

DECLARATION OF
COVENANTS,
CONDITIONS
AND RESTRICTIONS
FOR



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JACOBS CHASE
ATTORNEYS

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LIST OF EXHIBITS

- Exhibit A Initial Property
- Exhibit B Additional Property
- Exhibit C Marks
- Exhibit D Initial Delegate District(s)
- Exhibit E RETA Exemptions



**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
MESA DEL SOL**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MESA DEL SOL is made as of Dec. 20, 2010 by Mesa del Sol, LLC, a New Mexico limited liability company.

RECITALS

A. The Founder (as such term is defined below) owns the real property located in the City of Albuquerque, Bernalillo County, New Mexico described on Exhibit A attached hereto.

B. The Founder desires to create a planned community known as Mesa del Sol on the Initial Property (as such term is defined below) and any additional real property later subjected to this Declaration.

DECLARATION

In consideration of the foregoing, Founder hereby creates a planned community named "Mesa del Sol" on the Property (as such term is defined below), and declares that the Property shall be held, sold and conveyed subject to the covenants, conditions, restrictions, reservations, easements, assessments, charges, liens and other provisions of this Declaration.

**ARTICLE I
DEFINITIONS**

As used in this Declaration, the following terms shall have the meanings given to them in this Article I, unless the context clearly requires otherwise.

"Additional Property" means the real property described on Exhibit B attached hereto.

"Affiliate" means any Person that, directly or indirectly, is in control of, is controlled by or is under common control with the party for whom an affiliate is being determined. For purposes hereof, control of a Person means the power, direct or indirect, to: (i) vote 50% or more of the securities having ordinary voting power for the election of directors (or comparable positions) of such Person, or (ii) direct or cause the direction of the management and policies of such Person, whether by contract or otherwise and either alone or in conjunction with

others. Notwithstanding the foregoing, the Community Company shall not be deemed an Affiliate of Founder.

"Affordable" with respect to any: (i) "for sale" Residential Unit, means the monthly housing payment for such Residential Unit (including principal, interest, taxes, property insurance, reasonable utilities, Common Interest Community fees and assessments), and (ii) "for lease" Residential Unit, means the monthly housing payment for such Residential Unit (including lease payments, reasonable utilities and Common Interest Community fees and assessments), not exceeding 30% of the income limit for an Affordable Workforce Housing Unit or a Mid-Range Workforce Housing Unit, as applicable.

"Affordable Workforce Housing Unit" means: (i) a Residential Unit that is burdened by a Recorded covenant enforceable by the City providing that the Residential Unit may not be offered for sale or lease, nor be sold or leased, at a price that is not Affordable to households whose annualized income is 80% of the most current Area Median Income for Albuquerque as adjusted for household size and determined by the U.S. Department of Housing and Urban Development from time to time, or (ii) during such time as the Workforce Housing Covenant is effective, a Residential Unit that is recognized by the City as "Affordable Workforce Housing" as such term is defined in, and for purposes of, the Workforce Housing Plan.

"Alternate" has the meaning given to that term in Section 4.3.

"Area" means, with respect to any R/S Space, E/C Space, Office Space or I/C Space, the total interior square footage of such property as determined by reference to reliable Recorded documents (such as condominium maps), or, in the event that no documents setting forth such square footage have been Recorded or such documents are in conflict, the total interior of square feet of space contained within the perimeter walls, windows and doors of such R/S Space, E/C Space, Office Space, or I/C Space, respectively, as determined by the Board in its sole and absolute discretion. The Area of any property (i) shall not include the square footage of any common elements appurtenant to such property, and (ii) shall be rounded to the nearest whole number.

"Articles" means the Articles of Incorporation of the Community Company, as the same may be amended from time to time.

"Assessment" means a Residential General Assessment, a Commercial General Assessment, a Special Assessment, a Limited Assessment, a Default Assessment or a Real Estate Transfer Assessment.

"Assessment Lien" means the lien of the Community Company on an Interest described in Section 6.10.

"Assessment Units" has the meaning given to that term in Section 6.1.

"Association" means any owners' association for a Common Interest Community created within the Property pursuant to New Mexico law; provided, however, the term "Association" shall not include the Community Company.

"Bernalillo County Records" means the official real property records maintained by the County Clerk's Office for Bernalillo County, New Mexico.

"Board" means the board of directors of the Community Company.

"Bound Parties" has the meaning given to that term in Section 18.1.

"Builder" means a Person, other than Founder or an Affiliate of Founder, who holds legal title to the fee simple interest in an Interest for the purposes of: (i) constructing improvements upon such Interest, and (ii) Transferring such Interest to another Builder or Retail Purchaser.

"Bulk Service Agreements" has the meaning given that term in Section 17.1

"Bylaws" means the Bylaws of the Community Company, as the same may be amended from time to time.

"Capital Improvements" means capital repairs, restoration and replacement of, or additions to, major components of the Common Elements, including major repairs and structural repairs, which the Community Company is required, or may elect, to fund, maintain, repair or replace under this Declaration.

"Chargeable Property" has the meaning given to that term in Section 6.4.

"City" means the City of Albuquerque, New Mexico.

"Claim" has the meaning given to that term in Section 18.1.

"Claimant" has the meaning given to that term in Section 18.2.

"Commercial Directors" means the General Commercial Director(s), the Special Commercial Director and the Hotel Director.

"Commercial General Assessment" has the meaning given to that term in Section 6.3.

"Commercial Space" means (i) Hotel (ii) R/S Space, (iii) E/C Space, (iv) Office Space, (v) I/C Space, and (vi) any other category of Space created and designated by Founder or the Board as Commercial Space in accordance with Section 14.3.

"Common Elements" means any real estate (including any fixture or other improvement thereon) that is: (i) owned by the Community Company, or (ii) owned by a Person other than the Community Company, but in which the Community Company has rights of use or possession pursuant to (A) this Declaration, or (B) any other lease, license, easement or other agreement.

"Common Expenses" means any and all costs, expenses and liabilities incurred or expected to be incurred by or on behalf of the Community Company, including costs,

expenses and liabilities: (i) pertaining to the Common Elements or any other property of the Community Company, (ii) for carrying out any of the purposes of, and exercising any of the powers of, the Community Company as described in any Community Document, and (iii) for reserves for any such costs, expenses and liabilities.

"Common Interest Community" means real estate described in a declaration with respect to which a Person, by virtue of such Person's ownership of real property, is obligated to pay for real estate taxes, insurance premiums, maintenance or improvement of other real estate described in such declaration; provided, however, for the purposes of this Declaration, ownership of real property does not include holding a leasehold interest (in such real property) of less than 40 years, including renewal options.

"Community Company" means Mesa del Sol Community Company, Inc., a New Mexico nonprofit corporation, and its successors and assigns.

"Community Documents" means this Declaration, all Supplements, the Articles, the Bylaws and the Rules, as the same may be amended from time to time.

"Community Facility" means a Site or any portion of a Site that is:

(i) operated solely by a nonprofit, not-for-profit, governmental or quasi-governmental entity, and

(ii) used to provide athletic, cultural, educational, recreational, entertainment, medical or other community facilities or services to Owners, Guests or the general public, including:

- (A) theatres,
- (B) libraries,
- (C) conference and meeting facilities,
- (D) chapels,
- (E) schools, colleges and universities,
- (F) informational facilities,
- (G) community centers,
- (H) playing fields,
- (I) parks,
- (J) recreational centers,
- (K) nature centers, trails, open spaces and wetlands,

- (L) child care facilities,
- (M) teen centers,
- (N) parking and transportation services and facilities,
and
- (O) emergency service facilities.

"Community-wide Standard" means the higher of: (i) the requirements of the City, or (ii) the minimum standards described in the Community Documents.

"Condominium" has the meaning given to that term in the Condominium Act.

"Condominium Act" means the New Mexico Condominium Act §§ 47-7A-1 *et seq.* (NMSA 1978).

"Condominium Unit" means a "Unit," as such term is defined in § 47-7A-3 (NMSA 1978), within a Condominium.

"Consideration" means any combination of: (i) the money paid or to be paid, (ii) the value of property delivered or to be delivered, (iii) the value of any services delivered or to be delivered, and (iv) the amount of any debt assumed or to be assumed or forgiven, by a Transferee in exchange for the Transfer of any Interest.

"Cooperative" means a Common Interest Community in which the real property is owned by an association, each member of which is entitled by virtue of such member's ownership interest in the association to exclusive possession of a physical portion of such real property that is designed for separate ownership and occupancy (a **"Cooperative Unit"**).

"Cooperative Unit" has the meaning given to that term in the definition of "Cooperative".

"Co-Owner" has the meaning given that term in the definition of "Owner".

"CPI" means the Consumer Price Index – all Urban Consumer, U.S. City Average, All Items (1982-84=100), as published by the Bureau of Labor Statistics of the United States Department of Labor. If publication of the CPI is discontinued or published less frequently, then the Board shall adopt a substitute index published by a United States governmental body or recognized United States financial institution that reasonably reflects and monitors consumer prices in the United States.

"CPI Adjustment Factor" means, with respect to any budget deemed adopted pursuant to Section 6.2(c), a fraction, the numerator of which is the CPI available for the month in which such budget is deemed adopted pursuant to Section 6.2(c), and the denominator of which is the CPI for the month in which the budget for the preceding year was adopted or deemed adopted.

"Declaration" means this Declaration of Covenants, Conditions and Restrictions for Mesa del Sol, as the same may be amended or supplemented from time to time.

"Décor" has the meaning given to that term in Section 10.7

"Default Assessment" has the meaning given to that term in Section 6.6.

"Delegate" has the meaning given to that term in Section 4.3.

"Delegate District" has the meaning given to that term in Section 4.3.

"Development Site" means (i) a Residential Development Site Subject to Assessment, or (ii) a Commercial Development Site Subject to Assessment.

"DRB" has the meaning given to that term in Section 8.1.

"DRB Rules" means any instrument adopted by the DRB setting forth design guidelines, regarding design approvals or inspection or any other matter related thereto, as the same may be amended from time to time.

"Director" means a duly elected or appointed member of the Board.

"District Bords" has the meaning given to that term in Section 9.12.

"Districts" has the meaning given to that term in Section 9.12.

"ED #1", "ED #2", "ED #3" and "ED #4" each refers to an Election District (e.g., "ED #1" means Election District #1).

"Election District" means the election districts established under Section 5.3, as modified from time to time in accordance with Section 5.3.

"E/C Space" or "Entertainment/Cultural Space" means a Site or any portion of a Site:

- (i) used primarily for cultural (including museums) or entertainment activities, including space accessory thereto and primarily serving the operation of such activities (such as space used for offices, storage, and restrooms),
- (ii) that does not qualify as a Community Facility, and
- (iii) with respect to which a certificate of occupancy (or functional equivalent) has been issued by the appropriate governmental authority.

"Fair Market Value" means the greater of: (i) the Consideration given by the Transferee to the Transferor in exchange for the Transfer of an Interest; or (ii) the price that a Transferee would pay to a Transferor for an Interest in a bona fide arms-length Transfer between unrelated Persons, as determined by the Board.

"First Director Election Meeting After Completion" has the meaning given to that term in the Bylaws.

"First Mortgage" means any Mortgage which is not subordinate to any other lien or encumbrance, except liens for taxes or other liens which are given priority by statute.

"First Mortgagee" means a Mortgagee with respect to a First Mortgage.

"Fiscal Year" means the fiscal year for the Community Company, which shall be an annual period ending on a date certain as set forth in the Bylaws.

"Founder" means Mesa del Sol, LLC, a New Mexico limited liability company, and, to the extent not inconsistent with the provisions of this Declaration, its successors and assigns.

"Founder Right" means any right reserved to Founder under this Declaration, any Supplement or any other Community Document.

"General Commercial Director" has the meaning given to that term in Section 5.2.

"Guest" means any family member, employee, agent, independent contractor, lessee, customer or invitee of an Owner.

"HOA Service Owner" means an Owner of a HOA Service Unit.

"HOA Service Unit" is, with respect to any Bulk Service Agreement, the Residential Units to which Media and Communications Services are to be provided pursuant to such Bulk Service Agreement.

"Hotel" means a Site or any portion of a Site:

(iv) used as a hotel, motel, inn or lodge, including space accessory thereto and primarily serving the operation of a hotel, motel, inn or lodge (such as space used for storage, laundry facilities, kitchens, employee rest areas, loading areas, offices, or other back-of-house functions), and

(v) for which a certificate of occupancy (or functional equivalent) has been issued by the appropriate governmental authority.

Notwithstanding the foregoing: (A) any space within a hotel, motel, inn or lodge (other than a Hotel Room) that falls within the definition of any other type of Space (e.g., "R/S Space") shall not be considered part of a Hotel, but shall be such other type of Space, and (B) any room or suite within a hotel, motel, inn or lodge that is a separate residential Condominium Unit shall not be considered part of a Hotel, but shall be considered a Residential Unit.

"Hotel Director" has the meaning given to that term in Section 5.2.

"Hotel Room" means a room or suite in a Hotel designated for separate overnight occupancy by one or more Guests, excluding any room or suite that is a separate residential Condominium Unit, for which a certificate of occupancy (or functional equivalent) has been issued by the appropriate governmental authority.

"I/C Space" or **"Industrial/Conference Space"** means a Site or any portion of a Site:

(vi) used primarily for: (A) industrial, laboratory, manufacturing, assembling, treating, repairing, or rebuilding activities, or (B) conference, meeting, ballroom, banquet or other similar activities, including space accessory to such activities (such as space used for offices, food preparation, storage, pre-function and restrooms),

(vii) that does not qualify as a Community Facility, and

(viii) with respect to which a certificate of occupancy (or functional equivalent) has been issued by the appropriate governmental authority.

"Initial Property" means the real property described on Exhibit A attached hereto.

"Interest" means a Site or Time Share Interest.

"Limited Assessments" has the meaning given to that term in Section 6.5.

"Limited Common Element" means a portion of the Common Elements designated by Founder or the Board (in accordance with Section 9.3) for the exclusive use of one or more but fewer than all of the Interests.

"Majority", whether or not capitalized, means any percentage greater than 50%.

"Media and Communications Infrastructure" has the meaning given to that term in Section 17.1.

"Media and Communications Services" has the meaning given to that term in Section 17.1.

"Mesa del Sol" means the Planned Community created by this Declaration.

"Mid-Range Workforce Housing Unit" means a: (i) Residential Unit other than an Affordable Workforce Housing Unit that is burdened by a Recorded covenant enforceable by the City providing that the Residential Unit may not be offered for sale or lease, nor be sold or leased, at a price that is not Affordable to households whose annualized income is 130% of the most current Area Median Income for Albuquerque as adjusted for household size and determined by the U.S. Department of Housing and Urban Development from time to time, or

(ii) during such time as the Workforce Housing Covenant is effective, a Residential Unit that is recognized by the City as a "Mid-Range Workforce Housing Unit" as such term is defined in, and for purposes of, the Workforce Housing Plan.

"Mortgage" means any mortgage, deed of trust or other document pledging any Interest (or any interest therein) as security for payment of a debt or obligation.

"Mortgagee" means any Person named as a mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such person under a Mortgage.

"NNE Test" has the meaning given to that term in Section 9.12.

"NNE Test Information" has the meaning given to that term in Section 9.12.

"Non-Residential Real Estate Transfer Assessment Rates" has the meaning given to that term in Section 6.7.

