such residential or commercial identification signs as Grantor has the right to maintain, or as are specifically approved by the Board in accordance with the rules adopted by the Board

6. Political signs not exceeding 24 ft<sup>2</sup> each for a period not to exceed one month before the election and two (2) days after the election.

d. Except as provided otherwise by this Section, no mobile home, motor home, recreational vehicle, motorcycles, campers, trailers, boats, or similar facility, structure or recreational equipment shall be kept, placed, or maintained within the Subdivision at any time, unless enclosed within a garage or within the side or rear yard so as not to be visible from any street, or the ground floor of neighboring homes. The provisions of this subsection shall not apply to (i) temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any work or improvement permitted by this Declaration, (ii) a recreational vehicle parked in the driveway or the street for a period not to exceed 24 hours, and (iii) a guest's use of a recreational vehicle for a period not to exceed one week per thirty (30) days.

e. Any outside clothes lines or other outside clothes drying or airing facilities shall be maintained exclusively within a fenced yard in such a way as not to be visible from streets and the ground floor of neighboring dwellings.

f. No garbage, clippings from trees, shrubs or lawns, trash, ashes or other refuse may be thrown, dumped or allowed to accumulate on any land within the Subdivision, except for compost piles in locations approved by the Board. There shall be no burning of refuse out of doors, except for the burning of natural materials in connection with land clearance or fire control. No incinerators or other device for the burning of refuse indoors shall be constructed, installed or used by any person except in conformity with law and approved by the Board.

g. No animals, livestock, horses, insects or poultry of any kind shall be kept, raised, or bred in the Subdivision except dogs, cats and other household pets in reasonable numbers may be kept, providing they are not kept, raised or bred for commercial or hobby breeding purposes

h. All exterior spot or directional lighting of any sort, the light source of which is visible from neighboring Lots, shall be approved, in writing, by the Board prior to installation.

i. Except for antennas, satellite dishes and other over-the-air receiving devices covered by the FCC rules governing Over-the-Air Reception Devices; Television Broadcast Service and Multi-channel Multipoint Distribution Service (the "FCC Rule"), no antenna for the transmission or reception of television or radio signals or for access to the internet shall be installed on any Lot unless approved by the Board. Any antenna, satellite dish or other receiving device covered by the FCC Rule may be installed on a Lot without the approval of the Board, provided the antenna, satellite dish or receiving device is placed inside a home or other approved building on a Lot or is placed on the portion of the Lot which is the least visible from neighboring Lots and does not interfere with the viewer's ability to install, maintain or use the antenna, satellite dish or receiving device unless required to receive adequate reception, the receiving devices shall not be located on the roof of the home or within ten (10) feet of the front façade of the home. The Board shall have the right to adopt rules and regulations with respect to the installation and placement of antennas, satellite dishes and other receiving devices; provided, however, that the Board shall not impose or enforce any rule or regulation which is inconsistent with or prohibited by the FCC Rule.

j. No mechanical device shall be installed or maintained on the roof or exterior surface of any dwelling if such device is visible from the street which the dwelling faces unless screened or enclosed to the satisfaction of the Committee.

k. No vehicles of any type shall be permanently or semi-permanently parked in any portion of the Subdivision visible from other Lots for purposes of repairs or reconstruction, or storage. A vehicle shall be deemed parked for storage if it is not driven out of the Subdivision for thirty (30) consecutive days.

l. No trucks or other commercial vehicles exceeding 8 feet in height or 24 feet in length shall be kept or maintained in the Subdivision, except within garages, and except where customary or required for the limited purposes of building, repairing, refinishing, or maintaining the Subdivision or a dwelling, or for the purpose of moving household goods or other necessary or customary furnishings, equipment or supplies in or out of the Subdivision or as otherwise permitted by the Board on a case by case basis.

m. Except temporarily during a construction period, all utility lines, including, but not limited to, electrical, gas, telephone, cable television, and other communications systems shall be underground, except for access ports and above ground transformers.

n. No portion of the Subdivision shall be used for any purpose or in any manner which would increase the rate at which insurance against loss or damage by fire and the perils covered by extended coverage, bodily injury, property damage liability insurance, covering any other dwelling may be obtained, or cause any other dwelling to be uninsurable or have such insurance canceled or suspended.

**Section 3.03: Common Area/Easement Area.**

The Common Area shall be reserved by the Association for the benefit of all Owners pursuant to this Declaration to enhance the value and desirability of the Subdivision for watering, planting, cutting, removing and otherwise caring for the landscaping and for installing, maintaining and repairing signs identifying the Subdivision and utility lines necessary for the maintenance of the Landscaping. The exterior of all Lot walls abutting public right-of-way are Easement areas. The exterior of all Lot walls abutting Common area are Easement areas. The Association shall have the right and the obligation to maintain the appearance of the exterior of these walls. The Lot Owners shall be obligated to maintain the structural integrity of these walls.

**Section 3.04: Encroachment Easements.**

Should minor variations between lot lines as shown on the Plat and actual physical lot boundaries (such as walls, including interior party walls, and fences) occur, either due to original construction, reconstruction, repair or due to the settling, shifting or movement of structures, a valid easement shall exist for the encroaching Improvements for so long as the encroachment exists.

## **ARTICLE 4 - Membership in the Association and Voting Rights**

### **Section 4.01: Membership.**

a. Each Owner, by virtue of being an Owner and during such time as such Owner remains an Owner, shall be a member of the Association, or, a member of the unincorporated association preceding the Association or succeeding to the Association.

b. The rights, duties, privileges, and obligations of an Owner as a member of the Association or its proceeding or succeeding unincorporated association shall be those set forth in, and shall be exercised and imposed in accordance with the provisions of this Declaration and the Association's Articles of Incorporation and By-Laws.

### **Section 4.02: Classes of Membership.**

The Association shall have the following two (2) classes of membership:

**Owner Members.** Owner Members shall be all Owners, with the exception of Grantor. Each Owner Member shall be entitled to one (1) vote for each Lot held by such Member.

**Grantor Member.** The Grantor Member shall be the Grantor. The Grantor Member shall not vote on a per Lot basis. The rights of the Grantor Member as specified in its Declaration and the By-Laws and unless otherwise specified, shall all be exercised by the Grantor's sole and absolute discretion. The Grantor shall cease to be a Grantor Member at such time as the Grantor owns no more Lots within the Subdivision.

### **Section 4.03: Voting Rights.**

Each Owner Member shall be entitled to vote as provided in this Article on all matters properly submitted for vote to the membership of the Association. The right to vote may not be severed or separated from any Lot, and any sale, transfer or conveyance of the beneficial interest of the fee of any Lot to a new Owner Member shall operate to transfer the appurtenant voting rights without the requirement of any express reference thereto. Voting may be by written proxy.

### **Section 4.04: Voting Rules.**

When any provision of the Subdivision Restrictions calls for the vote or the consent of the Owner Members in any stated percentage, the following rules apply, unless the

specific language of the provision provides to the contrary:

a. Whenever a vote of the Owner Members is required, it is sufficient to obtain the written consent of the same percentage of Owner Members;

b. In any election held pursuant to the requirements of this Declaration, ballots may be transmitted to the Owners Members in the manner provided for the giving of notice.

## **ARTICLE 5 - Organization, Powers and Duties of the Association**

### **Section 5.01: Organization.**

a. The Association shall be organized as a non-profit corporation charged with the duties and empowered with the rights set forth herein. The Association's affairs shall be governed by this Declaration, the Articles of Incorporation and the By-Laws.

b. In the event that the Association, as a corporate entity, is not formed or after formation loses its corporate powers or is dissolved, a non-profit, unincorporated association shall forthwith and without further action or notice, be formed and shall succeed to all the rights and obligations of the Association hereunder until a qualified non-profit corporation is formed. Said unincorporated association's affairs shall be governed by the laws of the State of New Mexico, and to the extent not inconsistent therewith, by this Declaration, the Articles of Incorporation and the By-Laws, respectively, as if they were created for the purpose of governing the affairs of an unincorporated association.

c. The President and Secretary of the Association, or any three (3) members of the Board of Directors, may, but shall have no obligation to, execute, acknowledge and record a certificate of identity stating the names of all of the members of the then current Board and the then current Committee, if any. The most recently recorded certificate, if any, shall be conclusive evidence of the identity of the persons then composing the Board and the Committee in favor of any person relying thereon in good faith.

d. The Board shall be elected or appointed as provided in the By-Laws at an annual or special meeting not later than one (1) year after the closing of the sale of the first Lot.

e. The affairs of the Association shall be managed by the Board, which shall exercise all of the rights and powers and perform all of the duties and responsibilities set out in this Declaration for the Association.

