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AMENDED AND RESTATED COMMUNITY COVENANT

FOR

MARIPOSA ASSEMBLY



M A R I P O S A

HYATT & STUBBLEFIELD, P.C.
Attorneys and Counselors
Peachtree Center South Tower
275 Peachtree Street, N.E., Suite 1200
Atlanta, Georgia 30303

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THIS AMENDED AND RESTATED COMMUNITY COVENANT is made as of the 7th day of July, 2005, by High Desert Investment Corporation, a New Mexico corporation ("Founder").

BACKGROUND STATEMENT

WHEREAS, the Founder executed and filed that certain Community Covenant for Mariposa Assembly ("Covenant") on May 3, 2005 as Document 200515690 in Book 408, Page 15690, et seq., in the Office of the County Clerk of Sandoval County, New Mexico; and

WHEREAS, pursuant to Section 5.10 of the Covenant, the Founder has the right unilaterally to amend the Covenant for any purpose provided Founder's right has not expired and provided the amendment has no material adverse effect upon any substantive right, privilege, or protection specifically granted to more than 2% of the Owners; and

WHEREAS, Founder's right to amend the Covenant has not expired; and

WHEREAS, this Amended and Restated Community Covenant has no material adverse effect upon any substantive right, privilege, or protection granted to more than 2% of the Owners;

NOW THEREFORE, the Covenant is hereby amended and restated as follows:

PREAMBLE

"Mariposa" is a master planned community in the City of Rio Rancho, Sandoval County, New Mexico. The Founder intends to create within Mariposa a sense of collective identity, belonging, solidarity, and pride that many master planned communities lack. In essence, the Founder desires to create and foster a true community, akin to that traditionally found in towns, that will grow and evolve over time.

In pursuit of that goal, this Covenant establishes a comprehensive plan that is designed to create unified, overall administration of Mariposa. Through this Covenant, the Founder intends to create and foster programs, activities, and services to facilitate interaction among owners, residents, and visitors; involvement in the surrounding community; community pride; and a sense of responsibility for the quality of life within Mariposa.

Chapter 1

Understanding the Community at Mariposa

Government is a trust, and the officers of the government are trustees; and both the trust and the trustees are created for the benefit of the people. Henry Clay

Truly great communities have a physical identity and a pride in that place; the community's stakeholders have a positive feeling of belonging and accomplishment in what goes on there. But words alone can never make community, and a community is only as good as the people who live and work there, the community's stakeholders, make it. Therefore, this Community Covenant creates a vehicle, a process, through which you and other stakeholders can build community at Mariposa.

Through the procedures the Founder established in this Covenant, there is an administrative structure with the power and responsibility to initiate programs, activities, and services and to respond to stakeholders' individual and collective creativity and interests.

This administrative structure is the Mariposa Assembly, Inc., a New Mexico nonprofit corporation. It has the necessary powers to administer this Covenant and to engage in a broad range of community activities. It has various funding mechanisms and all the other powers of a New Mexico nonprofit corporation.

The Assembly facilitates the building of community and administers this Covenant.

1.1. Mission Statement

The Assembly's mission is to generate, preserve, and enhance a true sense of "community" through the creation and sponsorship of programs, activities, and services to facilitate:

- interaction, inclusiveness, involvement, community pride, and responsibility, and
- the sharing of ideas, common interests, and resources

in order to enhance the lifestyle within and contribute to the betterment of Mariposa and surrounding communities.

1.2. Participation

An essential component of building a sense of community involves listening to the community. The Founder appreciates the need for input from all those interested in Mariposa, whether Own-

ers, residents, Builders, or Mortgagees. This Covenant creates opportunities for stakeholders to build and sustain a sense of community for years to come.