"Notice" has the meaning given to that term in Section 18.2.

"Office Space" means a Site or any portion of a Site:

(ix) used primarily as an office or for conducting other administrative functions, including space accessory to any of such activities (such as space used for storage, employee rest areas, meeting rooms and restrooms),

(x) that does not qualify as a Community Facility, and

(xi) with respect to which a certificate of occupancy (or functional equivalent) has been issued by the appropriate governmental authority.

Notwithstanding the foregoing: any space within an office that falls within the definition of any other type of Space (e.g., "Hotel" or "R/S Space") shall not be considered part of Office Space, but shall be such other type of Space.

"Officer" means a duly elected or appointed officer of the Community Company.

"Optional Services" has the meaning given to that term in Section 17.1.

"Owner" means the record holder of fee title to any Interest. If there is more than one such record holder to an Interest, each such record holder (each, a **"Co-Owner"**) shall be an Owner. The term Owner includes Founder to the extent that Founder is the record holder of fee title to any Interest.

"PCAD #1", "PCAD #2" and "PCAD #3" and each refers to one of the Director positions occupied or to be occupied by a Pre-Completion Additional Director.

"Person" means any natural person, corporation, partnership, limited liability company, association, trust, trustee, governmental or quasi-governmental entity or any other

person or entity recognized as being capable of owning real property under the laws of the State of New Mexico.

"Planned Community" means a Common Interest Community that is not a Condominium or a Cooperative. A Condominium or a Cooperative may be part of a Planned Community.

"Planned Community Unit" means a physical portion of a Planned Community that is designed for separate ownership and occupancy.

"Pre-Completion Additional Directors" has the meaning given to that term in Section 5.2.

"Project" has the meaning given to that term in Section 9.12.

"Property" means: (i) the Initial Property, and (ii) any other real property that is later made subject to this Declaration.

"Purchaser" means a Person, other than Founder, an Affiliate of Founder or a successor or assign of Founder or an Affiliate of Founder, who acquires legal title to the fee simple interest in an Interest or portion thereof.

"RD #1", "RD #2", "RD #3" and "RD #4" means the four Residential Directors described in Section 5.2.

"Real Estate Transfer Assessment" has the meaning given to that term in Section 6.7.

"Real Estate Transfer Assessment Rate" has the meaning given to that term in Section 6.7.

"Recording", "Record", "Records", "Recordation" and "Recorded" with respect to any document, means (i) the act of recording such document in the Bernalillo County Records, or (ii) a document that has been recorded in the Bernalillo County Records, as the context requires.

"Required Services" has the meaning given to that term in Section 17.1.

"Reserves" has the meaning given to that term in Section 6.14.

"Residential Directors" has the meaning given to that term in Section 5.2.

"Residential General Assessment" has the meaning given to that term in Section 6.3.

"Residential Improvements" has the meaning given to that term in Section 8.2.

"Residential Unit" means a Site or any portion of a Site:

(xii) that contains: (A) one single-family dwelling or (B) one multi-family dwelling that is not within a Condominium (such as an apartment), and

(xiii) for which a final certificate of occupancy (or functional equivalent) has been issued by the appropriate governmental authority.

The term Residential Unit includes a residential Condominium Unit, a residential Cooperative Unit and a residential Planned Community Unit. A Residential Unit may be owned in Time Share Interests (subject to the requirements of this Declaration, and other applicable restrictions and law). A Hotel Room shall not be deemed a Residential Unit.

"Respondent" has the meaning given to that term in Section 18.2.

"Retail Purchaser" means a Person, other than a Builder, Founder, an Affiliate of Founder or a successor or assign of Founder, who acquires beneficial ownership of, or legal title to, the fee simple interest in an Interest or portion thereof.

"R/S Space" or **"Retail/Service Space"** means a Site or any portion of a Site:

(xiv) used primarily for the sale of goods or services, or for the sale of prepared food or drink (such as sitdown restaurants, fast food restaurants, bars, brewpubs and nightclubs), including space accessory thereto and primarily serving such activities (such as space used for offices, storage, loading, employee rest areas, meeting rooms, outdoor seating areas, restrooms, kitchens, and other back-of-house functions),

(xv) that does not qualify as a Community Facility, and

with respect to which a certificate of occupancy (or functional equivalent) has been issued by the appropriate governmental authority. Notwithstanding the foregoing, Hotel Rooms shall not be considered R/S Space.

"Rules" means any instrument adopted by the Board for the regulation and management of Mesa del Sol, and the DRB Rules, as the same may be amended from time to time.

"Secondary Suite" means a secondary self-contained living area within or appurtenant to a Residential Unit containing a second kitchen/kitchenette, separate entry, and private full bathroom and sleeping facilities that enables the occupant(s) of such secondary self-contained living area to live independently of the other occupants of such Residential Unit.

"Site" means any one of the following portions of real property within Mesa del Sol: (i) a Condominium Unit, (ii) a Cooperative Unit, (iii) a Planned Community Unit, (iv) a platted lot, or (v) an unplatted parcel of real property. Notwithstanding the foregoing, any such portion of real property owned, held or used in its entirety (A) by the Community Company, or (B) as common elements for another Common Interest Community located within Mesa del Sol, shall not be considered a Site.

"Space" means: (i) a Residential Unit, (ii) a Hotel, (iii) a R/S Space, (iv) an E/C Space, (v) an Office Space, (vi) an I/C Space, (vii) a Community Facility, (viii) a parcel of Undeveloped Land, or (ix) such other category of land use created pursuant to Section 14.3

"Special Assessments" has the meaning given to that term in Section 6.4.

"Special Commercial Director" has the meaning given to that term in Section 5.2.

"Supplement" means:

(xvi) any additional covenants, conditions and restrictions placed on any portion of the Property by one or more Recorded instruments approved in writing by Founder and the Owners of such portion of the Property to be burdened thereby, or

(xvii) any other Recorded document: (A) establishing, combining or modifying any Delegate District or any Election District in accordance with the Bylaws, (B) instituting or modifying any Real Estate Transfer Assessments on any Transfer of Commercial Spaces or Undeveloped Land in accordance with Section 6.7(c), (C) creating or modifying types of Spaces in accordance with Section 14.3, (D) designating any Limited Common Element and designating or redesignating Sites permitted to use any Limited Common Element in accordance with Section 9.3, (E) exercising any rights reserved by Founder under Section 14.2 or elsewhere in this Declaration, or (F) changing the Community Company's address for notice purposes pursuant to Section 18.9.

"Tax Information" has the meaning given to that term in Section 9.12.

"TIDD" has the meaning given to that term in Section 9.12.

"TIDD Agreement" means that certain Master Development Agreement, Mesa del Sol, Tax Increment Development Districts 1 through 5, Recorded on June 19, 2008 at Document No. 2008070059, as amended or replaced from time to time.

"Time Share Interest" means (i) an undivided fractional fee interest in real property entitling the Owner thereof to the exclusive use of a Residential Unit on a periodically recurring basis, together with appurtenant rights, or (ii) any arrangement, whether or not coupled with an estate in land, created by contract, membership agreement, declaration or other instrument granting the right to an Owner or holder thereof to use and occupy a Residential Unit on a periodically recurring basis.

"Transfer" means any sale, conveyance, assignment, lease or other transfer of legal or beneficial ownership of all or any portion of an Interest whether in one transaction or in a series of related transactions. The term "Transfer" includes, without limitation: (i) the conveyance of any fee interest in an Interest, (ii) the transfer of more than 50% of the outstanding shares of the voting stock of a corporation that owns, directly or indirectly, an Interest, and (iii) the transfer of more than 50% of the interest in net profits or net losses of any

limited liability company, partnership, joint venture or other entity that owns, directly or indirectly, an Interest.

"Transferee" means all Persons to whom an Interest passes by a Transfer.

"Transferor" means all Persons from whom an Interest passes by a Transfer.

"Undeveloped Land" means a Site or any portion of a Site that is not a Community Facility, and does not contain a building or other structure for which a certificate of occupancy (or functional equivalent) has been issued by the appropriate governmental authority.

"UNM" means The University of New Mexico.

"UNM Property" has the meaning given to that term in Section 14.3.

"UNM Property Façade" has the meaning given to that term in Section 10.7.

"Workforce Housing Covenant" means the covenant of Founder under section 7 of the TIDD Agreement to comply with the Workforce Housing Plan.

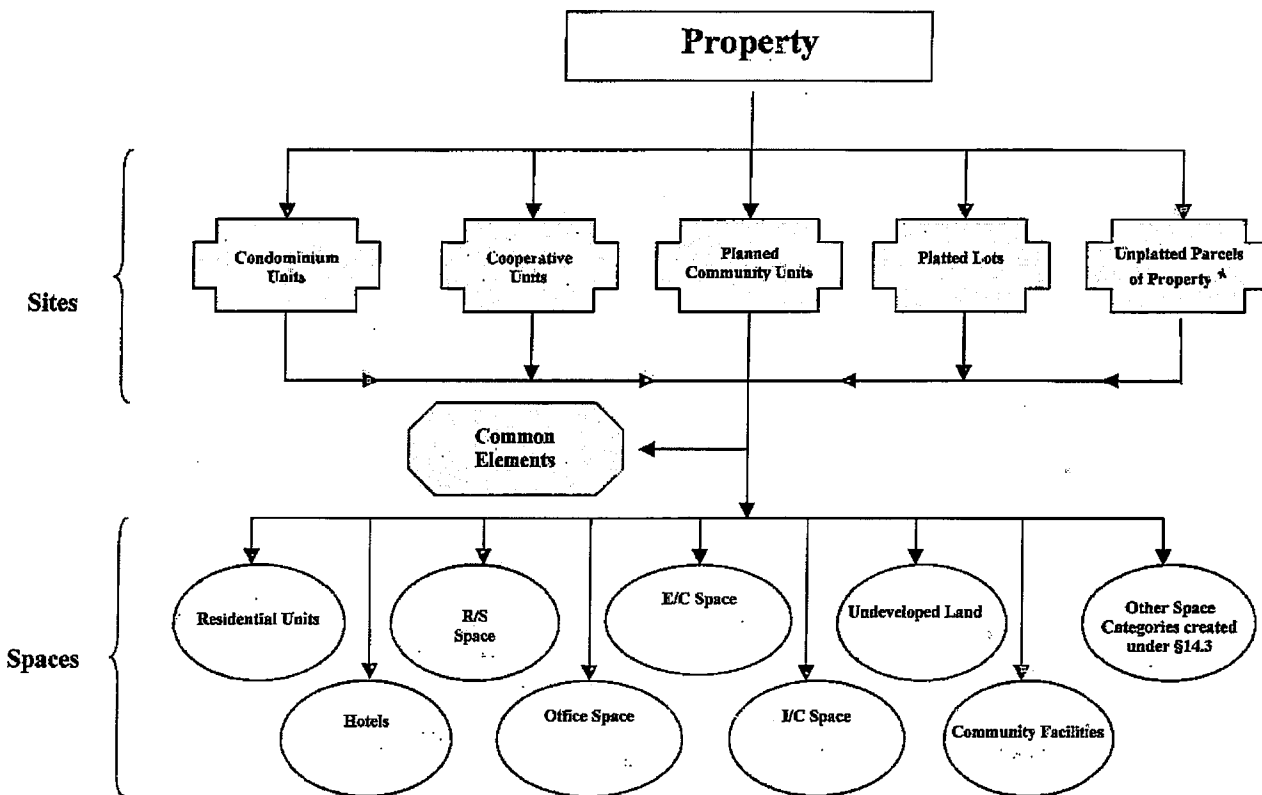
"Workforce Housing Plan" means the workforce housing plan attached as exhibit 3 to the TIDD Agreement.

"Workforce Housing Unit" means an Affordable Workforce Housing Unit or a Mid-Range Workforce Housing Unit.

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ARTICLE II
RELATIONSHIP OF TERMS DESCRIBING
PORTIONS OF THE PROPERTY

This Article II describes the relationships among various terms used in this Declaration to describe portions of the Property. Generally, as depicted in the chart below, the Property is comprised of Sites, and each Site may be comprised of one or more Common Elements and/or one or more Spaces. If there is any conflict between the chart below and the other provisions of this Declaration, the Articles, or the Bylaws, then such other provisions shall control.



*Some Spaces may not be permitted on unplatted parcels under applicable law.

ARTICLE III
THE COMMUNITY COMPANY

3.1 Formation of the Community Company.

Prior to the time Founder first conveys fee title in any Interest or portion thereof to any Person other than Founder, Founder shall cause the Community Company to be formed.

3.2 Purposes and Powers.

(a) ***Purposes.*** The Community Company's purposes are:

(i) to promote and sustain the sense of community of Mesa del Sol through projects and programs which fulfill artistic, cultural, educational and recreational needs of a vibrant community,

(ii) to acquire, construct, improve, own, lease, sell, transfer, grant easements over, encumber, manage, control, operate, insure, improve, repair, replace and maintain the Common Elements and all other property of the Community Company,

(iii) to provide certain facilities and services to Owners, Guests and the general public,

(iv) to administer and enforce the covenants, conditions, restrictions, reservations and easements created hereby,

(v) to adopt Rules from time to time, which shall be uniformly applied within any area for which they are adopted, for the regulation and management of Mesa del Sol,

(vi) to levy, collect and enforce the Assessments, charges and liens imposed pursuant hereto,

(vii) to contribute to the maintenance and enhancement of property values within Mesa del Sol,

(viii) to take any action it deems necessary or appropriate to protect the general welfare of Owners, Guests and the general public, and

(ix) to regulate and manage the Property.

(b) ***Powers.*** Unless prohibited by law or any Community Document, the Community Company may:

(i) take any and all actions that it deems necessary or advisable to fulfill its purposes, including the hiring and termination of employees, agents and independent contractors,

(ii) borrow money and secure any such borrowing with the Common Elements and the Community Company's other assets,

(iii) exercise any and all powers conferred on it by any Community Document, and

(iv) exercise any and all powers that may be exercised by nonprofit corporations formed pursuant to the New Mexico Nonprofit Corporation Act §§ 53-8-1 *et seq.* (NMSA 1978).

(c) **Additional Powers.** Without in any way limiting the powers of the Community Company as described in Section 3.2(b), the Community Company may, but is not obligated to:

(i) provide (or engage others to provide) facilities and services to Owners, Guests and the general public, including those related to safety, security, fire protection, traffic control, waste control and disposal, animal and pest control, roads, construction, parking, transportation, lighting and signage, streetscapes and waterscapes, playgrounds, ponds, and utilities (including electric, natural gas, water, sewer, storm sewer and drainage, telephone, internet, communications, data transmission and cable television, events and attractions),

(ii) charge use fees for the use of any Common Elements and for the use of any facilities or services provided by the Community Company, and

(iii) subject to the availability of budgeted funds, reimburse Directors, Officers, Delegates and Alternates for their expenses incurred in attending educational meetings and seminars on responsible governance of planned community associations.

(d) **Providers.** The Community Company may provide facilities and services itself or indirectly through other Persons by contract or otherwise, including bulk service agreements.

3.3 **Community Documents.**

(a) **Creation.** This Declaration creates the planned community known as Mesa del Sol and creates certain covenants, conditions, restrictions, reservations, easements, assessments, charges and liens applicable to Mesa del Sol. The Articles create the Community Company. The Bylaws provide for the regulation and management of the Community Company, and the Rules provide for the regulation and management of Mesa del Sol.