**Section 5.02: Powers and Authority of the Association.**

The Association shall have all of the powers set forth in its Articles of Incorporation, together with its general powers as a non-profit corporation, subject only to the limitations upon the exercise of such powers as are expressly set forth in its Articles of Incorporation, its By-Laws and in this Declaration, to do any and all lawful things which may be authorized, required, or permitted to be done by the Association under and by virtue of the Subdivision Restrictions and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association or for the peace, health, comfort, safety, and general welfare of Owners.

a. Any of the following actions by the Board shall require a majority vote or written assent of the Owner Members and the approval of the Grantor Member so long as there is a Grantor Member:

1. Entering into a contract for the furnishings of goods or services for Common Area and/or Easement Area or the Association for a term longer than three (3) years with the exception of prepaid casualty or liability policies of not to exceed three (3) years duration provided that the policy permits short rate cancellation by the insured; and

2. Paying compensation to members of the Board or officers for services performed in the conduct of the Association's business provided that the Board may cause a member or officer to be reimbursed for expenses incurred in carrying on the business of the Association.

b. In fulfilling any of its obligations or duties under the Subdivision Restrictions, including, without limitation, its obligations or duties for the maintenance, repair, operation, or administration of the Common Areas and/or Easement Areas, the Association shall have the power and authority:

1. To contract and pay for, or otherwise provide for, the improvement, maintenance, restoration, and repair of the Common Area and/or Easement Area and all Improvements located thereon;

2. To obtain, maintain, and pay for such insurance policies or bonds, whether or not required by this Declaration, as the Association shall deem to be appropriate for the protection or benefit of the Subdivision, the Association, the members of the Board, and the Owners;

3. To incur indebtedness; but any indebtedness in excess of the Association's estimate of its estimated gross revenue for the year incurred or any



indebtedness to be repaid over a period longer than one (1) year must be approved by a two-thirds (2/3) vote of the Owner Members and the approval of the Grantor Member;

4. To contract and pay for, or otherwise provide for, such utility services, including, but without limitation, water and electrical services, as may from time to time be required;

5. To contract and pay for, or otherwise provide for, the services of architects, engineers, attorneys, bookkeepers and certified public accountants, and such other professional and non-professional services as the Association deems necessary;

6. To contract and pay for, or otherwise provide for, such materials, supplies, furniture, equipment, and labor as and to the extent the Association deems necessary;

7. To pay and to discharge any and all liens from time to time placed or imposed upon any Common Area, or on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation, or administration;

8. To lease or contract for the use of land and Improvements for recreation or other purposes to the extent the Association deems necessary; and

9. To place and maintain upon Common Area such signs as the Association may deem necessary for the identification of the Subdivision and/or roads, the regulation of traffic, including parking, for the health, welfare and safety of owners and other persons.

c. In fulfilling any of its obligations or in exercising any of its rights with respect to the development, construction, installation or acquisition of a capital improvement, the Association shall have the power and authority:

1. To contract and pay for such Improvements upon such terms and conditions as the Association shall deem appropriate;

2. To obtain, maintain, and pay for such insurance policies or bonds as the Association may deem appropriate for the protection and benefit of the Association, the members of the Board, and Owners, including, but without limitation, builder's risk insurance, additional comprehensive liability insurance, workman's compensation insurance, and performance and fidelity bonds;

3. To incur indebtedness under terms and conditions as provided by this Article; and

4. To contract and pay for the services of architects, engineers, attorneys, and certified public accountants, and other professional and non-professional services.

d. With respect to the Common Area and Easement Area, the Association shall exercise control over the Common Area and Easement Area, but only for the purpose of carrying out the purposes of these Restrictions. The Association shall have no authority to mortgage, sell or convey Common Area or any part thereof, unless approved by the two-thirds (2/3) vote of the Owner Members and approval of the Grantor Member except that the Association shall have the power and authority from time to time without a vote of the Owner Members to grant and convey easements or rights of way, in, on, over, or under any Common Area, for the purpose of constructing, erecting, operating and maintaining thereon, therein, and thereunder wires, conduits and other equipment for the transmission of electricity and signals for lighting, heating, power, communication, cable television and other purposes, and for the necessary attachments in connection therewith; and public and private sewers, storm water ponding areas, storm water drains, storm water ponding areas, land drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and any and all equipment in connection with the foregoing.

e. The Association may, from time to time and upon such terms and conditions as it may deem appropriate, agree with the Governing Body of any other subdivision to jointly manage the affairs of the Subdivision, to jointly hire a manager, or jointly to engage in other activities not inconsistent with the Subdivision Restrictions.

f. The Association shall have the right from time to time to pay, compromise, or contest any and all taxes and assessments levied against all or any part of the Common Area any income of or assessed to the Association, and upon any personal property belonging to or assessed to the Association.

g. The Association shall have the power and authority from time to time, in its own name, on its own behalf, and on behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Subdivision Restrictions and to enforce, by mandatory injunction or otherwise, all of the provisions of this Declaration.

h. The Association shall have the power, but not the duty, to enter upon and maintain, or provide for the maintenance of, any Lot or Improvements which is not maintained by the Owner thereof in accordance with the requirements of these Restrictions, at the expense of any such Owner.

**Section 5.03: Liability of Members of Board.**

No member of the Board shall be personally liable to any Owner, or to any other person, including Grantor, for any error or omission of the Association, its representatives and employees, or the manager; provided, however, that such member has, with the actual knowledge possessed by him, acted in good faith.

**Section 5.04: Duties and Obligations of the Association.**

a. The Association shall have the obligation and duty, subject to the Subdivision Restrictions, to do and perform each and everything set out in this Section, for the benefit of the Owners and for the maintenance and improvement of the Subdivision.

b. The Association shall accept all Owners as members of the Association.

c. The Association shall accept from Grantor the Common Areas and maintenance responsibilities in all Easement Areas which shall be deemed transferred to it upon Recording of these Restrictions, subject to the reservations of all easements, licenses and rights to use and the rights of Grantor.

d. The Association shall maintain, or provide for the maintenance of, the Common Areas, the Easement Areas and all Improvements thereon.

e. The Association shall maintain or provide for the maintenance of all landscaping and vegetation (including without limitation, grass, mass plantings, shrubs and trees) on Common Areas and shall keep such vegetation properly trimmed, mowed, cut, watered, fertilized, planted and replaced so that it provides an attractive appearance.

f. The Association may employ the services of a corporate or individual manager to manage the affairs of the Association and, upon such conditions as are otherwise advisable by the Association, the Association may delegate to the manager any of its powers under the Subdivision Restrictions. No management agreement entered into between the Association and any professional management company (whether or not such professional management company is owned or controlled by the Grantor) shall provide for a term in excess of two (2) years and all such agreements shall permit the Association to terminate for cause upon not more than thirty (30) days' prior written notice and all such agreements shall provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.

g. The Association shall obtain and maintain in force the following policies of insurance to the extent policies with the required provisions are economically available:

1. Fidelity Bond: The Association shall procure and maintain a fidelity bond naming the Association as obligee in an amount equal to the estimated maximum amount of funds to be in the custody or control of the Association or its professional management company, including reserves for replacement and working capital, at any given time during the term of such bond, but in any event in an amount at least equal to three (3) months' aggregate monthly assessments on all Lots plus the sum of all reserve funds. Such fidelity bond shall cover all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of or administered by the Association, including the officers, directors, employees and agents of the professional management company employed by the Association pursuant to these Restrictions. Provided, however, that the fidelity bond to be procured by the Association need not cover the professional management company and its officers, directors, employees and agents, if such professional management company provides a sufficient fidelity bond naming the Association as an additional obligee or loss payee. Such bond shall contain a waiver of any defense or exclusion based upon the exclusion of persons serving without compensation from the definition of "employees" or other similar terms or expressions. Such bond shall require at least ten (10) days' prior written notice to the Association of cancellation or substantial modification (including cancellation for non-payment of premiums). The cost of such fidelity bond (except for premiums on any fidelity bond provided by the professional management company which the Board determines to be satisfactory and in compliance with the provisions of this Section) shall constitute a common expense of the Subdivision.