1.3. A Pledge

The Assembly and the Founder pledge to work to do the following:

- insure an inclusive environment
- provide an orderly, regular, and informative communication system within Mariposa
- provide all interested parties a voice in community matters and an opportunity to communicate with the Assembly
- respect the value of each individual as well as the value and the importance of the community
- appreciate diversity of thought and of people

- establish community traditions that will engender pride in Mariposa
- maintain an online network for communication within and about Mariposa
- foster a sense of belonging
- motivate Owners and residents to participate by offering a variety of life-enriching opportunities
- provide meaningful opportunities to connect with the Rio Rancho community
- make a significant contribution to the quality of life at Mariposa

1.4. Expectations of Stakeholders

There are only four expectations, but they are vital if there is to be community. It is expected that in all dealings among and between parties interested in Mariposa, everyone

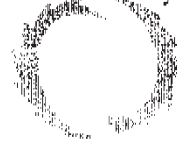
- be informed

- act with civility
- communicate constructively
- strive to make a contribution to the community

Then there will be community.

1.5. Notes and Thoughts

Space has been set aside throughout this Covenant to allow the reader to make notes. Those spaces and any notes made are not part of this Covenant and have no legal or binding effect. Diagrams, tables, and text set apart in boxes, some with "key" icons, are used in this Covenant to illustrate concepts and assist the reader. If there is a conflict between any of these and the text of this Covenant, the text shall control. In addition, the quotations throughout this Covenant are for information only and have no legal effect.



You Are the Community

The Founder and the Assembly cannot create community at Mariposa; only you and your neighbors can do that. This document and the processes and powers it creates are intended to enhance your ability to fashion the community you desire and to do so with minimal interference from sources outside Mariposa. You can be as active or as inactive in that process as you desire, but ultimately you will have the community that you and your neighbors determine to be right for Mariposa. The Founder wants it to be a special place and hopes that you do so as well.

Throughout this document, you will find that there is a genuine effort to avoid two well-recognized impediments to community: individualism without regard for the group and formal authority without regard to flexibility. There must be a balance between an individual's desire for choice and the group's need for an appropriate degree of certainty. You are a most important part of creating this balance and in making it work at Mariposa.

There is an amazing strength in the expression of the will of a whole people.

Tocqueville

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Chapter 2

Governance Scaled for Mariposa

Planned communities traditionally have focused more on the "planned" and less on the "community." The emphasis, the true purpose of "governance," was on managing property—and quite often on managing people, too. The results were lots of rules, excessive restrictiveness, and, in many cases, unhappiness and disputes. What was lost in that model was the quality of life that means community.

One needs all three - property, people, and community - in proportion and in a harmonious operational relationship. The property does need to be maintained and the Community Charter for Mariposa provides for such maintenance and other protections. The Mariposa Community Association, Inc. ("Association") will perform those responsibilities with respect to Mariposa's residential community. Other owners associations may have this responsibility for other portions of the community.

With this Covenant and the Assembly, governance is different. This Covenant is not concerned primarily with enforcement but with empowerment. Governance here has a different purpose, focus, and structure. It has one primary responsibility to effectuate the vision for community at Mariposa.

Assembly governance is simplified. It is more ad hoc than formal. It responds to needs and desires, and it helps stakeholders accomplish things they select. It seeks to enable, not regulate, and ultimately, it seeks to add real value to owning property at Mariposa by making Mariposa a better place . . . a community.

To worship choice and community together is to misunderstand what community is all about.

Alan Ehrenhalt

2.1. Assembly Powers

The Assembly shall have such express or implied powers reasonably necessary to create and provide activities, services, and programs, and to maintain and manage property for the common good and general welfare of Mariposa and the surrounding Rio Rancho area. The Assembly may create and delegate authority to for-profit and nonprofit entities that may or may not be tax-exempt organizations and may employ any of the tools for community achievement discussed in Chapter 3.

The Assembly will act consistently with this Covenant, the Assembly's By-Laws, the Assembly's Articles, and New Mexico law to achieve the mission and goals of Chapter 1 and realize Mariposa's vision of community.