(b) **Conflicts.** If there is any conflict or inconsistency between this Declaration and the Articles, the Bylaws or the Rules, then this Declaration shall control. If there is any conflict or inconsistency between the Articles and the Bylaws or the Rules other than the DRB Rules, then Articles shall control. If there is any conflict or inconsistency between the Bylaws and the Rules other than the DRB Rules, then the

Bylaws shall control. If there is any conflict or inconsistency between the DRB Rules and the Articles, the Bylaws or the Rules other than the DRB Rules, then the DRB Rules shall control.

ARTICLE IV
MEMBERSHIP AND VOTING

4.1 Membership.

Every Owner is automatically a member of the Community Company. However, there shall be only one membership per Interest. Thus, if an Interest has more than one Owner, all Co-Owners of the Interest shall share the privileges of such membership, subject to the provisions of the Community Documents. If an Owner is a corporation, a partnership, or other legal entity, its membership rights may be exercised by any officer, director, partner, member, manager, or trustee, or by an individual the Owner designates from time to time in a writing to the Community Company's secretary, except that only the individuals occupying a Site (or portion thereof) shall be entitled to use the Common Elements designated for use by the Owner of such Site (or portion thereof).

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4.2 Voting.

(a) ***Voting Allocation.*** Votes in the Community Company shall be allocated to the various Interests in accordance with the following voting table:

<u>Voting Table</u>	
<u>Space</u>	<u>Allocation</u>
Residential Unit (Time Share Interests—see Sections 4.2(c)(ii) and 4.2(g))	1 vote for each Residential Unit
Hotel	1 vote for every 3 Hotel Rooms within such Hotel
Retail/Service Space (R/S Space)	1 vote for each 1,000 square feet of Area within such R/S Space
Entertainment/Cultural Space (E/C Space)	1 vote for each 5,000 square feet of Area within such E/C Space
Office Space	1 vote for each 10,000 square feet of Area within such Office Space
Industrial/Conference Space (I/C Space)	1 vote for each 20,000 square feet of Area within such I/C Space
Community Facility	None
Undeveloped Land	None

(b) ***Vote Allocations for Parking.*** Notwithstanding any other provision herein, portions of the Property used primarily for parking (including without limitation surface, underground and structured parking) shall not be deemed part of any Commercial Space for purposes of voting or the allocation of Commercial General Assessments or Special Assessments. The foregoing sentence shall not limit, preclude or inhibit the imposition of a fee for the use of any portion of the Property for parking.

(c) ***Number of Votes for Election of Directors.***

(i) Except as set forth in Section 4.2(c)(ii), and subject to the prohibition on cumulative voting set forth in Section 4.2(i), in any election of Directors, the Owner of a Space shall have a number of votes equal to the product obtained by multiplying (A) the number of votes allocated to that Space, and (B) the number of Directors for which such Owner or such Owner's Delegate may vote by virtue of such Owner's ownership of that Space.

(ii) If a Residential Unit is owned in Time Share Interests, in any election of Pre-Completion Additional Directors or Residential Directors, the Owner of each such Time Share Interest shall have a number of votes (which shall be cast by such Owner's Delegate) equal to the product obtained by multiplying: (A) the number of votes allocated to that Time Share Interest pursuant to Section 4.2(g), and (B) the number of Pre-Completion Additional Directors or Residential Directors for which such Owner's Delegate may vote by virtue of such Owner's ownership of that Time Share Interest.

(d) ***Votes Appurtenant.*** The votes allocated to any Interest shall be held by the Owner(s) of such Interest, and may not be separated from the Interest to which the votes are allocated. The votes allocated to an Interest may be transferred or encumbered only in connection with the conveyance or encumbrance of the fee interest thereto. Any transfer or encumbrance of votes in the Community Company, other than as permitted in this Section 4.2(d), shall be void and have no force or effect.

(e) ***Casting Commercial Votes.*** Votes allocated to Commercial Spaces shall be cast by the Owners of such Commercial Spaces (or their duly appointed agents subject to the requirements of the Bylaws).

(f) ***Casting Residential Votes.*** Votes allocated to Residential Units and Time Share Interests shall be cast: (i) by their respective Delegates on certain issues, and (ii) by the Owners of Residential Units and Time Shares Interests on certain other issues, as determined in the Bylaws.

(g) ***Fractional Voting.*** Fractional voting shall not be allowed for any vote allocated to any Space; provided, however:

(i) if a Residential Unit is owned in Time Share Interests, fractional voting shall be allowed for the vote allocated to that Residential Unit; and in that case, the vote allocated to a Residential Unit shall be allocated among the Time Share Interests therein on the basis of the proportionate duration of the Time Share Interests, and

(ii) the Owner of a Space other than a Residential Unit may appoint one or more of its lessees in that Space as its agent to vote all or any portion of the votes allocated to that Space by proxy subject to satisfaction of requirements therefore set forth in the Bylaws; and, in that regard, fractional voting shall be allowed for the votes allocated to such Space.

(h) **Class Voting.** Class voting shall be allowed for the election of the Directors as set forth in Article V and as otherwise expressly set forth in the Community Documents, but for no other purposes.

(i) **Cumulative Voting.** Cumulative voting shall not be allowed for any purpose.

4.3 **Delegate Districts.**

(a) **Established.** There shall be one or more districts (each, a "Delegate District") established pursuant to the terms of this Section 4.3. Each Residential Unit and each Time Share Interest shall be assigned to one Delegate District. The Founder shall initially assign each Residential Unit and each Time Share Interest to a specific Delegate District. A Delegate District need not be comprised of a contiguous geographic area. The initial Delegate District, and Residential Units and Time Share Interests assigned thereto, is set forth on Exhibit D attached hereto.

(b) **Prior to the Close of the First Director Election Meeting After Completion.** Subject to Section 4.3(d), at any time, and from time to time, prior to the close of the First Director Election Meeting After Completion, Founder, and only Founder, shall be permitted to: (i) establish one or more Delegate Districts, (ii) combine Delegate Districts into fewer Delegate Districts, and (iii) reassign any Residential Unit or Time Share Interest from one Delegate District to another Delegate District.

(c) **After the Close of the First Director Election Meeting After Completion.** Subject to Section 4.3(d), at any time, and from time to time, after the close of the First Director Election Meeting After Completion, the Board may: (i) establish one or more Delegate Districts, (ii) combine Delegate Districts into fewer Delegate Districts, and (iii) reassign any Residential Unit or Time Share Interest from one Delegate District to another Delegate District; provided, however, the Board may not combine two or more existing Delegate Districts into fewer Delegate Districts without the approval of Owners of Residential Units and Time Share Interests within each Delegate District proposed to be combined. The Owners of Residential Units and Time Share Interests within a Delegate District shall be deemed to have approved the combination of such Delegate District with one or more other Delegate Districts only upon the affirmative vote of a majority of all votes allocated to such Residential Units and Time Share Interests cast in person or by proxy at a duly held Delegate District Meeting therefor.

(d) **Effective Date.** Any action described in Section 4.3(b) or 4.3(c) shall become effective on the date a Supplement specifying such action is Recorded, or such later date set forth in such Supplement.

(e) **Delegates and Alternates.** Pursuant to the procedures set forth in the Bylaws, each Delegate District shall elect one delegate (each, a "Delegate") and one alternate delegate (each, an "Alternate"). As set forth in the Bylaws, Delegate and Alternates shall cast certain votes on behalf of Owners of Residential Units and Time

Share Interests and exercise such other rights and perform such other duties as are set forth in, and subject to the terms of, the Community Documents.

ARTICLE V
BOARD OF DIRECTORS AND OFFICERS

5.1 Powers of the Board.

(a) **Authority.** Except as otherwise provided in Section 5.1(b) and the other provisions of this Declaration, the Board may act on behalf of the Community Company in all instances.

(b) **Limitations on Authority.** The Board may not act on behalf of the Community Company to:

- (i) amend this Declaration,
- (ii) terminate the Community Company, this Declaration or the Planned Community created by this Declaration,
- (iii) elect, remove or replace Directors,
- (iv) elect, remove or replace Delegates or Alternates (except as set forth in the Bylaws), or
- (v) determine the qualifications, powers and duties, or terms of office of Directors, Delegates or Alternates.

5.2 Composition of the Board.

(a) **Initial Board.** The initial Board shall consist of the five directors identified in the original Articles, who shall serve until their successors are appointed or elected as provided in this Section 5.2.

(b) **Removal and Replacement of Initial Board.** Notwithstanding any other provision herein or in the other Community Documents, the Founder (and only Founder) shall remove and replace all Directors (other than the Pre-Completion Additional Directors) until the close of the First Director Election Meeting After Completion.

(c) **Pre-Completion Additional Directors.** The number of Directors on the Board shall be increased and certain Directors (the "**Pre-Completion Additional Directors**") shall be elected to the Board as provided in this Section 5.2(c). Pre-Completion Additional Directors shall serve until their successors are appointed or elected as provided in this Section 5.2.

(i) Not later than 120 days after the conveyance to Purchasers of 10,000 Residential Units, the number of Directors on the Board shall be increased by

one (thereby providing for a total of six Directors on the Board) and a Pre-Completion Additional Director (PCAD #1) shall be elected to fill such additional Board seat.

(ii) Not later than 120 days after the conveyance to Purchasers of 20,000 Residential Units, the number of Directors on the Board shall be increased by one (thereby providing for a total of seven Directors on the Board) and a Pre-Completion Additional Director (PCAD #2) shall be elected to fill such additional Board seat.

(iii) Not later than 120 days after the conveyance to Purchasers of 30,000 Residential Units, a Director appointed by Founder under Section 5.2(a) or Section 5.2(b) that is then-serving (as designated by Founder) shall be removed and replaced (thereby maintaining for a total of seven Directors on the Board) by a Pre-Completion Additional Director (PCAD #3) elected to fill such Board seat.

(d) ***Directors After the Close of the First Director Election Meeting After Completion.***

(i) Upon the close of the First Director Election Meeting After Completion the Board shall consist of seven Directors, comprised of:

(A) the following Directors (the "**Residential Directors**"):

(1) Residential Director #1 (or RD #1) who shall be elected by the Delegates from Delegate Districts within Election District #1 (*see diagram in Section 5.3(g)*),

(2) Residential Director #2 (or RD #2) who shall be elected by the Delegates from Delegate Districts within Election District #2,

(3) Residential Director #3 (or RD #3) who shall be elected by the Delegates from Delegate Districts within Election District #3, and

(4) Residential Director #4 (or RD #4) who shall be elected by the Delegates from Delegate Districts within Election District #4,

(B) one Director who shall be elected by the Owners of the R/S Spaces (the "**General Commercial Director**"),

(C) one Director who shall be elected by the Owners of the E/C Spaces, Office Spaces and I/C Spaces (the "**Special Commercial Director**"), and

- (D) one Director who shall be elected by the Owners of Hotels (the "**Hotel Director**").
- (ii) Notwithstanding anything to the contrary herein, if prior to the close of the First Director Election Meeting After Completion there are:
- (A) no Hotels at any time when an election of a Hotel Director is to be conducted, then: (1) the Hotel Director shall be elected by a vote of all the Owners of the R/S Spaces, and (2) for such Director's term, there shall be no Hotel Director and such Director shall be deemed an additional General Commercial Director,
 - (B) no E/C Spaces, no Office Spaces and no I/C Spaces at any time when an election of a Special Commercial Director is to be conducted, then: (1) the Special Commercial Director shall be elected by a vote of all the Owners of the R/S Spaces, and (2) for such Director's term, there shall be no Special Commercial Director and such Director shall be deemed an additional General Commercial Director, or
 - (C) no R/S Spaces at any time when an election of: (1) a General Commercial Director is to be conducted, or (2) a Director is to be elected by the Owners of R/S Spaces pursuant to Section 5.2(c)(ii)(A) or (B), then: (a) all Directors that would have been elected by a vote of all the Owners of the R/S Spaces will be elected by a vote of all Owners, and (b) for each such Director's term, such Director shall be deemed an additional Residential Director (and not any other type of Director).

5.3 Election Districts.

(a) *Established for Pre-Completion Additional Directors.* For purposes of electing Pre-Completion Additional Directors:

- (i) on or before the date upon which 10,000 Residential Units have been conveyed to Purchasers, Founder shall have established one Election District (ED #1);
- (ii) on or before the date upon which 20,000 Residential Units have been conveyed to Purchasers, Founder shall have established two Election Districts (ED #1 and ED #2); and

(iii) on or before the date upon which 30,000 Residential Units have been conveyed to Purchasers, Founder shall have established three Election Districts (ED #1, ED #2 and ED #3).

(b) **Established for Residential Directors.** On or before the close of the First Director Election Meeting After Completion, Founder shall have established four Election Districts (ED #1, ED #2, ED #3 and ED #4) for the purposes of electing the Residential Directors at and after the First Director Election Meeting After Completion.

(c) **Composition Requirements.** Each Election District shall be comprised of one or more Delegate Districts, and each Delegate District shall be assigned to only one Election District. An Election District need not be a contiguous geographic area.

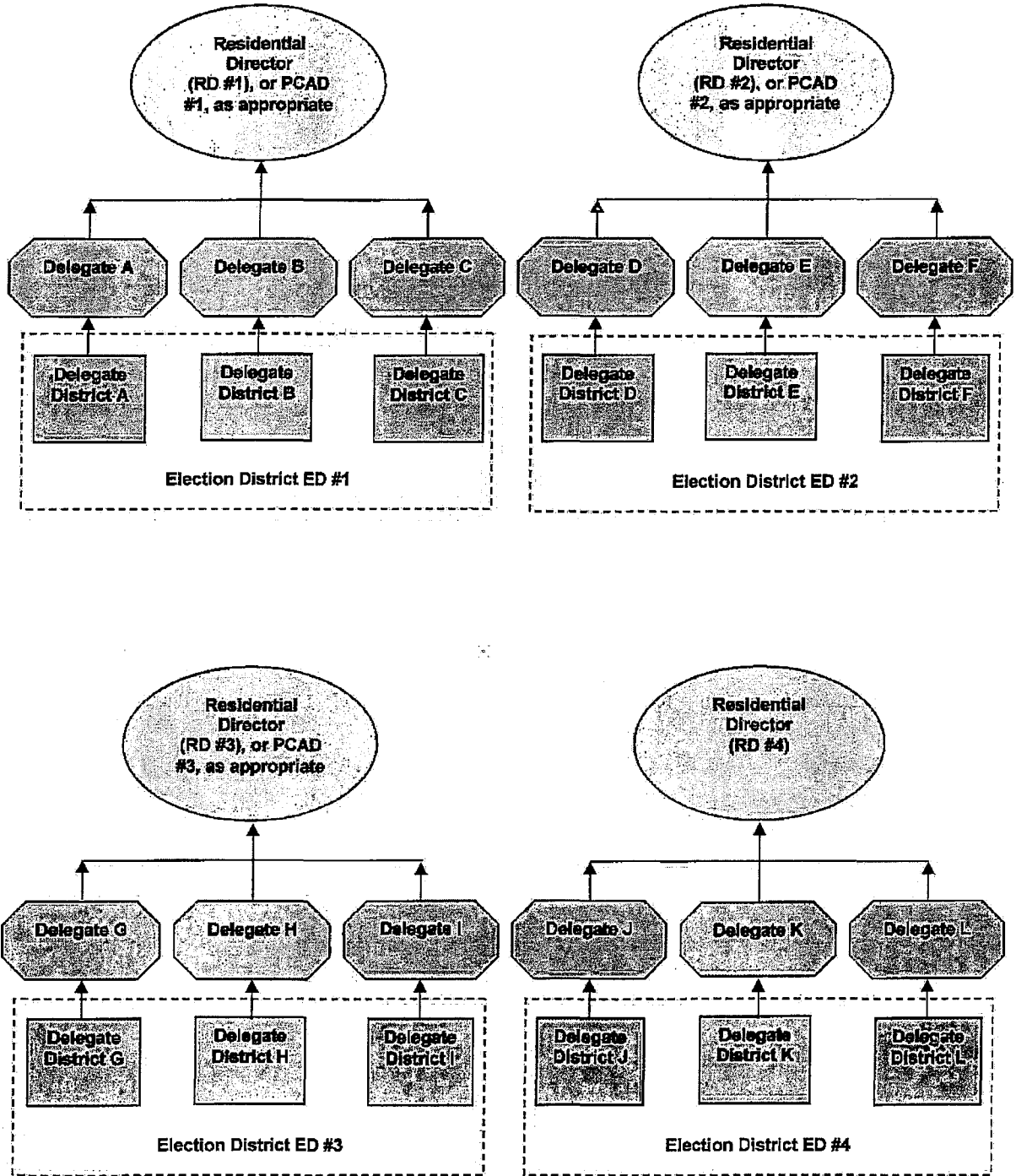
(d) **Prior to the Close of the First Director Election Meeting After Completion.** Subject to Section 5.3(f), at any time, and from time to time, prior to the close of the First Director Election Meeting After Completion, Founder, and only Founder, shall be permitted to: (i) reassign any Delegate District from one Election District to another Election District, and (ii) combine Election Districts into fewer Election Districts and establish additional Election Districts, on the condition that there shall always be the number of Election Districts required by Section 5.3(a) or Section 5.3(b), as appropriate.