2. Liability Insurance: The Association shall procure and maintain comprehensive public liability insurance in the amount of at least one million dollars (\$1,000,000) per single occurrence for bodily injury, death and property damage suffered by the public or any Owner and his family, guests, agents, employees or invitees occurring in, on or about the Common Areas. Such policy shall insure the Owners and the Association and its officers, directors, employees and agents, including expressly the professional management company and its officers, directors, employees and agents and shall further expressly cover legal liability arising from lawsuits related to employment contracts of every nature to which the Association is a party. Such policy shall be issued by insurers of recognized responsibility authorized to do business within the State of New Mexico and shall require at least ten (10) days' prior written notice of cancellation or substantial modification (including cancellation for nonpayment of premiums) to the Association and to any Mortgagee having a first lien against any Lot which is listed as a scheduled holder of such a first mortgage in the policy. The cost of such policy shall constitute a common expense of the Subdivision. Such insurance must not provide for contribution with regard to any policies of liability insurance carried

individually by any Owner.

3. Additional Insurance: The Board shall have the authority to obtain such other insurance, including the authority to increase the scope or amount of any insurance required by this Article 5, as the Board shall determine to be necessary or advisable. The cost of any such additional insurance shall constitute a common expense of the Subdivision.

h. The Association shall prepare an annual operating statement reflecting the money received by the Association and the expenditures of the Association for each fiscal year and distribute such statement to each member and each Eligible Mortgagee upon request.

i. The Association shall take such action, whether or not expressly authorized by the Subdivision Restrictions, as may reasonably be necessary to enforce or carry out the purposes of the Subdivision Restrictions and the Subdivision Rules.

## **ARTICLE 6 - Funds, Assessments and Delinquency**

### **Section 6.01: Creation of Lien and Personal Obligation for Assessments.**

Grantor for each Lot owned by it hereby agrees to pay, and each Owner Member of any Lot by the acceptance of a deed or contract of sale therefor, whether or not so expressed in any such deed or contract or other conveyance, is deemed to agree to pay to the Association:

- a. Maintenance assessments;
- b. Delinquency assessments;
- c. Assessments for capital improvements; and
- d. All other fees or other moneys due to the Association from such Owner.

The maintenance assessment, delinquency assessment and assessment for capital improvements, plus interest, late charges, costs and attorney's fees, shall be a charge against the Lot and shall be a continuing lien upon the Lot against which each such assessment is made, and shall also be the personal obligation of the Owner or Owners of such property on the assessment date. The personal obligation to pay assessments shall not pass to successors in title unless expressly assumed by the successors.

**Section 6.02: Operating Fund.**

There shall be an operating fund, into which the Association shall deposit all monies paid to it and from which the Association shall make disbursements in performing the functions for which the foregoing assessments are levied.

**Section 6.03: Maintenance Assessment.**

a. Within thirty (30) days prior to the commencement of each fiscal year the Association shall estimate the costs and expenses to be incurred by the Association during such year, including a reasonable provision for contingencies, and reserves for major repair and replacement, and shall subtract from such estimate an amount equal to the anticipated balance, exclusive of any reserves for contingencies and reserves for major repair and replacement, in the operating fund at the start of such year. Subject to Section 6.13 hereof the net sum or net estimate so determined shall be assessed to all Owners in shares: one (1) share for each Lot owned.

b. If, at any time and from time to time, during any fiscal year, the maintenance assessment proves or appears likely to prove inadequate for any reason, including non-payment of any Owner's share thereof, the Association may levy a further maintenance assessment in the amount of such actual or estimated inadequacy, which shall be assessed to all Owners apportioned as provided in subsection a, if approved by a majority vote of the Owner Members at a meeting of the Members at which a quorum is present and is approved by the Grantor Member

c. Maintenance assessments shall be due and payable to the Association when levied or in such installments during the year, and on such due dates as the Board shall designate.

d. The Board shall not levy assessments to defray the costs of any action or undertaking on behalf of the Association which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year and which are not part of such budgeted gross expenses without the majority vote or written consent of the Owner Members at a meeting of the Members at which a quorum is present and the approval of the Grantor Member.

**Section 6.04: Delinquency Assessment.**

The Association shall levy a delinquency assessment against any Owner or Owners as a result of whose acts, or failure or refusal to act, or otherwise comply with the

Subdivision Restrictions, monies were expended from the operating fund by the Association. Such assessment shall be in the amount so expended, and shall be due and payable to the Association when levied, or in such installments as the Association shall designate. Prior to the levy of a delinquency assessment the Board shall hold a hearing to determine the validity and amount of the assessment upon at least thirty (30) days' notice to the Owner to be assessed at which hearing such Owner shall be given an opportunity to be heard. Unpaid delinquency assessments shall bear interest at rate of one percent (1%) per month or such other rate as established from time to time by the Board.

**Section 6.05: Assessments for Capital Improvements and Indebtedness.**

The Association may also levy in any year an assessment for paying or returning, in whole or in part, the cost or proposed cost of acquisition and construction of a described capital improvement (whether the improvements constitute real or personal property), in an amount greater than can be included in the maintenance assessment, provided it has been approved by a two-thirds (2/3) vote or written consent of the Owner Members at a meeting of the Members at which a quorum is present, and the approval of the Grantor Member, which assessment shall be assessed to Owners as provided for in Section 6.

**Section 6.06: Reserves as Trust Funds.**

Reserves for major repairs and replacements and for capital improvements to be built or acquired shall be kept segregated from the other monies held by the Association as trust funds in an account or accounts labeled "Reserve Trust Fund" and shall be withdrawn and used only for the purposes of major repairs and replacements or for capital improvements respectively, as established by the Board.

**Section 6.07: Delinquency.**

Each assessment under this Article shall be the separate, distinct and personal debt and obligation of the Owner against whom it is assessed. Any assessment provided for in this Article, which is not paid when due, shall be delinquent. With respect to each assessment not paid within ten (10) days after its due date, the Association may, at its election, require the Owner to pay a late charge to be determined by the Association, to pay the costs of handling the delinquent sum. Such a charge shall be considered an additional assessment and collectible with the assessment for which it was charged. If any such assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at a rate set from time to time

by the Association, however not greater than twenty percent (20%), and the Association may, at its option, bring an action at law against the Owner or Owners personally obligated to pay the same, and upon compliance with the provisions of this Article to foreclose the lien against the Lot, and there shall be added to the amount of such assessment the late charge, the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest at the rate provided herein and a reasonable attorney's fee, together with the costs of action. Each Owner vests in the Association, or its assigns, the right and power to bring all actions at law or lien foreclosure against such Owner or other Owners for the collection of such delinquent assessments.

**Section 6.08: Notice of Lien.**

No action shall be brought to foreclose an assessment lien less than thirty (30) days after the date a notice of claim of lien is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of said Lot, and a copy thereof is recorded by the Association in the office of the Sandoval County Clerk; said notice of claim must recite a good and sufficient legal description of any such Lot, the record owner or reputed owner thereof, the amount claimed (which shall include the interest charges, costs and attorney's fees recoverable by an action at law) and the name and address of the Association.

**Section 6.09: Foreclosure Sale.**

Any such sale provided for above is to be conducted in accordance with the customary practice of the courts of the State of New Mexico, applicable to the foreclosure of Mortgages, or in any other manner permitted or provided by law. The Association, through its duly authorized agents, shall have the power to bid on the Lot at a foreclosure sale, and to acquire and hold, lease, mortgage and convey the same.