2.2. Assembly Activities

The Assembly may organize, fund, and administer such activities, services, and programs necessary, desirable, and appropriate to fulfill the Assembly's mission, including, but not limited to, the following:

- (a) continuing education and adult special interest programs;
- (b) services to benefit Mariposa's stakeholders and the surrounding area (e.g., caretaker services, childcare, personal shopping services, etc.);
- (c) charter clubs and other volunteer organizations and activities;
- (d) educational trust or endowment;

(c) a volunteer data bank to match those interested in volunteering with volunteer needs of local schools, libraries, and community organizations;

(f) social programs (e.g., parties, festivals, and similar events);

(g) environmental programs (e.g., community-wide recycling, tree planting, garden plots);

(h) activities designed to promote compliance with community standards through education, communication, and grass roots support;

(i) public relations activities to publicize the Assembly's programs and activities;

(j) cultural and artistic programs;

(k) health and wellness programs;

(l) operation and preservation of historical and archaeological sites;

(m) computer Internet or intranet sites;

(n) learning centers and computer centers;

(o) community-wide video and technology;

(p) strategic partnerships among local schools or public entities (e.g., library or local school system);

(q) programs to improve and maximize transportation and housing opportunities;

(r) other services, activities, and programs for the benefit of the residents of Mariposa and the surrounding community; and

(s) programs in cooperation with, and that work with, the neighboring Pueblos (e.g., providing services) and that educate Mariposa residents about Native American culture and history.

The Assembly may contract with other entities, including the Founder, to provide activities, services, programs, and the necessary facilities to accomplish the mission. The Assembly may also coordinate partnerships with local schools or corporate sponsors for the purpose of organizing or facilitating the above community building endeavors.

*Well done is better than well said,
Benjamin Franklin*

2.3. Assembly Funding

(a) **Budget.** At least 90 days before the beginning of each fiscal year, the Assembly shall prepare a budget of the estimated expenses necessary to facilitate or provide activities, services, and programs; to operate, maintain, and insure any Area of Assembly Responsibility (as defined in Section 5.4); and to perform other activities as authorized in this Covenant ("Assembly Expenses") for the coming year.

The budget shall reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, and any income anticipated to be generated through means authorized by this Covenant (e.g., assessments, "Mariposa Preservation Contribution," use and consumption fees, subsidies, etc.).

To fund the Assembly Expenses, the Assembly will levy an annual "Assembly Assessment," which will be allocated among the "Units" (a parcel of land depicted on a recorded subdivision plat, survey, or condominium instrument, which may be independently owned and conveyed and is zoned or otherwise intended for development, use, and occupancy). The Assembly Assessment shall be allocated equally among all Units subject to the Community Charter for Mariposa ("Charter"). The Assembly Assessment shall be allocated among other Units made subject to this Covenant as determined by the Founder and as set forth in a separate recorded instrument

subjecting such Units to this Covenant. Assembly Assessments shall be in addition to any annual assessment that may be levied by the Association pursuant to the Charter ("**Association Assessments**").

The initial Assembly Assessment shall not exceed 22% of the Association Assessment for the same year. Further, any increase in the Assembly Assessment from the amount for the previous year shall not exceed the percentage increase of the Association Assessment from the previous year. The Founder may, but shall not be obligated to, pay a shortfall to assist in funding the Assembly's activities. Any shortfall shall be disclosed in the income portion of the budget. Payment of a shortfall in any year shall not obligate the Founder to continue payment of such shortfall in future years unless otherwise provided in a written agreement between the Assembly and the Founder.

(b) **Reserves.** The Assembly's budget may include contributions for capital and operating reserves. Such contributions shall take into account the number and nature of replaceable assets within the Area of Assembly Responsibility, the expected life of each asset, and the expected repair or replacement cost.

(c) **Use and Consumption Fees.** The Assembly may charge use and consumption fees to any person who uses its services or facilities. The Assembly shall have the sole discretion to establish the amount and method of determining use or consumption fees. The Assembly may charge lower use and consumption fees to Owners than to non-Owners. (Any Person holding record title to a Unit (excluding Persons holding title merely as security for the performance of an obligation) is an "Owner.")

(d) **Trust or Endowment.** The Assembly may establish or cooperate with an educational trust to assist local public schools or tribal educational programs. The Assembly may solicit and collect charitable donations from the public

stakeholders, or corporate sponsors to fund the trust and its mission of sustaining the highest quality of education for students who attend those schools.