(e) **After the Close of the First Director Election Meeting After Completion.** Subject to Section 5.3(f), at any time, and from time to time, after the close of the First Director Election Meeting After Completion, the Board may (i) reassign any Delegate District from one Election District to another Election District, and (ii) combine Election Districts into fewer Election Districts and establish additional Election Districts, on the condition that there shall always be the number of Election Districts required by Section 5.3(a) or Section 5.3(b), as appropriate; provided, however, the Board may not combine two or more existing Election Districts into fewer Election Districts without the approval of Owners of Residential Units and Time Share Interests within each Election District proposed to be combined. The Owners of Residential Units and Time Share Interests within an Election District shall be deemed to have approved the combination of such Election District with one or more other Election Districts only upon the affirmative vote of a majority of all votes allocated to such Residential Units and Time Share Interests cast in person or by proxy as a duly held meeting therefor.

(f) **Effective Date.** Any action described in Section 5.3(d) or 5.3(e) shall become effective on the date a Supplement specifying such action is Recorded, or such later date set forth in such Supplement.

(g) **Election of Residential Directors.** The diagram below depicts the representation involved in the election of Pre-Completion Additional Directors and Residential Directors. If there is any conflict between such diagram and the other provisions of this Declaration, the Articles, or the Bylaws, then such other provisions shall control.

Election of Pre-Completion Additional Directors and Residential Directors



5.4 Bylaws.

Additional provisions regarding the election of Directors and meetings of the Board are set forth in the Bylaws.

5.5 Officers.

The Officers shall be a president, one or more vice presidents, a secretary and a treasurer, as set forth in the Bylaws. The Founder may appoint, remove, and replace all Officers until the close of the First Director Election Meeting After Completion. After the close of the First Director Election Meeting After Completion, the Officers shall be appointed, removed and replaced by the Board as set forth in the Bylaws.

ARTICLE VI **ASSESSMENTS, COMMON EXPENSES, BUDGETS AND LIENS**

6.1 Obligations for Assessments and Other Charges.

(a) **Obligation.** Each Owner, by accepting a deed to an Interest (whether or not it shall be expressly stated in such deed), shall be deemed to have covenanted and agreed to pay to the Community Company all Assessments and other charges that the Community Company is required or permitted to levy or impose on such Owner or such Owner's Interest pursuant to any Community Document.

(b) **Foreclosure.** Notwithstanding the definition of the term "Owner":

(i) a Person who acquires an Interest in a foreclosure sale shall be personally liable for all Assessments and other charges the Community Company is required or permitted to levy or impose on that Interest or on the Owner of that Interest commencing on the date of the foreclosure sale, and

(ii) a Person who acquires an Interest by deed-in-lieu of foreclosure shall be personally liable for all Assessments and other charges the Community Company is required or permitted to levy or impose on that Interest or on the Owner of that Interest commencing on the date on which the Owner of that Interest executes the deed-in-lieu of foreclosure.

(c) **No Waiver or Abandonment.** No Owner shall be exempt from liability for any Assessment or other charges by waiving the use or enjoyment of any Common Element or by abandoning an Interest against which such Assessments or other charges are made.

(d) **Personal, Joint and Several Liability.** Each Owner shall be personally liable for all Assessments and other charges levied on such Owner or such Owner's Interest during the period of such Owner's ownership of the Interest. If there are Co-Owners of an Interest, each Co-Owner shall be jointly and severally liable with the other Co-Owners of the Interest for all Assessments and other charges levied on the Interest or any Owner of the Interest.

(e) **Remedies.** Each Assessment or other charge, together with interest thereon and all costs and expenses incurred by the Community Company to collect such Assessment or other charge, including all fees and disbursements of attorneys, accountants, appraisers, receivers and other professionals engaged by the Community Company in connection therewith, may be recovered by a suit for a money judgment by the Community Company without foreclosing or waiving any Assessment Lien securing the same, and without waiving any other remedies.

(f) **Exemption for Community Facilities.** Notwithstanding any other provision of this Declaration, the Community Company may not levy or collect any Residential General Assessment, Commercial General Assessment, Limited Assessment, Special Assessment or Real Estate Transfer Assessment with respect to any Site or portion of a Site used exclusively as a Community Facility.

(g) **Exemption for Undeveloped Land.** Notwithstanding any other provision of this Declaration, the Community Company shall not levy or collect any Residential General Assessment, Commercial General Assessment, Limited Assessment or Special Assessment with respect to any Undeveloped Land other than Development Sites.

(h) **Exemption for Community Company.** Notwithstanding any other provision of this Declaration, the Community Company shall be exempt from all Assessments.

(i) **Assessment Unit Allocation.** As set forth herein, the obligation to pay Residential General Assessments, Commercial General Assessments, Special Assessments, and certain Limited Assessments, is allocated among Owners of certain Spaces on the basis of assessment units assigned to such Spaces in accordance with this Section 6.1(i) ("Assessment Units").

- (i) Each Residential Unit that:
 - (A) has a Secondary Suite shall be allocated 1.50 Assessment Units,
 - (B) is a multi-family dwelling unit not within a Condominium (such as an apartment), shall be allocated 0.75 Assessment Units,
 - (C) is an Affordable Workforce Housing Unit shall be allocated 0.25 Assessment Units (but only for such time as such Residential Unit qualifies as an Affordable Workforce Housing Unit),
 - (D) is a Mid-Range Workforce Housing Unit shall be allocated 0.50 Assessment Units (but only for such time as such Residential Unit qualifies as an Mid-Range Workforce Housing Unit), and

(E) that is not described in Sections 6.1(i)(i)(A) through 6.1(i)(i)(D) above shall be allocated one Assessment Unit.

(ii) Each Residential Development Site Subject to Assessment shall be allocated one Assessment Unit for each dwelling unit that has been or may be constructed within such Residential Development Site Subject to Assessment in accordance with applicable zoning and other applicable City approvals, and is not a Residential Unit because it has not received a certificate of occupancy (or the functional equivalent thereof). **"Residential Development Site Subject to Assessment"** means a Site that is:

- (A) not owned by Founder or any Affiliate of Founder,
- (B) either: (1) a Condominium Unit for which a final certificate of occupancy (or functional equivalent) has not been issued by the appropriate governmental authority, or (2) a lot, that is not also a Condominium Unit, created by a Recorded plat upon which one or more dwelling units have been or may be constructed in accordance with applicable zoning and other City development approvals but that are not (yet) Residential Units,
- (C) included within a Recorded plat or a Recorded condominium map, plat or declaration that also includes a Residential Unit that has been Transferred by a Builder, Founder, or an Affiliate of Founder to a Retail Purchaser, and
- (D) expected to be used primarily for residential uses as determined by Founder prior to the close of the First Director Election Meeting After Completion or by the Board after the close of the First Director Election Meeting After Completion.

(iii) Each Commercial Space shall be allocated one Assessment Unit for each vote in the Community Company allocated to such Commercial Space in accordance with the Community Documents.

(iv) Each Commercial Development Site Subject to Assessment shall be allocated Assessment Units for such Commercial Development Site Subject to Assessment pursuant to Sections 6.1(i)(iv)(B)-(F).

- (A) **"Commercial Development Site Subject to Assessment"** means a Site that is:

(1) not owned by Founder or any Affiliate of Founder, either: (a) a Condominium Unit for which a final certificate of occupancy (or functional equivalent) has not been issued by the appropriate governmental authority or (b) a lot, that is not also a Condominium Unit, created by a Recorded plat upon which Commercial Space may be constructed in accordance with applicable zoning and other City development approvals,

(2) included within a Recorded plat or a Recorded condominium map, plat or declaration that also includes Commercial Space that has been Transferred by a Builder, Founder, or an Affiliate of Founder to a Retail Purchaser, and

(3) expected to be used primarily for commercial uses as determined by Founder prior to the close of the First Director Election Meeting After Completion or by the Board after the close of the First Director Election Meeting After Completion.

(B) *(Potential Hotel Rooms)*. 1.00 Assessment Unit shall be allocated to each Commercial Development Site Subject to Assessment for every 3 hotel, motel, inn or lodge rooms that: (1) have been or may be constructed within such Commercial Development Site Subject to Assessment in accordance with applicable zoning and other applicable City development approvals, and (2) do not qualify as Hotel Rooms because they have not received certificates of occupancy (or the functional equivalent thereof),

(C) *(Potential R/S Space)*. 1.00 Assessment Unit shall be allocated to each Commercial Development Site Subject to Assessment for each 1,000 square feet of Area that: (1) has been or may be constructed within such Commercial Development Site Subject to Assessment in accordance with applicable zoning and other applicable City development approvals, (2) is (as determined by Founder prior to the close of the First Director Election Meeting After Completion or by the Board after the close of the First Director Election Meeting After Completion) to be used primarily for the sale of goods and

services, or for the sale of prepared food or drink (such as sit down restaurants, fast food restaurants, bars, brewpubs and nightclubs), including space accessory thereto and primarily serving such activities (such as space used for offices, storage, loading, employee rest areas, meeting rooms, outdoor seating areas, restrooms, kitchens, and other back-of-house functions), and (3) does not qualify as R/S Space because it has not received a certificate of occupancy (or the functional equivalent thereof),

(D) *(Potential E/C Space)*. 1.00 Assessment Unit shall be allocated to each Commercial Development Site Subject to Assessment for each 5,000 square feet of Area that: (1) has been or may be constructed within such Commercial Development Site Subject to Assessment in accordance with applicable zoning and other applicable City development approvals, (2) is (as determined by Founder prior to the close of the First Director Election Meeting After Completion or by the Board after the close of the First Director Election Meeting After Completion) to be used primarily for cultural (including museums) or entertainment activities, including space accessory thereto and primarily serving the operation of such activities (such as space used for offices, storage, and restrooms), and (3) does not qualify as E/C Space because it has not received a certificate of occupancy (or the functional equivalent thereof),

(E) *(Potential Office Space)*. 1.00 Assessment Unit shall be allocated to each Commercial Development Site Subject to Assessment for each 10,000 square feet of Area that: (1) has been or may be constructed within such Commercial Development Site Subject to Assessment in accordance with applicable zoning and other applicable City development approvals, (2) is (as determined by Founder prior to the close of the First Director Election Meeting After Completion or by the Board after the close of the First Director Election Meeting After Completion) to be used primarily as an office or for conducting other administrative functions, including space accessory to any of such activities (such as space used for storage, employee rest areas,

meeting rooms and restrooms), and (3) does not qualify as Office Space because it has not received a certificate of occupancy (or the functional equivalent thereof), and

- (F) *(Potential I/C Space)*. 1.00 Assessment Unit shall be allocated to each Commercial Development Site Subject to Assessment for each 20,000 square feet of Area that: (1) has been or may be constructed within such Commercial Development Site Subject to Assessment in accordance with applicable zoning and other applicable City development approvals, (2) is (as determined by Founder prior to the close of the First Director Election Meeting After Completion or by the Board after the close of the First Director Election Meeting After Completion) to be used primarily for: (a) industrial, laboratory, manufacturing, assembling, treating, repairing, or rebuilding activities, or (b) conference, meeting, ballroom, banquet or other similar activities, including space accessory to such activities (such as space used for offices, food preparation, storage, pre-function and restrooms), and (3) does not qualify as I/C Space because it has not received a certificate of occupancy (or the functional equivalent thereof).

6.2 **Budgets.**

(a) ***Approval and Contents of Budgets.*** Prior to the first levy of any Residential General Assessment, Commercial General Assessment, Special Assessment or Limited Assessment, and at least once during each Fiscal Year thereafter, the Board shall propose and adopt by majority vote of Directors present at a meeting at which a quorum is present an annual budget for the Community Company for the following Fiscal Year that sets forth:

- (i) estimates of expenses for the next Fiscal Year,
- (ii) the amount of funds to be raised through all Assessments,
- (iii) a summary of matters related to Reserves, including:
 - (A) the useful life and remaining life of each major component of the Common Elements,
 - (B) the current estimate of the cost of repairing, replacing or restoring each major component of the Common Elements, (C) the cost to undertake any additional Capital Improvements, and (D) an estimate of the total annual Assessments that may be required to cover the costs of such repairs, replacements and restorations and such additional Capital Improvements, and

(iv) a statement as to whether the Board has determined or anticipates that the levy of one or more Special Assessments will be required to make any Capital Improvements.

(b) **Delivery of Budget Summary.** Within 90 days after an annual budget or budget amendment is approved by the Board, or is deemed approved pursuant to Section 6.2(c), the Board shall deliver a summary of the annual budget or budget amendment to all Owners, Delegates and Alternates.

(c) **Failure to Approve a Budget.** If, for any Fiscal Year, the Board fails to adopt a budget, then the line items from the budget last adopted by the Board shall be multiplied by the CPI Adjustment Factor and deemed adopted as the budget for the next Fiscal Year and such budget shall remain in full force and effect until such time as the Board adopts a new annual budget or budget amendment.

6.3 **General Assessments.**

(a) **Collection and Amount of Residential General Assessment.** For each Fiscal Year, the Community Company shall levy and collect from each Owner, with respect to (i) each Residential Unit owned by such Owner, and (ii) each Residential Development Site Subject to Assessment owned by such Owner, an annual assessment to be used by the Community Company as determined by the Board (to be paid in 12 equal monthly installments or in such other installments as determined by the Board from time to time) (the "**Residential General Assessment**") in an amount equal to the product obtained by multiplying: (i) the total amount of the Residential General Assessment set by the Board for that Fiscal Year, by (ii) the number obtained by dividing: (A) the Assessment Units allocated to the Residential Units and Residential Development Sites Subject to Assessment owned by such Owner by (B) the total number of Assessment Units allocated to all Residential Units and Residential Development Sites Subject to Assessment within Mesa del Sol.