**Section 6.10: Curing a Default.**

Upon the timely curing of any default for which a notice of claim of lien was filed by the Association, the officers of the Association are hereby authorized to file or record, as the case may be, an appropriate release of such notice, upon payment by the defaulting owner of a fee, to be determined by the Association, to cover the costs of preparing and filing or recording such release, together with the payment of such other costs, interest or fees as shall have been incurred.



**Section 6.11: Cumulative Remedies.**

The assessment lien and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

**Section 6.12: Certificate of Payment.**

The Association shall, upon demand, furnish to any Owner liable for assessments, a certificate in writing signed by an officer of the Association, setting forth whether the assessments on a specified Lot have been paid, and the amount of the delinquency, if any. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

**Section 6.13: Commencement of Annual Assessments.**

The maintenance assessments provided for in this Article shall commence as to each Lot upon the sooner of: (a) the conveyance of the Lot with a home constructed thereon or (b) the first anniversary of the conveyance of the Lot by the Grantor. The first such annual assessment shall be prorated for each Lot for the period from the commencement as provided in this section to the start of the next fiscal year following such commencement. Until such time as all of the Lots are paying maintenance assessments, the Grantor shall bear the expense of any shortfall in the Association fulfilling its obligations.

**ARTICLE 7 - Duties and Responsibilities of Owners**

**Section 7.01: Owner's Responsibility to Repair.**

Each Owner shall be responsible for the maintenance and repair of his dwelling, his Lot and his landscaping.

**Section 7.02: Joint Maintenance by Owners.**

a. Each wall which is built as part of the original construction of the Subdivision and placed on the dividing line between Lots shall constitute a party wall. Each part of the structure of a building which is shared by more than one dwelling is a common structure. To the extent not inconsistent with the provisions of this Section, the general

rules of law regarding party walls and liability for property damage due to negligence or willful acts or omission shall apply.

b. The cost of reasonable repair, maintenance and replacement of a party wall, common structure or joint utility shall be shared by the Owners who make use of the wall in proportion to such use.

c. Notwithstanding any other provision of this Section, an Owner who, by his negligent or willful act, causes a party wall or common structure to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

d. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the Lot and shall pass to such Owner's successors in title.

**Section 7.03: Parking Areas, Vehicles.**

For overnight parking, each Owner shall park his vehicle in his garage, except that when there are more vehicles used by the Owner than his garage will accommodate. All vehicles shall be parked within garages or on paved driveways.

**Section 7.04: Maintenance of Landscaping.**

Each Owner shall maintain the landscaping on his Lot in a neat and attractive manner. All grass, mass plantings and other plantings shall be mowed, trimmed and cut as necessary at regular intervals.

**Section 7.05: Observance of Subdivision Restrictions.**

Each Owner shall comply with the Subdivision Restrictions and will cause and be responsible for Owner's family, agents, guests, contractors, employees and any person renting or leasing Owner's dwelling to do likewise.

**Section 7.06: Rights of Action.**

Each Owner and the Association shall have a right of action against Owners for failure to comply with the provisions of this Article 7 of the Subdivision Restrictions.

## **ARTICLE 8 - Construction and Architectural Control**

### **Section 8.01: Architectural Control Committee:**

An Architectural Control Committee for the Subdivision is hereby established consisting of the following three persons:

Robert Prewitt  
Harvey Crowley  
Brent Lesley

At least one Board member shall serve on the Committee at all times. The Committee shall serve at the pleasure of the Grantor Member and thereafter at the pleasure of the Board who shall have the right to appoint, reappoint and discharge members of the Committee at will. A majority of the members of the Committee may appoint one member of the Committee to act on and for the Committee.

### **Section 8.02: Construction of Improvements.**

(a) Before anyone shall commence on any Lot within the Subdivision the installation of construction of, remodeling of, addition to, or alteration of any Improvement of whatsoever nature; and before anyone shall paint, texture, repaint or retexture the exterior surfaces of any Improvement, there shall be submitted to the Committee plans and specifications as follows:

(i) Preliminary or tentative plans and specifications which shall clearly show the nature of the work or installation proposed and the location thereof, on the Lot, which such preliminary or tentative plans shall include sufficient description of materials, colors, textures, etc. together with a landscaping plan as shall enable the Committee to evaluate whether the proposed construction, alteration, installation, etc. will harmonize with the motif and style of the Subdivision and be compatible with surrounding homes. The Committee shall grant blanket approval to Builders' general landscape plans and after such approval the Builders' plans shall not be required to include landscape plans.

(ii) After approval of the preliminary or tentative plans, including therein any requirements made by the Committee in the due and proper exercise of its discretion and powers, two complete sets of the final plans and specifications; and

(iii) No Improvement of any kind, installations, painting or texturing, shall ever be, or permitted to be, erected, constructed, installed, placed or maintained

on any Lot within the Subdivision, unless and until the final plans, specifications and elevations therefor shall have received written approval of the Committee. All such final plans shall include plot plans showing the location on the Lot of all Improvements proposed to be constructed and/or installed, planted, placed or maintained on the Lot and shall further include elevations, together with the proposed color scheme and textures for roofs and exteriors thereof, indicating the materials for same.

The Committee is authorized to charge for review of plans and specifications. Payment of the required charge shall be a part of, and condition to, the submittal of plans and specifications for committee approval. Builders shall not be required to pay a fee for the review of their plans by the Committee.

(b) The Committee shall approve or disapprove within thirty days after receipt thereof plans and specifications which have been submitted to it. One set of plans and specifications, with the Committee's approval or disapproval and requirements endorsed thereon, shall be returned to the applicant and the other copy thereof, with a duplicate endorsement thereon corresponding to the first set, shall be retained in the Committee's files.

In the event that the Committee shall fail to approve or disapprove the plans, specifications and other information within thirty days after receipt thereof by the Committee, then such approval shall not be required, provided that no structure, building or other improvement shall be installed, erected, painted, textured, altered or modified which violates any of the Restrictions.

The Committee shall have the right and power to disapprove any plans, specification or details submitted to it, if the Committee shall find that the plans and specifications are not in accord with all provisions of this Declaration, or if a design or color scheme submitted is not in harmony and accord with the Subdivision, or surrounding homes, or if the plans and specifications are incomplete.

### **Section 8.03: Design Guidelines**

The Committee may from time to time adopt and amend design guidelines, architectural rules and subdivision standards for approval of Improvements. The Initial Design Guidelines, Architectural Rules and Subdivision Standards are attached as Exhibit "A". The Committee may grant variances from its Design Guidelines. Amendments to the Design Guidelines, Architectural Rules and Subdivision Standards shall be available in the office of the Association manager.

**Section 8.04: Estoppel Certificate.**

Within thirty (30) days after written demand is delivered to the Committee by any Owner, and upon payment therewith to the Association of a reasonable fee to cover costs from time to time to be fixed by the Association, the Committee shall provide Owner with an estoppel certificate executed by an officer of the Association and acknowledged, certifying with respect to any Lot owned by said Owner, that as of the date thereof either (1) all Improvements and other work made or done upon or within said Lot by the Owner, or otherwise, comply with this Declaration, or (2) such Improvements or work do not so comply, in which event the certificate shall also (a) identify the non-complying Improvements and work and (b) set forth with particularity the cause or causes for such noncompliance. Any purchaser from the Owner, or mortgagee or other encumbrancer shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between Grantor, the Association, and all Owners and such purchaser, and mortgagee.

Within ten business days after receipt of a written request from a Lot Owner, the Association shall furnish a disclosure certificate (a "Disclosure Certificate") containing the information necessary to enable the Lot Owner to comply with the provisions of the New Mexico Homeowners Association Act (the "Act"), as enacted from time to time. The Association may impose reasonable charges for preparation of a Disclosure Certificate.