(e) **Grants.** The Assembly may also seek to qualify for local, state, or federal grants.

(f) **Mariposa Preservation Contribution.**

(i) **Authority.** The Assembly has the authority to establish and collect a "**Mariposa Preservation Contribution**," from the transferring Owner upon each transfer of title to real property subject to this Covenant unless the transfer is exempt. The Contribution will be payable at the closing of the transfer and will constitute an assessment against the property being transferred, which is secured by the Assembly's lien.

(ii) **Amount of Contribution.** The Assembly has the sole discretion to determine the amount and method of calculating any Mariposa Preservation Contribution. The Contribution may be based upon a sliding scale, which varies according to the "**Gross Selling Price**" of the property or such other factors as the Assembly deems appropriate. Until July 1, 2010, the amount of any such Contribution shall not exceed 0.25% (one-quarter of one percent) of the Gross Sales Price of the real property transferred; thereafter, the amount of any such Contribution shall not exceed 0.5% (one-half of one percent) of the Gross Sales Price of the real property transferred. For purposes of this Section, the "**Gross Sales Price**" means the total amount paid by the purchaser for the real property, excluding transfer taxes and title fees imposed by the City of Rio Rancho, Sandoval County, and/or New Mexico, or in the case of a transfer other than a sale at fair market value, the appraised value of the real property being transferred, as determined by the local authority for real estate *ad valorem* tax purposes.

(iii) *Purpose of Contribution.* All Mariposa Preservation Contributions shall be used exclusively for purposes consistent with the Assembly's mission and with the purposes for which the Assembly was created.

(iv) *Exempt Transfers.* No Mariposa Preservation Contribution shall be levied upon transfer of title to property:

(A) by a co-Owner to any person who was a co-Owner immediately prior to such transfer;

(B) to a family trust or a family limited partnership controlled by the grantor, or to the Owner's estate, surviving spouse, or child (or a trust for the benefit of the child) upon the death of the Owner; provided, upon any subsequent transfer of an ownership interest in such entity, the Mariposa Preservation Contribution shall become due;

(C) to an entity wholly owned by the grantor or, provided that upon any subsequent transfer of an ownership interest in such entity, the Mariposa Preservation Contribution shall become due;

(D) to an institutional lender pursuant to a mortgage or upon foreclosure of a mortgage;

(E) by an Owner who has held title to the property for less than 12 months;

(F) prior to July 1, 2010 by an Owner who purchased the property for occupancy or residential purposes and not solely for the purpose of development and resale;

(G) by a homebuilder or developer (other than Founder) who purchased property within Tracts 1A-2, 1A-4, 1A-9, 1A-10 or Desert View solely for the purpose of development and resale in the ordinary course of its business;

(H) under circumstances which the Assembly Board, in its discretion, deems to warrant classification as an exempt transfer (*e.g.*, a transfer made solely for estate planning purposes may be, but is not required to be, deemed exempt from payment of the Mariposa Preservation Contribution); or

(I) to the Assembly.

(g) *Obligation for Assessments.* No person subject to assessment and/or contribution is exempt from liability for assessments and/or contributions because they do not use services, programs, property, facilities, or for any other reason. The obligation to pay assessments and/or contributions is a separate and independent covenant. Assessments and/or contributions may not be reduced or set-off due to an alleged failure of the Assembly to take some action or perform a certain function or from acting in a certain manner.

All charges and assessments are payable on such dates as the Assembly may establish.

The Assembly's failure to fix Assembly Assessment amounts or rates or to deliver or mail an Assembly Assessment notice is not a waiver, modification, or a release of any person from the obligation to pay assessments. In such event, the Association and each Owner shall continue to pay the Assembly Assessments on the same basis as during the last year for which an assessment was made until a new assessment is levied, at which time the Assembly may retroactively assess any shortfalls in collections.

If any person is delinquent in paying any assessment, fee, or other charge, the Assembly may require that the outstanding balance on all assessments against it be paid in full immediately.

All assessments, together with interest, late charges, costs, and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Unit until paid in full. Upon

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