(b) **Time Share Estates.** If a Residential Unit is owned in Time Share Interests, the Community Company shall allocate the Residential General Assessment payable with respect to such Residential Unit among the Owners of the Time Share Interests on the basis of the proportionate duration of such Time Share Interests. Accordingly, each Owner of a Time Share Interest in a Residential Unit shall be responsible for that portion of the Residential General Assessment payable with respect to such Residential Unit equal to the product obtained by multiplying: (i) the Residential General Assessment payable with respect to that Residential Unit, by (ii) a fraction, the numerator of which is the number of days such Owner is permitted to use such Residential Unit in a calendar year, and the denominator of which is the total number of days all Owners of Time Share Interests in such Residential Unit are permitted to use such Residential Unit in a calendar year.

(c) **Collection and Amount of Commercial General Assessment.** For each Fiscal Year, the Community Company shall levy and collect from each Owner, with respect to (i) each Commercial Space owned by such Owner, and (ii) each Commercial

Development Site Subject to Assessment owned by such Owner, an annual assessment to be used by the Community Company as determined by the Board (to be paid in 12 equal monthly installments or in such other installments as determined by the Board from time to time) (the "**Commercial General Assessment**") in an amount equal to the product obtained by multiplying: (i) the total amount of the Commercial General Assessment set by the Board for that Fiscal Year, by (ii) the number obtained by dividing: (A) the Assessment Units allocated to Commercial Space and Commercial Development Sites Subject to Assessment owned by such Owner by (B) the total number of Assessment Units allocated to all Commercial Spaces and Commercial Development Sites Subject to Assessment within Mesa del Sol.

6.4 Special Assessments.

(a) **Defined.** The Assessments that the Community Company may levy and collect pursuant to this Section 6.4 are referred to as "**Special Assessments**".

(b) **Approval.** If the Community Company's revenues are not sufficient to pay the Common Expenses, then a majority of Directors present at a meeting at which a quorum of Directors is present may cause the Community Company to levy and collect a Special Assessment, in an amount equal to such shortfall, against: (i) the Owners of Residential Units and the Owners of Residential Development Sites Subject to Assessment, and/or (ii) the Owners of Commercial Space and the Owners of Commercial Development Sites Subject to Assessment as determined by a majority of Directors present at a meeting at which a quorum of Directors is present.

(c) **Collection and Amount.** If the Community Company levies a Special Assessment against any property to cover any shortfall described in Section 6.4(b), the Owner of each Space and Development Site subject to such Special Assessment (each Space and Development Site subject to the Special Assessment being "**Chargeable Property**") shall pay to the Community Company, when and in such installments as a majority of Directors present at a meeting at which a quorum of Directors is present deems necessary or appropriate, an amount equal to the product obtained by multiplying: (i) the amount of the Special Assessment, by (ii) the number obtained by dividing: (A) the Assessment Units allocated to such Space or Development Site subject to such Special Assessment by (B) the total number of Assessment Units allocated to the Chargeable Property, unless such Space is a Residential Unit owned in Time Share Interests, in which case each Owner of a Time Share Interest shall be responsible for that portion of the Special Assessment payable with respect to such Space equal to the product obtained by multiplying: (1) the Special Assessment payable with respect to that Residential Unit, by (2) a fraction, the numerator of which is the number of days such Owner is permitted to use such Residential Unit in a calendar year, and the denominator of which is the total number of days all Owners of Time Share Interests in such Residential Unit are permitted to use such Residential Unit in a calendar year.

6.5 Limited Assessments.

(a) **Defined.** The Assessments that the Community Company may levy pursuant to this Section 6.5 are referred to as "**Limited Assessments.**"

(b) **Amount.** If a Common Element benefits one or more but fewer than all of the Interests or Owners, benefits one or more but fewer than all of the Interests or Owners to a greater extent than other Interests or Owners, or if the Community Company provides facilities or services to one or more but fewer than all the Owners, then notwithstanding Sections 6.3 through 6.4, a majority of Directors present at a meeting at which a quorum of Directors is present, may cause the Community Company to levy and collect a Limited Assessment from such benefited Owners in an amount equal to the product of: (A) such costs and expenses of owning, maintaining or making Capital Improvements or providing such facilities or services, as appropriate, and (B) either (1) the number obtained by dividing the Assessment Units of such benefited Owner's Spaces and Development Sites divided by the total number of Assessment Units allocated to all such benefited Owners' Spaces and Development Sites, or (2) a fraction representing such other equitable proportion as determined by the Board.

(c) **Collection.** Limited Assessments payable pursuant to this Section 6.5 shall be due and payable on the first day of each calendar month or on such other day or in such other intervals as determined by the Board.

(d) **Required Services Limited Assessment.** If the Community Company enters into any Bulk Service Agreement then a Limited Assessment shall be paid by each HOA Service Owner for the provision of Required Services to its HOA Service Unit. Such Limited Assessment may be comprised of (i) fees, applicable taxes, franchise fees, surcharges or other amounts that may be charged to the Community Company by a service provider for provision of Required Services to HOA Service Units; and (ii) the costs and expenses of the Community Company to administer or collect such Limited Assessment, or to recover any non-payment or delinquent payment of such Limited Assessment including the costs and expenses of engaging third parties to do such work. No HOA Service Owner may be exempted from liability for such Limited Assessment by reason of waiver of the use or enjoyment of the Required Services.

(e) **Payable Upon Transfer.** Upon the occurrence of any Transfer of any HOA Service Unit to a Transferee, such Transferee shall make a non-refundable payment to the Community Company, which shall be due and payable at the time of such Transfer, in an amount equal to three months of the Limited Assessment levied or anticipated by the Community Company to be levied for Required Services for the current year. Payments required under this Section 6.5(e) are in addition to all other Assessments and may be used by the Community Company to offset the costs and expenses to the Community Company resulting from any shortfall in the collection of Limited Assessments from HOA Service Owners for Required Services.

6.6 Default Assessments.

(a) **Obligations.** Notwithstanding anything to the contrary contained herein, if any Common Expense is caused by: (i) the negligence or misconduct of an Owner or such Owner's Guest, or (ii) a violation of any covenant or condition of a Community Document by an Owner or such Owner's Guest, then the Community Company may levy an assessment against such Owner's Interest. Any such assessment levied by the Community Company and each fine, penalty, fee or other charge imposed upon an Owner for the violation of any covenant or condition of any Community Document by an Owner or such Owner's Guest are each referred to herein as a "**Default Assessment**". For purposes of this Section 6.6(a), only the employees and authorized agents of Founder and no other Persons shall be deemed "Guests" of Founder.

(b) **Opportunity to be Heard.** With respect to any Default Assessment, or portion thereof, levied other than as a late charge, the Owner of the Interest against which the Community Company seeks to levy the Default Assessment shall be provided notice and an opportunity to be heard by the Board. Owners of Interests against which Default Assessments have been levied shall pay such Default Assessments as and when required by the Board.

6.7 Real Estate Transfer Assessments.

(a) **Residential.** Subject to the terms and conditions of Sections 6.7(b), 6.7(c) and 6.7(d), upon the occurrence of any Transfer of any Interest, the Transferee shall pay to the Community Company an assessment (a "**Real Estate Transfer Assessment**") in an amount equal to the product obtained by multiplying: (i) the Fair Market Value of the Interest transferred, by (ii) the Real Estate Transfer Assessment Rate.

(b) **Joint and Several.** Each Person included within the term "Transferee" shall have joint and several liability for the Real Estate Transfer Assessment owed by the Transferee.

(c) **Exemption for Commercial Space and Undeveloped Land.** Notwithstanding other provisions of this Section 6.7, Real Estate Transfer Assessments shall not apply to the Transfer of any Commercial Space or Undeveloped Land unless Founder Records a Supplement instituting Real Estate Transfer Assessments with respect to such Commercial Space or Undeveloped Land. The Founder may institute or modify any such Real Estate Transfer Assessment at any time and from time to time by Recording a Supplement setting forth the terms thereof, subject to the cap on the Non-Residential Real Estate Transfer Rate set forth in Section 6.7(g)(ii).

(d) **Other Exemptions.** Notwithstanding anything to the contrary contained in this Section 6.7, the Community Company shall not levy or collect a Real Estate Transfer Assessment with respect to: (i) any Transfer to or from Founder or Affiliates of Founder, (ii) any Transfer of an Affordable Workforce Housing Unit, (iii) any Transfer from a Builder to another Builder, or (iv) any Transfer described on Exhibit

E attached hereto, subject to the provisions of Exhibit E. In connection with considering any requests for an exemption under this Section 6.7(d), the Board may require the applicant to submit true and correct copies of all relevant documents relating to the Transfer and an opinion of the applicant's counsel, in form and substance satisfactory to the Board, (A) setting forth all relevant facts regarding the Transfer, (B) stating that in their opinion the Transfer is exempt under this Section 6.7(d), and (C) setting forth the basis for such opinion.

(e) ***Payable Upon Transfer.*** With respect to any Transfer, the Real Estate Transfer Assessment thereon shall be due and payable by the Transferee to the Community Company at the time of the Transfer. With such payment, the Transferee shall make a written report to the Community Company on forms prescribed by the Community Company, fully describing the Transfer and setting forth the true, complete and actual Consideration for the Transfer, the names of the parties thereto, the legal description of the Interest transferred, and such other information as the Community Company may reasonably require. The Transferee shall also pay the Community Company's costs of administering and collecting the Real Estate Transfer Assessment and documenting the transfer of ownership. The Community Company may use third parties to do this work.

(f) ***Underpaid Amounts.*** If the Community Company believes that a Transferee has underpaid a Real Estate Transfer Assessment, the Community Company may so notify the Transferee and collect the amount of the deficiency from the Transferee.

(i) Any such notice shall set forth in reasonable detail: (A) the amount of the Real Estate Transfer Assessment that the Community Company believes was payable for the Transfer, (B) the method by which the Community Company calculated that amount, and (C) the amount of the deficiency that the Transferee must pay to the Community Company.

(ii) A Transferee may object to any such notice from the Community Company by delivering written notice thereof to the Community Company within 15 days after the date on which the Community Company delivers its notice under Section 6.7(f)(i). If a Transferee fails to deliver a written notice of objection within such 15-day period, the Transferee shall be deemed to have waived its right to object and the Community Company's determination of the amount of the Real Estate Transfer Assessment shall be binding on the Transferee.

(iii) If a Transferee delivers a written notice of objection within the 15-day period described in Section 6.7(f)(ii), the Community Company shall obtain an appraisal of the Interest from a real estate appraiser selected by the Community Company who is familiar with property values in Bernalillo County, New Mexico. The appraisal so obtained shall be binding on both the Community Company and the Transferee.

(iv) If it is determined that a Transferee has underpaid a Real Estate Transfer Assessment, the Transferee shall pay the amount of the deficiency and the costs incurred by the Community Company to obtain the appraisal, if any, to the Community Company within 30 days after the Community Company delivers written notice of that determination to the Transferee.

(g) ***Real Estate Transfer Rate.***

(i) The "**Real Estate Transfer Assessment Rate**" shall be 0.25%, unless and until the Board adopts a different rate that is approved in writing by Founder; *provided, however*, in no event shall the Real Estate Transfer Assessment Rate on any Transfer exceed 0.5%.

(ii) If any Transfer of a Commercial Space or Undeveloped Land is subjected to a Real Estate Transfer Assessment pursuant to this Section 6.7, then Founder may set a different rate or rates for any Commercial Spaces or Undeveloped Land, as appropriate (the "**Non-Residential Real Estate Transfer Assessment Rates**"). In no event shall any Non-Residential Real Estate Transfer Assessment Rate exceed 0.5%.

(h) ***Funding of the RETA Account.*** With respect to any Transfer subject to a Real Estate Transfer Assessment, the portion of the Real Estate Transfer Assessment thereon equal to 0.25% multiplied by the Fair Market Value of the Interest Transferred collected by the Community Company shall be deposited by the Community Company in a separate account and may be used solely for education within Mesa del Sol, for the sustainability of Mesa del Sol, and for the acquisition, operation, use, maintenance, repair and replacement of parks, open space and recreational facilities located within the Property and improvements, facilities and programs related thereto as determined by the Board from time to time.

6.8 Initial Capitalization of the Community Company/ Working Funds.

(a) ***Residential.*** With respect to each Residential Unit, the first Retail Purchaser of such Residential Unit shall make a non-refundable payment to the Community Company in an amount equal to three months of the Residential General Assessment to be levied or anticipated by the Community Company to be levied against such Residential Unit for the current year, plus the costs of administering collection of such amount; which shall be due and payable at the time of closing of the sale of such Residential Unit to such Retail Purchaser. Payments required under this Section 6.8(a) are in addition to all other Assessments.

(b) ***Commercial.*** With respect to each Commercial Space, the first Retail Purchaser of such Commercial Space shall make a non-refundable payment to the Community Company in an amount equal to three months of the Commercial General Assessment to be levied or anticipated by the Community Company to be levied against such Commercial Space for the current year, plus the costs of administering collection of such amount; which shall be due and payable on the later to occur of: (i) the time a

certificate of occupancy (temporary, final or functional equivalent) for such Commercial Space has been issued by the appropriate governmental authority or (ii) the time of the sale of such Commercial Space to such Retail Purchaser. Payments required under this Section 6.8(b) are in addition to all other Assessments.

6.9 Assignment of Assessments.

The Board shall have an unrestricted right to assign the Community Company's right to receive Assessments and other future income, either as security for obligations of the Community Company or otherwise.

6.10 Assessment Lien.

(a) **Lien.** The Community Company shall have a lien on each Interest for any Assessment levied against that Interest and any fines, late charges, penalties, interest, attorneys' fees, disbursements and costs of collection imposed against its Owner under any Community Document. The Assessment Lien shall secure all of the foregoing obligations of an Owner from the time such obligations become due. If an Assessment is payable in installments, the Assessment Lien secures each installment from the time it becomes due, including the due dates set by any valid Community Company acceleration of installment obligations.

(b) **Property.** An Assessment Lien is prior to all other liens and encumbrances on an Interest except:

(i) liens and encumbrances Recorded prior to this Declaration,

(ii) a First Mortgage which was Recorded before the date on which the Assessment sought to be enforced became delinquent; *provided, however,* that the Assessment Lien for an amount equal to the Assessments which would have become due, in the absence of any acceleration, during the six month-period immediately preceding institution of an action to enforce the lien or to extinguish the lien shall be prior to such First Mortgage, and

(iii) liens for real estate taxes and other governmental assessments or charges against the Interest.

(c) **Notice.** The Recording of this Declaration constitutes record notice and perfection of an Assessment Lien on each Interest. No further Recordation of any notice or claim of any Assessment Lien is required.

(d) **Lapse.** An Assessment Lien on any Interest is extinguished unless proceedings to enforce such Assessment Lien are instituted within ten years after the full amount of the Assessment secured by such Assessment Lien becomes due.

(e) **Other Remedies.** This Section 6.10 does not prohibit: (i) actions or suits to recover sums secured by an Assessment Lien, or (ii) the Community Company from taking a deed in lieu of foreclosure. In any action by the Community Company to

collect Assessments or to foreclose an Assessment Lien for unpaid Assessments, the court may appoint a receiver with respect to an Interest to collect all sums alleged to be due from the Owner prior to or during the pendency of the action. A court may order the receiver to pay any sums held by the receiver to the Community Company during the pendency of the action to the extent of the Community Company's Assessments. An Assessment Lien shall be foreclosed in like manner as a mortgage on real estate.