**Section 8.05: Liability.**

Neither the, Committee, the Board nor any member thereof shall be liable to the Association or to any Owner for any damage, loss, or prejudice suffered or claimed on account of:

- a. The approval of any plans, drawings, and specifications, whether or not defective,
- b. The construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications,
- c. The development or manner or development of any property within the Subdivision, or
- d. The execution and recording of an estoppel certificate whether or not the facts therein are correct; provided, however, that the officer executing the certificate, with the actual knowledge possessed by him, has acted in good faith.

Without in any way limiting the generality of the foregoing, the Committee, Board,

or any member thereof, may, but is not required to, consult with or hear any Owner with respect to any plans, drawings, or specifications, or any other proposal submitted to it.

## **ARTICLE 9 - Protection of Security Interests**

### **Section 9.01: Application of Assessments to Mortgagees.**

The liens created under the Subdivision Restrictions upon any Lot shall be subject and subordinate to, and shall not affect the rights of a mortgagee under any recorded first mortgage upon a Lot made in good faith and for value, provided that after the foreclosure of any such mortgage the amount of all maintenance and special assessments, and all delinquent assessments to the extent such delinquent assessments relate to expenses incurred after such foreclosure, assessed hereunder to the purchaser at foreclosure sale, shall become a lien upon such lot upon recordation of a notice thereof with the Sandoval County Clerk.

### **Section 9.02: Limitation of Enforcement Against Mortgagee.**

No violation by an Owner of the Subdivision Restrictions or enforcement of the Subdivision Restriction against an Owner shall defeat or render invalid the lien of any mortgagee made in good faith and for value against the property of such Owner, but, the Subdivision Restrictions shall be effective against any Owner whose title is acquired by foreclosure, trustee's sale, voluntary conveyance, or otherwise.

### **Section 9.03: Rights of Mortgagee to Information.**

A mortgagee shall, upon written request, be entitled to inspect the Declaration, By-Laws, books and records of the Association on the same basis as a Member. If a mortgagee furnishes the Association, in writing, with its address, it shall be entitled to receive within a reasonable time financial statement for the immediately preceding fiscal year, free of charge and shall receive notice of meetings on the same basis as members.

### **Section 9.04: Application of Subdivision Restrictions.**

Except as provided in this Article or specifically provided elsewhere in the Subdivision Restrictions, all mortgages and mortgagees are bound by the provisions of the Subdivision Restrictions.

### **Section 9.05: Collection of Assessments.**

The Mortgagees shall be under no obligation to collect assessments.

## **ARTICLE 10 - Limitation of Subdivision Restrictions on Grantor**

### **Section 10.01: Limitation of Subdivision Restrictions on Grantor.**

Grantor is undertaking the work of constructing the Subdivision and Builders are undertaking the construction of homes within the Subdivision. The completion of that work and the sale, rental and other disposition of the Lots is essential to the establishment of the Subdivision. In order that said work may be completed and said property be established and fully occupied as rapidly as possible, nothing in this Declaration shall be understood or construed to:

a. Prevent Grantor, Builders, or their agents, employees, and contractors from doing on the properties whatever is reasonably necessary or advisable in connection with the completion of the work; or

b. Prevent Grantor, Builders, or their agents, employees, and contractors from erecting, constructing and maintaining on any part or parts of the Subdivision, such structures as may be reasonably necessary for the conduct of its business of completing the work and establishing the Subdivision, and selling homes, including, without limitation, sales offices, model units, general business offices for its staff, employees and contractor, and storage and parking facilities for materials and equipment, and disposing of the Subdivision in parcels by sale, lease or otherwise; or

c. Prevent Grantor, or Builders from conducting on any part of the properties its business of completing the work, and of establishing and disposing of the Subdivision and the homes;

d. Prevent Grantor and Builders from maintaining such sign or signs on the Subdivision as may be necessary for its sale, lease, or disposition, or the sale, lease or disposition of any Lot, or homes constructed thereon.

### **Section 10.02: Use of Subdivision Name.**

Grantor may use the name of the Subdivision and the Subdivision Restrictions in other subdivisions or projects, whether located adjacent to the Subdivision or not, provided such names have a distinctive number or other designation so that they are not

identical with the names of the Subdivision and Association. Consent is hereby given to Grantor and Grantor's assigns to use such names of a corporation and upon request of Grantor, the Association agrees to execute a written consent authorizing Grantor to use the same or similar name which Consent will be filed with the State Corporation Commission.

**Section 10.03: Architectural Control.**

Improvements by Grantor to the Subdivision do not require approval of the Committee.

**Section 10.04: No Amendment or Repeal.**

The provision of this Article may not be amended or repealed without the consent of the Grantor Member.

**ARTICLE 11 - Miscellaneous Provisions**

**Section 11.01: Amendment or Repeal; Duration.**

a. During the existence of the two (2) classes of Members, these Restrictions and any provisions thereof which are in effect with respect to all or part of the Subdivision, may be amended or repealed in the following manner:

1. The approval by majority vote or written consent of the Owner Members and the consent of the Grantor Member; and
2. The recordation of a certificate of the Secretary or an Assistant Secretary of the Association setting forth, in full, the amendment or amendments so approved, including any portion or portions of this Declaration repealed, and certifying that such amendment or amendments have been approved by the required vote or consent of the Owners.

From and after conversion to a one-class voting structure, these Restrictions may be amended as stated above, provided the vote or written consent is obtained from members representing a seventy-five percent (75%) majority of the Member Owners.

At any time during which Grantor is the only owner of property within the



Subdivision, Grantor may amend or correct these Restrictions by a recorded instrument of amendment or correction.

b. All of the provisions of these Restrictions shall continue and remain in full force and effect at all times with respect to all property, and each part thereof, included within the Subdivision, to the Owner and to the Association subject, however, to the right to amend and terminate as provided for in this Article, in perpetuity, subject to the repeal procedures set out in this Article II.

**Section 11.02: Enforcement; Non-Waiver; No Forfeiture.**

a. Except to the extent otherwise expressly provided herein, the Association or any Owner or Owners shall have the right to enforce any and all of the provisions now or hereafter imposed by the Subdivision Restrictions upon other Owners, or upon any property within the Subdivision.

b. Except to the extent otherwise expressly provided herein, any Owner or Owners shall have the right to enforce any and all of the provisions now or hereafter imposed by the Subdivision Restrictions upon the Association.

c. Every act or omission whereby any restriction, condition, or covenant of the Subdivision Restrictions is violated, in whole or in part, is hereby declared to be and to constitute a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by the Association or by an Owner or Owners, as provided for in this Section. Any provisions to the contrary notwithstanding, only the Association or its duly authorized agents may enforce by self-help any limitation, restriction, covenant, condition, or obligation herein set forth.

d. Each remedy provided for in the Subdivision Restrictions is cumulative and not exclusive.

e. The failure to enforce the provisions of any limitation, restriction, covenant, condition, obligation, lien, or charge of the Subdivision Restrictions shall not constitute a waiver of any right to enforce any such provision or any other provision of the Subdivision Restrictions.

f. No breach of any of the provisions of the Subdivision Restriction shall cause any forfeiture of title or reversion or bestow any rights of re-entry whatsoever.

g. Reasonable attorney's fees and costs may be awarded to the prevailing party in any action brought to enforce the provisions of the Subdivision Restrictions.

**Section 11.03: Construction; Compliance with Laws; Severability;**

**Singular and Plural; Titles.**

a. All of the limitations, restrictions, covenants, and conditions of the Subdivision Restrictions shall be liberally construed, together, to promote and effectuate the beneficial operation of the Subdivision.

b. No provision of the Subdivision Restrictions shall be construed to excuse any person from observing any law or regulation of any governmental body having jurisdiction over such person or the Subdivision.

c. Notwithstanding other provisions in this Section, the limitations, restrictions, covenants, and conditions of the Subdivision Restrictions shall be deemed independent and severable, and the invalidity or partial invalidity of any provision, or portion thereof, of any of such limitations, restrictions, covenants, or conditions shall not affect the validity or enforceability of any other provision.

d. The singular shall include the plural and the plural, the singular, unless the context requires the contrary, and the masculine, feminine and neuter, as the context requires.

e. The table of contents and all titles used in the Subdivision Restrictions, including those of Articles and Sections, are intended solely for convenience of reference and the same shall not, nor shall any of them affect that which is set forth in such Articles, Sections, nor any of the terms or provisions of the Subdivision Restrictions. Any numbered or lettered subdivision of a Section is referred to as "subsection" or "subsections" and any indented portion of this Declaration which is unnumbered and unlettered shall be referred to as "Paragraph."

**Section 11.04: Lot Splitting; Consolidation.**

a. No Lot within the Subdivision shall be split unless the Board shall have given its written consent.

b. No two or more lots within the Subdivision shall be consolidated into one Lot unless the Board shall have given its written consent.

c. Nothing contained in this Section shall apply to the splitting of any Lots by Grantor or the consolidation of two or more Lots into one Lot by Grantor.

d. The Association can require a change in the voting rights and assessment obligation in any Lot split or consolidation to keep the assessment and voting rights the same after the split or consolidation as they were before.

**Section 11.05: Obligations of Owners; Avoidance; Termination.**

a. No Owner, through the abandonment of his Lot, may avoid the burdens or obligations imposed on him by the Subdivision Restrictions by virtue of his being an Owner.

b. Upon the conveyance, sale, assignment or other transfer of a Lot to a new Owner, the transferring Owner shall not be liable for any assessments levied with respect to such Lot after the date such transfer is recorded, provided such transferring Owner notifies the Association of the transfer as provided by the Subdivision Restrictions, and no person, after the termination of his status as an Owner and prior to his again becoming an Owner, shall incur any of the obligations or enjoy any of the benefits of an Owner under the Subdivision Restrictions following the date of such termination.

**Section 11.06: No Partition or Severance of Interests.**

There shall be no partition or severance of any Lot from the Subdivision, and the Grantor, Board, Association and Owners shall not seek to partition or sever any part of a Lot from the Subdivision, nor shall they have any right to maintain an action for judicial partition in connection with the Subdivision unless such right is expressly given by the Subdivision Restrictions. This provision shall not prevent the partition of any Lot or Lots held in joint ownership as long as no physical partition takes place and there is no severance from any incident of the Subdivision Restrictions. No owner shall sever his Lot from its interest in the Association.

**Section 11.07: Notices; Documents; Delivery.**

Any notice or other document permitted or required by the Subdivision Restrictions to be delivered may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed as follows:

If to an Owner:

At any Lot \within the Subdivision owned by the Owner or at such other address given by Owner to the Association, in writing, or at the address of the Lot Owner in the records of the Sandoval County Assessor.

If to Grantor or to the Association:

4400 Alameda Blvd., Suite E  
Albuquerque, New Mexico 87113

Any such address may be changed from time to time by any Owner, or by Grantor by notice in writing, delivered to the Association, or by the Association, by notice in writing, delivered to all Owners.

**Section 11.08: Ownership of Property.**

All funds and facilities provided for by the Subdivision Restrictions and all property of any kind held by the Association and derived from assessments of members, proceeds of insurance carried or obtained by the Association, proceeds of bonds payable to the Association or payment received for damages to the Subdivision, and any right or interest in any such property shall belong to the Owners in proportion to each Owner's share of the maintenance assessment, and no assessment or the proceeds of any assessment shall be considered income to the Association. No person has any right to appropriate or make use of such property, except as provided by the Subdivision Restrictions until and unless there has been a partition or distribution of such property. All such property shall be appurtenant to each Lot in proportion to each Lot's share of the maintenance assessment and may not be severed or separated from any Lot, and any sale, transfer, or conveyance of the beneficial interest of the fee of any House shall operate to transfer the Owner's rights in such property without the requirement of any express reference thereto.

**Section 11.09: Transfer of Common Area.**

The Grantor shall transfer and convey to the Association, and the Association shall accept, the Common Areas and the beneficial interest in the Easement Area. The Common Areas may be subject to any or all of the following exceptions, liens, and encumbrances:

- a. The lien of real property taxes and assessments not delinquent;

b. Such easements and rights of way as may have been offered for dedication to a political subdivision or public organization, or public utility corporation;

c. Such easements and rights of way, licenses or rights of use on, over, or under all or any part of any such property or structures or Improvements thereon as may be reserved to Grantor or granted to any Owner for the use thereof in accordance with the provisions of these Restrictions;

d. Obligations imposed, directly or indirectly, by virtue of any statute, law, ordinance, resolution, or regulation of the United States of America, the State of New Mexico, or any other political subdivision or public organization having jurisdiction over such property, or by virtue of any organization or body politic created pursuant to any such statute, law, ordinance or regulation; and

e. Any other lien, encumbrance, or defect of title of any kind whatsoever (other than of the type which would, at any time, or from time to time, create a lien upon such property to secure an obligation to pay money) which would not materially and actually prejudice Owners in their use and enjoyment of such property.

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

DOUBLE M PROPERTIES, INC., a New Mexico corporation

By: \_\_\_\_\_



Robert C. Prewitt  
Vice President

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

This instrument was acknowledged before me on November 8, 2017,  
by Robert C. Prewitt, Vice President of Double M Properties, Inc., a New Mexico  
corporation.

Kathryn Lowe

My Commission Expires:  
5/8/2021



## EXHIBIT "A"

### DESIGN GUIDELINES, ARCHITECTURAL CONTROL RULES AND SUBDIVISION STANDARDS FOR THE MILAGRO MESA SUBDIVISION

The following are the Design Guidelines, Architectural Control Rules and Subdivision Standards adopted pursuant to the *Restrictions of Milagro Mesa Subdivision, Rio Rancho, New Mexico*, as amended, recorded on November 8, 2017 as Document number \_\_\_\_\_ in the records of the Sandoval County Clerk (the "Declaration") and effect all Lots developed, or to be developed, on the property described in the Declaration, or subsequently subjected to the Declaration. Capitalized words not defined herein shall have the meanings given in the Declaration. In cases where these guidelines conflict with governmental requirements, the more stringent shall apply. These Design Guidelines shall be administered by the Architectural Control Committee (the "Committee") established pursuant to the Declaration, and any variation from these guidelines shall only be permitted if approved in writing by the Committee pursuant to authority granted herein or in the Declaration.

#### I. Procedures for Approval.

A. Approval by the Architectural Control Committee must be obtained for the following construction or modification activities:

##### 1. Structures on the Lot:

(a) Residence and attached features (including but not limited to decks, awnings, shutters and roof elements, which include but are not limited to solar collectors, air conditioning equipment, chimneys, skylights, gutters and downspouts)

(b) Accessory structures

(c) Site structures (including but not limited to fences, walls, flags, statues, flagpoles, swimming pools, play courts and site lighting)

##### 2. Landscaping on the Lots:

Initial landscaping of new residences and any landscaping irrigation system installation (whether at the time of initial construction or at any other time) must be approved by the Committee. Installation of trees, shrubs, and grasses after initial residence construction does not require prior Committee approval but such installation shall be in conformance with the landscaping guidelines contained herein.

3. Exact duplication of a home design that has already been approved by the Committee, including residence, attached features, accessory structures, site structures and landscaping, does not require further approval by the Committee.

4. Any Owner may remodel, paint or redecorate the interior of structures on his Lot without approval by the Committee.

B. Application for approval of new construction or modifications shall include the submittals set out in Section 8.02(a) of the Declaration, together with any other submittals required by the Committee, from time to time.

C. Application Review:

1. The review period shall not commence until the application is considered complete by the Committee.

2. The Committee shall give approval, approval with modifications or disapproval of the application within thirty (30) days of receipt. If no approval or disapproval of the application is given within the review period, the application shall be deemed not to have been approved.

3. Approval of the application shall be valid for a period of two (2) years from the approval date, after which time the application must be resubmitted.

4. In the event that the Committee does not approve an application, the Committee shall not assume any liability for any expenses sustained by the applicant for architectural, engineering or landscape design service.