6.11 Waiver of Homestead Exemption.

By acceptance of the deed or other instrument of transfer of an Interest, an Owner irrevocably waives the homestead exemption pursuant to § 42-10-9 (NMSA 1978).

6.12 Estoppel Certificates; Notices to Mortgagees.

(a) *Estoppel Certificates.* The Community Company shall furnish to an Owner or its designee or to a Mortgagee or its designee, upon written request, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the Community Company's registered agent, a statement setting forth the amount of unpaid Assessments currently levied against such Owner's Interest. The statement shall be furnished within 21 calendar days after the Community Company's receipt of the request and shall be binding on the Community Company, the Board, every Owner and Mortgagee. If no statement is furnished to the Owner, the Mortgagee or its designee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, then the Community Company shall have no right to assert an Assessment Lien upon the Interest for unpaid Assessments which were due as of the date of the request.

(b) *Notices to Mortgagees.* The Community Company shall report to any First Mortgagee any unpaid Assessments remaining unpaid for more than 90 days after the same shall have become due, if such First Mortgagee first shall have delivered to the Community Company a written request for notice of unpaid Assessments. Any First Mortgagee holding a lien on an Interest may pay any unpaid Assessment with respect to such Interest, together with any and all costs and expenses incurred with respect to the Assessment Lien securing such unpaid Assessment, and upon such payment, such First Mortgagee shall have a lien on the Interest for the amounts paid with the same priority as a lien of the First Mortgage held by such First Mortgagee.

6.13 Administration of Assessments.

(a) *Records.* The Community Company shall have the right to inspect and copy all records of any Owner that are related to the Owner's obligation to pay any Assessment or to deliver any information to the Community Company under this Article VI.

(b) *Rules.* The Board may adopt any Rules it deems necessary or appropriate with respect to the administration of the Assessments, including Rules that:
(i) require Owners to report information regarding Assessments to the Community Company, including, information that an Owner must obtain from the Owner's lessees,

shareholders, partners or members, and (ii) relate to the Community Company's right to inspect and copy all records of any Owner that are related to the Owner's obligation to pay any Assessment or to deliver any information to the Community Company under this Article VI.

(c) **Disputes.** The Board shall resolve any dispute or question regarding the imposition, application, determination, administration, payment or collection of any Assessment. Any decision made in that regard shall be final and binding on the Community Company and the Owners.

6.14 Capital Reserves.

The Community Company shall maintain one or more reserve accounts for the sole purpose of holding funds to undertake Capital Improvements and to pay costs and expenses related thereto (the "**Reserves**"). Funds may be withdrawn from the Reserves only for Capital Improvements and to pay costs and expenses related thereto.

ARTICLE VII **MAINTENANCE OF COMMON ELEMENTS AND SITES**

7.1 Maintenance of Common Elements.

Except as otherwise provided in this Declaration, the Community Company, or its duly designated agent, shall maintain, repair and replace all Common Elements (including the improvements and landscaping located thereon) in accordance with the Community-wide Standard, and shall otherwise manage and operate all Common Elements as it deems necessary or appropriate.

7.2 Maintenance of Sites.

(a) **Owners.** Each Owner shall, at such Owner's sole cost and expense, maintain such Owner's Site and the improvements and landscaping located thereon, or constituting a part thereof, in accordance with the Community-wide Standard, except to the extent the Community Company has affirmatively committed to maintain such property by a separate written agreement.

(b) **Associations.** The Association for each Common Interest Community located within Mesa del Sol shall, at such Association's sole cost and expense, maintain such Association's property and common elements within such Common Interest Community in accordance with the Community-wide Standard, except to the extent the Community Company has affirmatively committed to maintain such property by a separate written agreement.

(c) **Failure to Maintain, Repair and Replace.** If, in the reasonable judgment of the Community Company, an Owner fails to maintain, repair and replace its Site or the improvements or landscaping located thereon, or an Association fails to maintain its property or common elements, in accordance with the Community-wide Standard, and such failure remains uncured for more than 30 days after the Community

Company's delivery of written notice thereof to such Owner or Association, the Community Company may enter upon such Site, property or such common elements and perform such maintenance, repair or replacement as the Community Company deems necessary or appropriate and charge all costs and expenses incurred by the Community Company in connection therewith to such Owner or such Association or Association's members as a Default Assessment. The Community Company may, without notice, make emergency repairs to, maintain and replace any Site or improvement located thereon, or any Association's property or common elements, as may, in its judgment, be necessary for the safety of any Person or to prevent damage to any other property. The cost of such maintenance, repair and replacement shall be charged to the Owner of the Site or such Association or Association's members as a Default Assessment.

7.3 Maintenance Obligations of Community Company.

(a) ***Maintenance Obligations.*** The Community Company shall be obligated to perform the maintenance obligations set forth in Sections 6-5-5-18(A), (C) and (D) of the Albuquerque City Ordinances with respect to all sidewalks, drive pads, curb ramps and sidewalk setback areas (as such terms are defined in Section 6-5-5-4 of the Albuquerque City Ordinances) located within a Site; provided, however, such maintenance obligations of the Community Company shall not commence with respect to any Site or any improvements therein or thereon until the Community Company has expressly accepted such obligations by written document executed on behalf of the Community Company by a duly authorized representative thereof and such written document is Recorded.

(b) ***Costs and Expenses.*** Costs and expenses of the Community Company to maintain, repair and replace sidewalks, drive pads, curb ramps and sidewalk setback areas pursuant to its obligations under Section 7.3(a) shall be included in the Residential General Assessments, Commercial General Assessments, Special Assessments and/or Limited Assessments as the Board deems necessary or appropriate.

(c) ***Approval Required for Changes.*** No Person may make any changes to any sidewalk, drive pad, curb ramp and sidewalk setback area or construct, install, modify, remove or replace any improvements therein or thereon without the prior written approval of the DRB (as such term is defined below) or Founder.

ARTICLE VIII DESIGN REVIEW

8.1 DRB.

(a) ***Composition.*** The Community Company shall have a design review board (a "DRB") consisting of at least three members as determined by Founder. All members of the DRB shall be appointed by Founder, and such members may be removed and replaced only by Founder. The DRB may, but need not include, architects, urban designers, engineers or similar professionals. The Community Company may

compensate DRB members in such manner and amount, if any, as the Board may determine appropriate.

(b) *Administration.* The DRB shall select its own chairperson from its members. The chairperson shall be the presiding officer of DRB meetings. In the absence of the chairperson at a meeting, the members present shall appoint another DRB member to serve as acting chairperson at such meeting. Meetings shall be held upon call of the chairperson at the offices of the Community Company, or at such other location selected by the chairperson. A majority of members of the DRB shall constitute a quorum for the transaction of business. In the absence of a quorum, a lesser number may adjourn any meeting to a later time or date. The affirmative vote of a majority of the members of the DRB present at a meeting at which a quorum is present shall constitute the action of the DRB on any matter before it, without any requirement for ratification by the Board or any other Person. The DRB shall operate in accordance the DRB Rules. Such DRB Rules shall be consistent with this Declaration, be uniformly applied within any area for which they are adopted, and be filed with the Community Company and maintained in the records of the Community Company and be subject to inspection by all Owners and Mortgagees. The DRB may amend the DRB Rules at any time, and from time to time, and shall deliver any such amendment to the Community Company.

(c) *Consultants and Agents.* Subject to budgets for the Community Company established in accordance with this Declaration and additional funds as may be provided by Founder, if any: (i) the DRB is hereby authorized to retain the services of one or more consulting architects, landscape architects, urban designers, engineers or other professionals to advise and assist the DRB in performing the design review functions described in this Article VIII and in the DRB Rules, (ii) the DRB is hereby authorized to hire Persons on behalf of the DRB or the Community Company to perform the design review functions described in this Article VIII, and (iii) in addition to compensation from the Community Company for serving on the DRB, if any, the Community Company may also compensate a DRB member for services performed for the Community Company or the DRB that are separate and distinct from such member's duties as a DRB member.

8.2 DRB Approval and Control

(a) *Approval Required for Certain Changes to Residential Units.* Except as set forth in Section 8.2(b), no Person may make any changes to the exterior of any improvements (after the installation or construction thereof by the initial Builder) constituting or appurtenant to a Residential Unit, or any Site or portion of a Site limited to use or intended to be used solely for residential purposes ("**Residential Improvements**") if such changes would:

(i) increase the interior gross square footage of such Residential Improvements,

(ii) add or modify an exterior deck or balcony at the primary entry to such Residential Improvements or above the ground floor thereof,

(iii) substantially modify the architectural style or character of the Residential Improvements, in the opinion of the DRB,

(iv) add or modify any accessory or additional structure thereto; provided however, sheds and storage structures do not require DRB approval, or

(v) substantially modify the roof plan or line of any Residential Improvements.

(b) ***Approvals Not Required.*** Notwithstanding any other provision herein, the following improvements and activities may be undertaken without DRB approval (unless such approval is required pursuant to any Supplement), but are subject to all other covenants, conditions and restrictions contained in this Declaration and the other Community Documents, and may be subject to other governmental requirements, including those of the City:

(i) Modifications to exterior colors,

(ii) Additions of or modifications to fencing or walls,

(iii) Landscaping,

(iv) Additions of or modifications to any shed or storage structure,

(v) Modifications to any primary entrance door,

(vi) Additions of or modifications to any deck or balcony that is at ground level and not at the primary entrance to a Residential Improvement,

(vii) Rebuilding, repairing or restoring any damaged improvement consistent with the installation or construction thereof by the initial Builder or consistent with the most-recent plans and specifications therefor approved by the DRB or Founder,

(viii) Activities of Founder (including additions of or modifications to any improvements conducted or approved by Founder), and

(ix) any other improvements and activities as determined by the DRB from time to time.

(c) ***Assignment and Delegation.*** From time to time, the DRB may delegate any or all of its duties or assign its rights under this Declaration to any other Person or committee; provided that such delegation or assignment is in writing, specifies the scope of the duties delegated or rights assigned, as appropriate, and is subject to this Declaration.

(d) **DRB Rules.** Each Owner shall comply with the DRB Rules, as the same may be amended from time to time by the DRB.

(e) **DRB Rule Amendments.** Amendments to the DRB Rules shall apply only prospectively. The DRB Rules shall not require modifications to or removal of any building, structure or other improvement previously approved by Founder or the DRB once construction or modification of such building, structure or other improvement has commenced.

(f) **Approvals.** The DRB may consider any factors it deems relevant, including harmony with the surrounding built environment. The DRB may act solely in the Founder's interest and owes no duty to any other Person. The DRB's decisions may be based entirely on aesthetic considerations. Each Owner acknowledges that such determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of any particular improvement. The DRB may: (i) approve any application with or without conditions (including conditions: (A) requiring that construction commence within a specified period of time, or (B) requiring an Owner to enter into a written agreement with the DRB or the Community Company containing such covenants, conditions and restrictions as the DRB deems necessary or appropriate, including penalties for failure to comply), (ii) approve a portion of any application and disapprove other portions, or (iii) disapprove any application.

(g) **Approvals in Stages.** The DRB Rules may require that any application be submitted or considered in stages, in which case a final decision shall not be required until after the final required submission.

(h) **Notification of Decisions.** The DRB shall notify the applicant in writing of its final determination on any stage of approval within 30 business days after the DRB's receipt of a complete application for such stage of approval.

(i) **Decisions Conclusive.** The decisions of the DRB shall be conclusive and binding on all interested parties.

(j) **Inspections.** The DRB or its designated representative may monitor any approved project to the extent required to ensure the construction or work on such project complies with any and all approved plans and construction procedures. The DRB or its designated representatives may enter upon any Site at any reasonable time or times to inspect the progress, work status or completion of any project. In addition to the remedies described in Section 8.4, the DRB may withdraw its approval of any project and require all activity at such project to be stopped, if deviations from the approved plan or approved construction practices are not corrected or reconciled within 24 hours after written notification to the Owner specifying such deviations.

(k) **Variances.** At any time, and from time to time, the DRB may authorize variances from the DRB Rules and any procedures therein, when, in its judgment, a variance is justified. No variance shall: (i) be effective unless in writing, or

(ii) prevent the DRB from denying any request for the same or a similar variance with respect to any other application.

8.3 Enforcement of Restrictions.

(a) **Remedies.** If an Owner violates any term or condition set forth in this Article VIII or the DRB Rules, the DRB shall have the following rights and remedies:

(i) The DRB may, by written notice to the Owner, withdraw any approval previously granted to the Owner by the DRB, in which event the Owner shall, upon receipt of such notice, immediately cease any construction, alteration or landscaping covered by the approval so withdrawn.

(ii) The Community Company or the DRB may, but is not obligated to, enter upon the Owner's Site and cure such violation at the Owner's sole cost and expense. If the Community Company or the DRB cures any such violation, the Owner shall pay to the Community Company or DRB, as appropriate, the amount of all costs and expenses incurred by it in connection therewith within 30 days after the Owner receives demand therefor.

(iii) The Community Company or the DRB may sue the Owner to enjoin such violation.

(iv) Each of the Community Company and the DRB shall have all other rights and remedies available to it under this Declaration, at law or in equity. All rights and remedies of the Community Company and the DRB shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy.

8.4 Fees.

The DRB may establish processing, review and inspection fees for considering and monitoring any requests for approvals submitted to it, which fees shall be paid in advance or as otherwise required by the DRB. Such fees may include reasonable costs incurred by the DRB to have professionals review any application or conduct any inspection. The DRB may also establish requirements for the escrowing of funds in an amount sufficient to guarantee completion of any proposed activity presented for DRB approval.

8.5 Lapse of Approval.

Any approval issued by the DRB shall lapse and become void in accordance with the terms and conditions of the DRB Rules and the terms and conditions of any consents, approvals or permits issued by the DRB. In addition, an approval issued by the DRB for a project will lapse and become void if any building permit or approval issued by a governmental or quasi-governmental entity for such project lapses or is revoked or suspended.

8.6 Liability.

(a) **Approvals.** A consent or approval issued by the DRB means only that the DRB believes the construction, alteration, installation or other work for which the consent or approval was requested complies with the DRB Rules. No such consent or approval shall be interpreted to mean that the construction, alteration, installation or other work covered thereby (i) complies with laws, rules, regulations, ordinances or other requirements of any governmental or quasi-governmental authority, or any applicable covenants, conditions or resolutions, (ii) is free from defects, errors or omissions, or (iii) lies within the boundaries of the Site. No consent, approval or permit issued by the DRB shall relieve Owners or other Persons of their obligations to comply with laws, rules, regulations, ordinances and other requirements of governmental or quasi-governmental authorities and any applicable covenants, conditions or restrictions.

(b) **Other Matters.** Neither the Founder, the DRB, any committee established by the Founder or the DRB, nor any of their respective officers, directors, employees, members, managers or agents shall be responsible or liable for: (i) any defects, errors or omissions in any plans or specifications submitted, revised or approved under this Article VIII, (ii) any defects, errors, omissions or encroachments in any construction or any plans or specifications, (iii) any soil conditions, drainage, or other site work, (iv) any loss or damage arising out of or related to the action, inaction, integrity, financial conditions or quality of work of any contractor, subcontractor, employee or agent, regardless of whether the Founder or any Founder Affiliate has approved or featured such Person in connection with Mesa del Sol, or (v) any injury, damage, or loss arising out of or related to the manner or quality of other circumstances of approved construction on or modification to any portion of the Property. In all matters, the Community Company shall defend and indemnify the DRB and its committees and members as set forth in the Articles.