5. Review and approval of an application by the Committee is made on the basis of subjective aesthetic considerations only, and the Committee shall bear no responsibility for ensuring the structural integrity or soundness of approved construction or modifications, or for ensuring compliance with building codes or any other governmental requirements. Neither the Declarant, the Association, the Board, the Committee nor any member of any of the foregoing shall be held liable for any injury, damage or loss arising out of the manner or quality of the approved construction or modifications of any Lot.

II. Construction Control.

A. Substantial completion of approved construction for an individual residence shall be required within one (1) year of approval, unless it is part of a Builder's pre-approved plan offering, in which case substantial completion is required within one (1) year of issuance of a building permit. When construction is completed, the applicant must



notify the Committee, and, if deemed appropriate, the Committee may inspect the completed construction.

B. The applicant shall be responsible for damage to any common areas or to other Lots or Subdivision improvements, including but not limited to those owned by the Association and/or the City of Rio Rancho, resulting from construction. Any damage that occurs as a result of construction shall be repaired or replaced by the applicant at its expense under the direction of the Committee or, if applicable, the City of Rio Rancho.

C. All construction, repair and maintenance shall be limited to the hours and noise levels specified in the City of Rio Rancho code.

D. All building debris must be placed in appropriate containers (wire ring, trash cans or dumpsters), which when filled must be removed. Any excess site dirt must be cleaned from adjacent streets promptly.

E. Portable toilets for construction workers shall not be placed on any lot where a residence has been completed, and shall be subject to relocation at the Association's request.

F. Temporary construction facilities are allowed if approved by the Committee.

G. Any construction signs installed on a Lot during construction shall be removed at the completion of construction. One real estate "for sale" sign no greater than four (4) square feet may remain on a lot until the residence has sold.

H. Existing site drainage shall not be altered in any way that would affect the quantity or direction of water flows in contravention of the approved grading and drainage plan for the Lot and for the Subdivision.

I. Applicant shall be responsible for limiting wind or water erosion by site watering, fencing or drainage control during the construction period.

J. Model homes and sales offices shall have all marketing structures, including flagpoles, signs, fences and site lighting removed at the time the model homes and sales offices are no longer used for such purposes.

### III. Site Planning.

A. Grading and Drainage of the initially constructed Lot (as set forth in the plot plan for the Lot which identifies spot elevations and flow arrows depicting the grading and drainage plan approved by the applicable governmental entities and built by the builder) shall not be altered. If an

application involves or requires modification of the grading and drainage of a lot, the Committee may require, at applicants' expense, a written certification from a licensed New Mexico geotechnical engineer that such proposed modification will not negatively impact the grading and drainage pattern or otherwise cause potential damage to the Lot or improvements thereon, or to any adjacent Lots or improvements thereon. Improper alteration of or failure to stabilize and/or maintain drainage patterns as provided in the Plot Plan may result in significant damage, including but not limited to, damage to the foundation of the house or adjacent slopes, patios and/or yard walls.

B. Parking and Driveways:

1. A minimum of two (2) parking spaces, in addition to the garage spaces, shall be provided on each Lot to accommodate guests.
2. Only one (1) driveway access and driveway shall be allowed per Lot without the prior written approval of the Committee.
3. Driveway surface materials shall be concrete or concrete augmented (colored, stamped, exposed aggregate or scored) or interlocking pavers (brick, stone or concrete). No asphalt driveways are permitted.
4. Other parking restrictions shall be those enumerated in the Declaration of Covenants, Conditions and Restrictions.

C. Walls:

1. Privacy Walls are those walls constructed along the individual Lot property lines between Lots. Community Perimeter Walls are those walls which are constructed on a lot line adjacent to public right-of-way or Common Area.
2. Privacy Walls shall be of masonry construction conforming to the applicable Concrete Masonry Unit (CMU) wall standard (8"X8"X16"). The color shall be tan colored block, with a cap block. Privacy Walls that extend between the side Lot line and the residence (Return Walls) shall be constructed of tan CMU block or wrought iron.
3. Privacy Walls shall not exceed six (6) feet in height above the adjacent highest finished grade, unless approved otherwise by the Committee.
4. Openings in Privacy Walls that are adjacent to a street right-of-way require approval of the Committee.

5. The cost of reasonable repair, maintenance and replacement of Privacy Walls will be shared equally by the Owners of the Lots on either side of the wall. Each Owner may make reasonable use of the Privacy Wall in a manner that does not interfere with the other Owner's use of the wall and does not otherwise violate any regulations or guidelines created or adopted by the Committee. Any Owner who, by negligent or willful action or failure to act, causes a Privacy Wall to subside, tip or fall shall bear the entire cost of restoring, repairing or shoring up such wall.

6. No equipment of any type may be attached to Privacy Walls.

7. The Association shall maintain the cosmetics of the exterior of all Community Perimeter Walls and shall remove all graffiti therefrom. Lot Owners shall be responsible for maintaining the structural integrity of any portion of the Community Perimeter Walls adjacent to their Lot but may not alter any portion of the Community Perimeter Walls in any manner without the written approval of the Committee. This Lot Owner obligation to maintain includes the obligation to repair or replace damaged portions of the Community Perimeter Walls.

8. All walls shall conform to the City of Rio Rancho Zoning requirements.

9. Each Lot shall have a wall made of stucco clad adobe, stucco clad CMU, the Association's CMU wall standard, or wrought iron with 3" maximum space between bars (sufficient to retain most pets) whichever is most appropriate and approved by the Committee, a minimum of forty-eight (48) inches in height, on either side of the residence separating the front yard from the rear yard ("Return Walls"). Gate materials may be wood, painted to match stucco color, or wrought iron.

D. Outdoor Recreational Facilities:

1. Swimming pools and spas are allowed in rear yards only. Pool and spa installations must minimize any disturbance to adjacent Lots. Owners must ensure that a temporary fence, approved by the Committee, is installed whenever a Privacy Wall is removed while pool or spa construction or modification is in progress. Pool and spa equipment and plumbing must be concealed or placed underground and shall not produce sounds that disturb other Owners. Every pool or spa must have a backwash pit or separation tank.

2. Every application to the Committee to construct or modify a pool or spa must be accompanied by the relevant City of Rio Rancho permit(s) and, if required by the Committee, a certificate from a geotechnical engineer as discussed in Section III(A) above.

3. Outdoor play courts (e.g. basketball, tennis) shall be located in the back yard and may be constructed only with prior written approval by the Committee upon the Committee finding that the play courts will have minimal adverse impact upon adjoining Lots.

4. No outdoor recreational facility shall alter an approved Grading Plan unless a licensed New Mexico geotechnical engineer has certified the alteration will not negatively impact grading and drainage and the alteration is further approved by the Committee and the City of Rio Rancho.

E. Miscellaneous Site Features:

1. Exterior lighting shall be located to minimize impact on adjoining Lots or adjoining Common Areas. Ground-mounted lighting shall be directed downward as necessary to safely light walkways and residence entries. Light fixtures mounted on the residence shall be mounted no higher than ten (10) feet above the finished grade and shall be screened to prevent direct light falling outside the subject Lot.

2. Accessory Buildings such as gazebos, trellises, tool and storage buildings, and pet houses shall be constructed of the same materials and colors to match the features of the residence, unless approved otherwise by the Committee.

3. Garbage and trash containers shall not be visible from the street (unless visibility is through a gate for containers behind a Return Wall), except solely on the day designated for garbage removal.

4. Flagpoles shall be limited to one per Lot and shall be located and limited in height as determined by the Committee.

5. Air conditioning equipment shall be located on the ground level, be screened from view from the street and from adjacent Lots in a manner acceptable to the Committee.

6. Model homes and sales offices will be allowed marketing features that are allowed by the Committee to be constructed and used during the home-selling period.

7. The Builder shall maintain landscaped areas in front yards until the residence has sold and is occupied.

8. Sidewalks will conform to specifications and regulations of the City of Rio Rancho. If an Owner or its agent, employee or representative, damages any

sidewalk on or adjacent to that Owner's Lot, the Owner must repair or replace the sidewalk to return it to its original condition.