ARTICLE IX COVENANTS, CONDITIONS AND RESTRICTIONS

9.1 Applicability of Covenants, Conditions and Restrictions.

Except as otherwise provided herein, the covenants, conditions and restrictions set forth in this Article IX shall apply to all of the Property.

9.2 Additional Covenants.

In addition to the covenants, conditions and restrictions found in this Declaration, the Community Company, all Owners and the Associations for all Common Interest Communities within Mesa del Sol shall comply with all covenants, conditions and restrictions set forth in any Recorded Supplements applicable to such Persons or their property.

9.3 Designation of Limited Common Elements.

At any time, and from time to time, prior to the close of the First Director Election Meeting After Completion, Founder may designate any Common Element as a Limited Common

Element, and may designate and redesignate those Sites permitted to use any Limited Common Element, by Recording a Supplement setting forth the same and identifying the affected Property. At any time, and from time to time after the close of the First Director Election Meeting After Completion, the Board may designate any Common Element as a Limited Common Element, and may designate and redesignate those Sites permitted to use any Limited Common Element, by Recording a document setting forth the same and identifying the affected Property.

9.4 **Protection of Owners and Others.**

(a) ***Standards for Rules.*** Except as may be set forth in this Declaration, all Rules shall comply with the following provisions:

(i) Similarly situated Sites or Spaces shall be treated similarly; however, the Rules may vary by geographic area, housing type, type of non-residential use, or Space type.

(ii) No Rule shall prohibit an Owner or occupant from displaying political, religious, or holiday symbols and decorations on such Owner's Residential Unit of the kinds normally displayed in single-family residential neighborhoods, nor shall any Rule regulate the content of political signs. However, the Community Company may adopt time, place, and manner restrictions with respect to signs, symbols, and displays visible from the outside of any Space, including reasonable limitations on size and number.

(iii) No Rule shall prohibit leasing or Transfer of any Space or Site or require Community Company approval prior to leasing or transferring a Space or Site.

(iv) No Rule may interfere with or hinder the ability of Founder and Affiliates of Founder to develop, construct, market and sell property in Mesa del Sol.

(v) No Rule may unreasonably interfere with the existence of any easement.

(b) ***Commercial Operations.*** No action of the Community Company, including adoption of any Rule, may interfere with or hinder the permitted use or operation of any Commercial Space or Community Facility, including regulations regarding business hours, noise, signage, outdoor displays, odors, parking, deliveries, trash removal, types of products sold, operators and lighting. It is the intent of Founder that such operations be regulated by the City or other governmental agencies.

(c) ***Owners' Acknowledgment and Notice to Purchasers.*** BY ACCEPTING A DEED, EACH OWNER ACKNOWLEDGES AND AGREES THAT THE USE, ENJOYMENT, AND MARKETABILITY OF SUCH OWNER'S SITE IS LIMITED AND AFFECTED BY THE COMMUNITY DOCUMENTS, WHICH MAY CHANGE FROM TIME TO TIME. ALL PURCHASERS OF A SITE ARE HEREBY NOTIFIED THAT THE COMMUNITY COMPANY MAY HAVE ADOPTED

CHANGES TO THE RULES AND THAT SUCH CHANGES MAY NOT BE SET FORTH IN A RECORDED DOCUMENT. A copy of the current Rules, if any, and all administrative policies are available from the Community Company upon request. The Community Company may charge a reasonable fee to cover its reproduction cost.

9.5 Compliance with Laws.

Nothing shall be done or kept within the Property in violation of any law, ordinance, rule or regulation of any governmental or quasi-governmental authority.

9.6 Compliance with Insurance.

Except as may be approved in writing by Founder or the Board, nothing shall be done or kept within the Property which may result in an increase in the rates of any insurance, or the cancellation of any insurance, maintained by the Community Company.

9.7 Mineral Exploration.

No portion of the Property shall be used by any Person other than Founder, and its lessees and designees, in any manner to explore for or to remove any water, oil or other hydrocarbons or minerals (including sand and gravel).

9.8 Wells, Water and Sewage.

(a) *Wells.* Except for those water wells now or hereafter installed or maintained by Founder, or its lessees or designees, no water wells shall be permitted on any portion of the Property without the prior written approval of Founder.

(b) *Water & Sewer Connections.* All buildings, structures and improvements within the Property designed for residential, commercial or lodging purposes shall be connected to such water and sewer services as the Board may require, unless otherwise approved by Founder.

9.9 Marks.

The service marks and trademarks set forth on Exhibit C attached hereto are owned by Founder. Neither the Community Company nor any Owner (other than Founder) shall use the service marks or trademarks of Founder without the prior written consent of Founder.

9.10 Founder's Exemption.

Nothing contained in this Declaration or any other Community Document shall be construed to prevent, hinder or limit: (a) Founder's exercise or enjoyment of any Founder Right, or (b) the conduct of any activity by Founder, Affiliates of Founder or the employees or agents of Founder or its Affiliates, including the erection or maintenance of temporary structures, trailers, improvements or signs, necessary or convenient to the development, construction, marketing or sale of property within Mesa del Sol.

9.11 Additional Founder Approvals.

It is acknowledged that Founder, in cooperation with the City and Bernalillo County, has created a master plan for the development of the Property which includes modern master-planning objectives which have been formulated for the common good and enhancement of property values within the community. Each Owner of a Site acknowledges by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in any such deed or other instrument, that Founder has a substantial interest to be protected with regard to assuring compliance with and enforcement of the covenants, conditions, restrictions and reservations contained in this Declaration and any amendments thereto and any Supplements Recorded pursuant to this Declaration. Notwithstanding any other provisions of the Community Documents to the contrary, until the close of the First Director Election Meeting After Completion, the following actions, before being undertaken by the Owners, the Board, the Community Company, or any Association, must first be approved in writing by Founder in addition to any other approval rights of Founder set forth in the Community Documents:

- (a) subjecting any real property to this Declaration other than the Initial Property,
- (b) attempting to rezone any portion of the Property or applying for any variance or use permit on any portion of the Property,
- (c) subdividing any portion of the Property,
- (d) adjusting the boundaries of any Site,
- (e) increasing the amount of R/S Space, E/C Space, Office Space, or I/C Space or the number of Hotel Rooms within the Property,
- (f) electing, pursuant to Article XII or Article XIII, not to repair or replace any Common Elements or to substantially alter such improvements,
- (g) significantly reducing Common Element maintenance or other services,
- (h) supplementing or amending the Rules,
- (i) constructing improvements on any property owned by the Community Company, or the alteration, modification, addition or removal of any improvement constructed or approved by Founder,
- (j) forming any Association to manage any portion of the Property,
- (k) recording any declaration affecting any portion of the Property, or
- (l) creating any Common Interest Community on any portion of the Property.

9.12 TIDD Reporting Requirements.

(a) **TIDD and Revenue and Expense Information.** The Property is located within a Tax Increment Development District (the "**TIDD**"). In conjunction with the TIDD, Founder, the City, and the Mesa del Sol Tax Development Districts Numbered 1 through 5, each a political subdivision of the State of New Mexico (the "**Districts**") have entered into the TIDD Agreement. Pursuant to the TIDD Agreement, the Districts' obligation to continue to issue bonds to finance infrastructure (the "**District Bonds**") serving the Mesa del Sol project (the "**Project**") is conditioned upon the Project continuing to be at "no net expense" to the City as determined by the "no net expense" definition included within the TIDD Agreement (the "**NNE Test**"). The NNE Test requires certain information from employers within the Property (the "**NNE Test Information**"), which includes the following:

- (i) the type of business of the employer,
- (ii) a description of the jobs of the employer at the Property,
- (iii) the source of funding of the employer, and/or the source of revenues of the employer (e.g., Federal funding, or sales of products),
- (iv) if the employer's funding source is product sales, where the sales are made and the percentage of the sales which are made to residents of the City,
- (v) the number of full time equivalent jobs of the employer at the Property,
- (vi) the average salary of the employees of the employer at the Property, and
- (vii) such other information as is reasonably required by the City to determine if the NNE Test is satisfied.

(b) **Tax Information.** Additionally, in order to determine the taxes generated at the Project for purposes of determining the tax increment funds which will be paid to the Districts, certain information will be required from Owners and tenants within the Property (the "**Tax Information**") which includes the following:

- (i) the amount paid for utilities for the Property,
- (ii) a copy of each CRS Reporting Form filed with the State of New Mexico, and
- (iii) such other information as, is reasonably required by the City, the District or Founder to determine the portion of taxes attributed to the Project.

(c) **Reporting Information.** Each Owner and each tenant within the Property shall provide to Founder, the Districts and the City the NNE Test Information

and the Tax Information, at such regular intervals, or other dates, as requested by the City, the Districts or Founder.

ARTICLE X
EASEMENTS AND RESERVATIONS

10.1 Founder's Easements.

(a) **General Easement.** There is hereby created for Founder a general easement over, across, through and under the Common Elements to: (i) exercise any of Founder's rights under this Declaration, and (ii) install, construct or alter improvements on, under or above the Property, or any real estate designated by Founder.

(b) **Additional Rights.** There is hereby reserved for Founder the right to: (i) establish from time to time, in locations reasonably determined by Founder, utility and other easements, permits or licenses over, across, through and under the Common Elements; and (ii) create other reservations, exceptions and exclusions for the interests of the Community Company.

(c) **Additional Property and Withdrawn Property.** In addition, until such time as Founder adds any portion of the Additional Property (or other property) to Mesa del Sol, and after such time as Founder withdraws any portion of the Property from Mesa del Sol, Founder shall have whatever easements are reasonably necessary or desirable across the Property for access to and utility services for such portion of the Additional Property or such portion of the Property withdrawn from Mesa del Sol, as the case may be.

10.2 Owners' Easements Over Common Elements.

(a) **Easement.** Subject to the terms and conditions of the Community Documents, each Owner shall have a nonexclusive easement over, across and through the Common Elements to use and enjoy the Common Elements subject to:

(i) any restrictions or limitations contained in any deed conveying such property to the Community Company,

(ii) certain Owners' rights to the exclusive use of those portions of the Common Elements and Limited Common Elements, and

(iii) the Board's rights to:

(A) adopt Rules regulating Common Elements use and enjoyment, including Rules limiting the number of persons who may use any Common Element, and to charge use fees for such use,

(B) suspend an Owner's right to use any Common Elements,

- (C) exercise its powers set forth in the Community Documents,
- (D) impose reasonable membership requirements and charge reasonable admission or other user fees for the use of any facility situated upon the Common Elements,
- (E) rent any portion of any clubhouse or other Common Element on an exclusive or non-exclusive short-term basis to any Person,
- (F) permit use by the general public of any Common Elements, which use may be subject to admission charges, membership fees, or other user fees established in the Board's discretion, and
- (G) permit use of Common Elements, at such charge or no charge as the Board may determine appropriate, for the purpose of offering and conducting classes or other activities, whether offered on a for profit or nonprofit basis.

(b) **Guests and Lessees.** Subject to the terms and conditions of the Community Documents, each Owner may grant its rights of use under this Section 10.2 to any Guest of the Owner. An Owner who leases such Owner's Space shall be deemed to have assigned all such rights to the lessee of such Space for the period of the lease.

10.3 Utility Easement.

(a) **Easement.** Subject to the terms and conditions of this Declaration (including those set forth in Section 10.8) and all other Community Documents, Founder hereby creates a general easement over, across, through and under all of the Property, for ingress to, egress from, and installation, replacement, removal, repair and maintenance of, all utility and service lines and systems, including water, sewer, gas, telephone, electricity and cable communication that service the Property, any portion thereof, or other property designated by Founder. The Board may, but is not obligated to, authorize the release of portions of the general easement created by this Section 10.3 upon the request of any Owner showing good cause therefor.

(b) **Conditions.** Pursuant to this easement, a utility or service company may install, remove and maintain facilities and equipment on the Property, to provide service to any portion of the Property or other property designated by Founder; provided, however, that all utility lines, and such other facilities and equipment as Founder may require, shall be installed underground. Notwithstanding anything to the contrary contained in this Section 10.3, no sewers, electrical lines, water lines, telephone lines or other utility or service lines at facilities shall be installed or relocated on any portion of the Property, except as approved by the DRB. Any utility or service company

using this general easement shall use its best efforts to install, repair, replace, remove and maintain its lines and systems without unreasonably disturbing the uses of Owners, the Community Company, Founder and other utility and service companies.

(c) **Specific Easement.** If any utility or service company furnishing utilities or services to the Property or any portion thereof requests a specific easement by a separate recordable document, the Board shall have the right and authority, but not the obligation, to grant such easement over, across, through and under any portion of the Property.

10.4 Community Company's Easement.

(a) **Easement.** There is hereby granted to the Community Company an easement over, across, through and under all of the Property to: (i) exercise any right held by the Community Company under any Community Document, and (ii) perform any obligation imposed upon the Community Company by any Community Document.

(b) **Notice.** Notwithstanding the foregoing, the Community Company shall not enter upon any Site without reasonable prior notice to the Owner of the Site, except in cases of emergency or as otherwise expressly permitted under the Community Documents.

10.5 Emergency Access Easement.

There is hereby granted a general easement to all police, sheriff, fire protection, ambulance and other similar emergency agencies or Persons to enter upon the Property in the proper performance of their duties.

10.6 Easement for Encroachments.

There is hereby granted an easement over, across, through and under the Property for all encroachments of any improvements constructed by Founder or any Affiliate of Founder; provided, however, that such easement for encroachments shall exist only to the extent that such encroachments are caused by minor inaccuracies in legal descriptions or unintentional minor deviations in construction, repair or reconstruction or the subsequent shifting or settlement of any such improvements and that do not cause damage to, or unreasonably impede or impair the use of improvements on the property upon which the encroachment has occurred.

10.7 Exterior and Façade Easement.

(a) **Easement.** There is hereby created for the benefit of the Community Company a perpetual non-exclusive easement over, across, through and under: (i) all of the Undeveloped Land, and (ii) all exterior improvements (such as fences and light poles) and all façades of buildings and structures located on any Site other than a Site containing only one single-family dwelling, to project, install, maintain, operate, repair, replace and remove any signage, lighting, banners and other décor (collectively, "Décor") of the Community Company as the Community Company deems necessary or advisable to fulfill the purposes of the Community Company as set forth in Section

3.2(a). The Community Company shall promptly repair and replace at its sole cost and expense any improvements located on any Site that are damaged or destroyed as a result of the Community Company's exercise of its easement rights set forth in this Section 10.7.