IV. Landscaping Design.

A. Lot Landscape Areas and Coverage:

1. No later than ninety (90) days after occupancy, all of the front yard shall be landscaped. The Association requires that landscaping be of a type which conserves water to the highest degree possible. Sod and grass require a lot of water to maintain and are, therefore, discouraged. Moreover, the use of excessive water can cause soil settlement or soil consolidation and damage to improvements on a Lot and/or on adjacent Lots and the improvements thereon. Consequently, Lot owners are required to use drought tolerant sod/grass such as blue grama, buffalo grass and drought tolerant fescues, and to familiarize themselves with the soils reports related to the subdivision and the current planting and watering recommendations available by the State of New Mexico and/or its Universities and their cooperative extensions, and to follow those recommendations. Copies of these documents may be obtained from the Association upon request. Neither the Association, nor the builder, will be responsible for specific plant and watering recommendations and any loss or damage resulting directly or indirectly from floods, surface water (including but not limited to irrigation water) or water below the surface of the ground. High-water-use turf (annual bluegrass, Kentucky bluegrass, perennial ryegrass, red fescue and tall fescue) are prohibited. All gravel color shall be either gray, Santa Fe tan or Santa Ana tan.

2. At least one (1) deciduous or evergreen tree of at least a two-inch (2") caliper shall be planted in the front yard.

3. Railroad ties and landscape timbers are not permitted in the front yard.

4. No high water-use turf shall be planted in the "right-of-way strip" between the back of the curb and the sidewalk.

5. No trees within five feet of any structure (e.g. house, Privacy Walls etc).

B. Irrigation Systems:

1. Irrigation systems shall be designed to minimize water waste, overwatering and overspray. The lot owner is responsible for ensuring that all water lines are maintained and any leaks are promptly repaired.

2. Spray-type systems shall be limited to turf areas and shall be located so as not to spray onto parking areas, sidewalks, Privacy Walls, or adjacent residences.

3. Walls, whether Privacy, Common or Perimeter, and any other improvements that are damaged by an Owner's irrigation system will be repaired or replaced at the expense of such Owner.

C. Plants

1. Plant species (trees, shrubs, groundcover, and grasses) that do not require high water use are to be used. A guide to the identification of such species is available from the Committee.

2. Owners shall locate trees so that roots will not damage shared walls or fences as the trees mature.

D. Water features such as decorative pools or fountains are discouraged and, if installed, shall be limited to one hundred (100) square feet.

E. Owners shall maintain landscaped areas to ensure replacement of dying plant materials, pruning, regular watering, and Lot cleanup.

V. Residence Design.

A. Architectural Style:

1. The architectural character and style of all residences must be approved by the Committee.

2. The permitted architectural styles for the residences are limited to Pueblo, Territorial, Northern New Mexico Territorial, Southwest Traditional and Southwest Contemporary, Contemporary or other as approved and deemed appropriate by the Committee.

3. The architectural character or style of a residence shall be compatible with other residences in the Subdivision.

4. Porches, decks and trellises, attached or detached from the residence, shall maintain an architectural style consistent with that of the residence through use of materials, color and detail.

B. Building Plan:

1. The minimum area of heated floor space for residences shall be 1400 square feet.

2. Garages are required for all residences with a minimum two (2) spaces provided and a maximum of three (3) spaces, unless approved otherwise by the Committee. Garages may not be converted into living space or into any space that limits off-street parking.

C. Elevations:

1. Consistency of architectural style shall be maintained throughout all exterior elevations with respect to theme, material, colors and details. A consistent level of finish detail shall be maintained between front, side and rear elevations.

2. Elevation massing shall be consistent with the overall architectural style of the residence.

3. Roof forms shall exhibit consistency within the Subdivision and within each individual residence. Use of multiple roof forms (hip, gable and flat) within an individual residence is acceptable; however, the predominance of one form is encouraged.

D. Exterior Materials:

1. Residences shall balance the need to incorporate multiple materials to create visual variety while limiting the number of materials so as not to create a disharmonious or complicated appearance.

2. Metal cladding, vinyl or wood siding, and exposed standard-color and standard-finish concrete block are not permitted.

3. Residence exterior wall materials must be predominantly stucco with only stone, wood, adobe, metal, brick or simulated wood used for accent detailing.

4. All trim materials must be approved by the Committee and shall be limited to stone, adobe, metal, wood or simulated wood.

5. Exterior finish materials must extend down to within six (6) inches of the finished grade.

6. Every Residence shall be built with any of the following roof materials: a tile roof, a built up or rolled material flat roof behind parapets, an asphalt shingle roof, or a roof combining parapets and tile or asphalt shingles.

7. No asphalt other than dimensional twenty-five (25) year asphalt shingle, wood or composition shingle roofing will be permitted. All sloping roof materials must be approved by the Committee and only one material shall be used for all the sloping roof area.

8. No wood fencing of any kind shall be erected on any Lot where such wood fencing would be visible from any other Lot or from the street.

9. Doors and windows, if framed with metal, shall not be unfinished (unanodized). Mirrored and reflective films are not permitted on windows or doors, unless approved otherwise by the Committee. Appropriate window coverings, including but not limited to curtains, draperies and blinds, shall be installed by each Owner on each window within sixty (60) days after the Owner closes escrow or moves in, whichever comes first. Foil, Sheets, blankets, newspapers and cardboard are prohibited except during the initial 60-day period.

10. Shutters and awnings shall be designed to maintain a consistent architectural style with the residence. If deterioration of shutters or awnings occurs, they must be repaired, replaced or removed.

11. Owners shall maintain all exterior surfaces in good repair.

12. Any sign approved by the Committee and not otherwise mentioned or described in these Guidelines or the Declaration of Covenants, Conditions and Restrictions for Milagro Mesa shall be no larger than one foot by two feet.

E. Color:

1. Exterior finish material colors shall be complementary to and harmonious with each other. Accent colors for exterior trim, windows, doors and details that are harmonious with each other and with the overall color scheme of the residence are allowed. Colors of porches, trellises, and decks attached to or adjacent to the residence shall be consistent with the exterior finish colors of the residence. A three-color scheme for the exterior of residences is encouraged: roof color, primary wall color, and trim color (window and door trim, roof trim, miscellaneous trim). Primary wall colors and garage door colors shall be limited to those colors approved by the Committee. The Committee may from time to time approve colors based upon a suppliers or manufacturers sample. Substantially equal colors to those approved by the Committed are acceptable, provided however, that no gray shall be permitted.



2. Individual roof covering materials of a variegated color are encouraged, and the entire roof shall incorporate a blend of the individual permitted shingles.

3. All vents, flashing and metal chimney caps shall be painted to match or complement the roof color.

4. No unfinished metal frames of doors and windows shall be allowed on the exterior of the residence.

F. Roof Elements:

1. Antennas and satellite dishes shall not exceed one meter (39 inches) in diameter and may be installed on or under eaves.

2. Solar collectors shall be appropriately located and/or screened as determined by the Committee.

3. Gutters and downspouts shall be painted to match or complement the adjacent roof trim or wall surface color.

4. HVAC equipment shall be ground-mounted or completely screened by parapet walls. Roof-mounted units shall be permitted only on flat roofs with parapet walls.

VI. Amendments; Additional Development Standards.

These Design Guidelines may be amended at any time and from time to time by unanimous action of the members of the Committee, and in addition to these standards, the Committee may promulgate additional design guidelines or standards that are not inconsistent with the standards set forth in these Design Guidelines and in the Declaration. Notwithstanding the foregoing, during the Period of Grantor Control, amendments and additional standards may only be adopted with the consent of the Grantor.

VII. Variances.

The Committee may authorize variances from compliance with any of the design guidelines set forth in these Design Guidelines or in any additional criteria promulgated and adopted by the Committee. If such a variance is granted, no violation shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive or to render unenforceable any of the terms and provisions of this Declaration for any purpose except as to the particular property, provision, and instance covered by the variance.

The design guidelines provided herein shall be deemed established upon the recording of this document and shall thenceforth be deemed not only guidelines but covenants running with the land and they shall inure to the benefit of and bind the lot owners and the successors and assigns of the lot owners in the Subdivision and their heirs, personal representatives, grantees, tenants, successors and assigns.

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