(b) **Notice.** Notwithstanding Section 10.7(a): (i)(A) at least five business days prior to the installation of any Décor on any UNM Property Façade, the Community Company shall provide UNM written notice in accordance with Section 18.9 (or email notice if followed by a telephonic communication giving notice of the email) reasonably describing such proposed Décor, and (B) if UNM reasonably believes the proposed Décor is inconsistent with the dignity or responsibilities of UNM or if the installation of such Décor would not comply with applicable law, then the Community Company shall not be permitted to install such Décor on any UNM Property Façade if UNM delivers to the Community Company written notice in accordance with Section 18.9 (or email notice if followed by a telephonic communication giving notice of the email) within five business days after UNM's receipt of the notice of the proposed Décor, and (ii) notwithstanding the preceding clause (i), no Décor installed by the Community Company shall remain on any UNM Property Façade for more than 45 calendar days without written consent of UNM. For purposes hereof, the term "**UNM Property Façade**" means: (1) the exterior improvements (such as fences and light poles) and the façade of any building or structure that is located on UNM Property that is not part of a Condominium, and (2) if the UNM Property is a Condominium Unit, all exterior portions of the Condominium common elements (including limited common elements) that are (x) part of a building, (y) adjacent to the UNM Property, and (z) closer to the UNM Property than to another condominium unit within such Condominium.

10.8 Founder Consent Required within Founder-Owned Land.

The exercise of any rights or easements created by this Article X upon, over or under property owned by Founder or Founder's Affiliates within the Property or any other property owned by Founder or Founder's Affiliates shall require the prior written consent of Founder.

ARTICLE XI **INSURANCE**

11.1 Insurance Required To Be Obtained by the Community Company.

(a) **Required Insurance.** The Community Company shall obtain and maintain in effect the following insurance coverage, if reasonably available, or if not reasonably available, the most nearly equivalent coverage as is reasonably available:

(i) Blanket property insurance covering "risks of direct physical loss" for all insurable improvements on or constituting the Common Elements to the extent that the Community Company has responsibility for repair or replacement in the event of a casualty. Such policies shall have limits sufficient to cover the full

replacement cost of the insured improvements under current and applicable ordinances and codes.

(ii) Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements in an amount equal to \$3,000,000 per occurrence with respect to bodily injury, personal injury, and property damage insuring the Board, the Community Company and their respective employees, agents and all persons acting as agents. The Owners shall be included as additional insureds, but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements. The Founder shall be included as an additional insured. Such insurance shall cover claims of one or more insured parties against other insured parties. Such coverage may be provided through a combination of primary and umbrella policies. However, if additional coverage and higher limits are available at reasonable cost that a reasonably prudent person would obtain, the Community Company shall obtain such additional coverages or limits.

(iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law.

(iv) Directors and officers liability coverage in an amount determined in good faith by the Board to be appropriate.

(v) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Community Company funds in an amount determined in the Board's business judgment but not less than an amount equal to one-fourth of the annual Residential General Assessment and Commercial General Assessment on all Sites plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation.

(b) *Additional Insurance.* In exercise of its business judgment, the Board may obtain additional insurance coverage and higher limits than this section requires.

(c) *Annual Review.* The Community Company shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in and around the City.

11.2 Deductibles.

The Community Company's policies may contain reasonable deductibles, as the Board shall determine, which shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 11.1. In the event of an insured loss, the deductible shall be treated as a Residential General Assessment, Commercial General Assessment, Special Assessment or Limited Assessment, as appropriate, in the same manner as the premiums for the applicable insurance coverage. However, if the Board

reasonably determines, after notice and an opportunity to be heard in accordance with this Declaration or the Bylaws, that the loss is the result of negligence or willful misconduct of one or more Owners or their Guests, then the Board may assess the full amount of such deductible against such Owner(s) and their Sites as a Default Assessment.

11.3 Policy Requirements.

(a) **Certificate.** All Community Company policies shall provide for a certificate of insurance to be furnished to the Community Company and, upon request, to each Owner.

(b) **Requirements.** To the extent available at reasonable cost and terms, all Community Company insurance shall:

(i) be written with a company authorized to do business in New Mexico which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate,

(ii) be written in the name of the Community Company as trustee for the benefited parties,

(iii) be for the benefit of the Community Company and the Owners, except that policies on Limited Common Elements shall be for the benefit of the Owners of the Sites to which the Limited Common Element is assigned,

(iv) be primary and not be brought into contribution with insurance purchased by Founder, Owners, occupants or their Mortgagees individually,

(v) contain an inflation guard endorsement,

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

(vii) provide that Founder and each Owner is an insured person with respect to liability arising out of such Owner's status as a member of the Community Company,

(viii) provide a waiver of subrogation against Founder, any Owner or household member of an Owner, and

(ix) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any act or omission of one or more Owners, unless acting on the Community Company's behalf within the scope of their authority, or on account of any curable defect or violation, without prior written demand to the Community Company and allowance of a reasonable time to cure the defect or violation.

(c) **Additional Provisions.** The Board shall use reasonable efforts to secure insurance policies that list the Owners as additional insureds and provide:

- (i) a waiver of subrogation as to any claims against the Community Company's Directors, Officers, employees, and manager,
- (ii) a waiver of the insurer's right to repair and reconstruct instead of paying cash,
- (iii) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause,
- (iv) an endorsement requiring at least 30 days' prior written notice to the Community Company of any cancellation, substantial modification, or non-renewal,
- (v) a cross-liability provision, and
- (vi) a provision vesting in the Board exclusive authority to adjust losses. However, Mortgagees having an interest in such losses may not be precluded from participating in the settlement negotiations, if any, related to the loss.

11.4 Insurance Premiums.

Premiums for all Community Company insurance shall be a Common Expense, except that premiums for property insurance on: (a) one or more but fewer than all of the Sites, or (b) Limited Common Elements, shall be charged as a Limited Assessment, unless the Board reasonably determines that other treatment of the premiums is more appropriate.

ARTICLE XII CASUALTY

12.1 Casualty to Common Elements.

(a) **Repair.** The Community Company shall respond to any damage to, or destruction of, any Common Elements by promptly repairing and replacing damaged or destroyed Common Elements, unless:

- (i) Mesa del Sol is terminated,
- (ii) such repair and replacement would be illegal under any state or local statute or ordinance governing health or safety,
- (iii) the Founder (until close of the First Director Election Meeting After Completion) or the Board (after the close of the First Director Election Meeting After Completion) determines that the improvements constituting such damaged or destroyed Common Elements should not be rebuilt but shall instead be replaced with different improvements, or

(iv) a Mortgagee on the damaged or destroyed portion of the Common Elements rightfully demands all or a substantial part of the insurance proceeds.

(b) ***Cost versus Proceeds.*** The cost of repair and replacement of damaged or destroyed Common Elements in excess of insurance proceeds is a Common Expense. Any remainder of insurance proceeds shall be divided and distributed in such equitable fashion as the Board may reasonably decide.

12.2 Casualty to a Site.

Each Owner shall be responsible for repairing or replacing any damage to, or destruction of, its Site. If an Owner elects not to repair or replace any such damage or destruction, such Owner shall: (a) promptly landscape such Site in accordance with plans approved by the DRB, and (b) maintain such Site in a neat and attractive condition, free of hazards, and in accordance with the Community-wide Standard.

ARTICLE XIII CONDEMNATION

13.1 Condemnation of Fewer Than All Sites.

If one or more Sites, but fewer than all Sites, are taken by condemnation or similar proceeding, any condemnation award payable in connection therewith shall be paid to the Owner(s) of such Sites in such equitable fashion as the Board may reasonably decide.

13.2 Condemnation of Common Elements.

If any Common Element is taken by condemnation or similar proceeding, any condemnation award payable in connection therewith shall be paid to the Community Company and used by the Community Company: (a) first, to repair or replace any damage to Common Elements resulting from the condemnation or similar taking, (b) second, for any other Common Expenses related to such condemnation or similar proceeding, and (c) third, to the Owners as follows: The Board shall apportion the amounts allocated to the Common Elements, excluding the Limited Common Elements, among Owners in proportion to their interest in the Community calculated by dividing the vote or votes allocated to a Site by the total number of votes allocated to all Sites; and, any amount apportioned to the taking of or injury to the Limited Common Elements shall be divided and distributed in such equitable fashion as the Board may reasonably decide.

ARTICLE XIV FOUNDER RIGHTS

14.1 Improvements.

There is hereby reserved for Founder the right to install, construct, operate, maintain, repair, replace and remove any improvements that it deems necessary or appropriate on the Common Elements and on any Sites owned by Founder.

14.2 Development Rights.

(a) ***Rights Reserved.*** In addition to all other Founder Rights, there is hereby reserved for Founder the following rights:

- (i) the right to amend this Declaration to add to Mesa del Sol:
 - (A) all or any portion of the Additional Property, or
 - (B) real estate other than Additional Property up to 25% of the total area of the Initial Property and Additional Property,
- (ii) the right to create additional Sites and additional Common Elements on all or any portion of the Additional Property or any other real estate that Founder may add to Mesa del Sol pursuant to Section 14.2(a)(i), subject to Section 14.2(a)(iii),
- (iii) the right to create within, or add to, Mesa del Sol the maximum number of Sites permitted by the applicable zoning,
- (iv) the right to create as many Residential Units, Hotel Rooms and square feet of Commercial Space and Community Facilities within Mesa del Sol as permitted by any zoning applicable to the Property and in whatever size or configuration permitted by applicable law,
- (v) the right to subdivide any Site owned by Founder,
- (vi) the right to combine any Sites owned by Founder,
- (vii) the right to convert any Site owned by Founder into Common Elements,
- (viii) the right to withdraw from Mesa del Sol any real estate owned by Founder, and
- (ix) the right to impose additional covenants, conditions, restrictions or obligations on any portion of the Property.

(b) ***Supplement.*** In exercising any right reserved under this Section 14.2, Founder shall execute and Record a Supplement thereof.

14.3 Creation or Modification of Spaces/Space Classification Disputes.

Prior to close of the First Director Election Meeting After Completion, Founder may (and after the close of the First Director Election Meeting After Completion, the Board may) create new types of Spaces, and modify and adjust the definitions of the various types of Spaces by Recording a Supplement. For any new Space type so created, Founder or the Board,

as applicable, shall determine the number of votes to be allocated to property within such Space type and whether such Space type will be considered Commercial Space. In the event of any dispute or uncertainty regarding the type of Space that any portion of the Property should be deemed included within, such dispute or uncertainty shall be resolved by the Founder prior to the close of the First Director Election Meeting After Completion or the Board after the close of the First Director Election Meeting After Completion. Notwithstanding the foregoing provisions of this Section 14.3: (a) the definition of "Community Facility" shall not be adjusted such that any portion of UNM Property is not included within the definition of "Community Facility", without the written consent of UNM, and (b) no portion of UNM Property shall be subject to any Residential General Assessment, Commercial General Assessment, Limited Assessment, Special Assessment or Real Estate Transfer Assessment, without the written consent of UNM. For purposes hereof, the term "UNM Property" means any portion of the Property that is both: (i) owned by UNM, and (ii) if such portion of the Property is physically occupied by any Person, it is occupied by UNM.

14.4 Sales Offices and Model Homes.

There is hereby reserved for Founder and its designees the right to maintain sales offices, management offices and models within any Site owned by Founder. Founder also reserves for itself the right to install, construct and maintain signs on any and all Common Elements including signs advertising Mesa del Sol, or any project therein.

14.5 Merger.

There is hereby reserved for Founder the right to merge or consolidate Mesa del Sol with any other Planned Community.

14.6 Exercising Founder Rights.

Founder may exercise its Founder Rights at any time; provided, however, that its Founder Rights must be exercised, if at all, no later than 99 years following the date this Declaration is Recorded. Founder may exercise its Founder Rights in any order and no assurance is given as to the order in which Founder will exercise its Founder Rights. If Founder exercises any Founder Right with respect to any portion of the Property or other property, Founder may, but is not obligated to, exercise that Founder Right with respect to any other portion of the Property or other property. Notwithstanding anything to the contrary contained in this Declaration, Founder may exercise any Founder Right, without the consent of the Community Company, the Board, the DRB, any Delegates, or any Owners.

14.7 Interference with Founder Rights.

Without Founder's prior written consent, neither the Community Company nor the Board, the DRB, any Delegate, or any Owner may take any action or adopt any Rule that hinders, interferes with, diminishes or is inconsistent with any Founder Right.

14.8 Transferring Founder Rights.

Founder Rights may be transferred or assigned only by a Recorded written

instrument executed by Founder (or its permitted transferees or assignees) that expressly identifies the Founder Right(s) to be transferred or assigned.

ARTICLE XV
ENFORCEMENT AND REMEDIES

15.1 Compliance and Enforcement.

Every Owner, Association and Guest shall comply with the Community Documents and shall be subject to sanctions for violations as described in this Article XV. In addition, each Owner and Association shall be responsible for, and may be sanctioned for, all violations of the Community Documents by its Guests and for any damage to any Common Element caused by such Owner, Association or its Guest; *provided, however*, that to the extent Founder or any Affiliate of Founder is an Owner, neither Founder nor such Affiliates may be held responsible for its Guests' failure to comply with the provisions of the Community Documents. Notwithstanding the foregoing, Founder and Founder's Affiliates may be held responsible for their respective employees' compliance with the provisions of the Community Documents to the extent such employees are acting within the scope of their employment.

15.2 Remedies for Non-Compliance.

The Community Company, Founder and every affected Owner and Association shall have the right to file suit at law or in equity to enforce the Community Documents. In addition, the Board, on behalf of the Community Company, may impose sanctions for violation of the Community Documents, including those sanctions listed below and any others described elsewhere in the Community Documents.

- (a) ***Sanctions Requiring Prior Notice and Hearing.*** After written notice and an opportunity for a hearing in accordance with the Bylaws, the Board may:
- (i) impose reasonable monetary fines, which shall constitute a lien upon the violator's Site; and, in the event that any Guest or any Owner or Association violates the Community Documents and a fine is imposed, the fine may, but need not, first be assessed against the violator; provided, if the fine is not paid by the violator within the time period set by the Board, such Owner or Association shall pay the fine upon notice from the Board,
 - (ii) suspend an Owner's right to vote (except that no hearing is required if the Owner is more than 60 days delinquent in paying any Assessment or other charge owed to the Community Company),
 - (iii) suspend any Person's right to use any Common Element facilities (A) for any period during which any charge against such Persons or such Person's Site remains delinquent, and (B) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation (except that no hearing is required if such Person is more than 60 days delinquent in paying any Assessment or other charge owed the Community Company); provided, nothing herein shall authorize the Board to limit ingress or egress to or from a Site or Space,

(iv) suspend services the Community Company provides (except that no hearing is required if the Person is more than 60 days delinquent in paying any Assessment or other charge owned to the Community Company),

(v) enter any portion of the Property and exercise self-help or take action to abate any violation of the Community Documents in non-emergency situation (including removing personal property that violates the Community Documents), provided, no opportunity for a hearing need be provided for violations under Section 15.2(b)(i) or 15.2(b)(ii), and any such entry shall not be deemed a trespass,

(vi) without liability to any Person, preclude any contractor, subcontractor, agent, employee, or other Guest of an Owner who causes change to any portion of the Property in the Community or who fails to comply with the Community Documents, including any design guidelines adopted by the DRB, from continuing or performing any further activities within the Property,

(vii) levy Limited Assessments to cover costs the Community Company incurs in bringing a Site into compliance with the Community-wide Standard or other requirements under the Community Documents or in repairing damage to any portion of the Common Elements resulting from action of an Owner or its Guests,

(viii) fine an Owner or Association, as a Default Assessment, an amount to be determined by the Board for each violation, in which case the Owner or Association shall pay any such fine to the Community Company within 30 days after receiving written notice thereof from the Community Company, and

(ix) Record a notice of violation with respect to any Site on which a violation exists.

(b) **Other Sanctions.** The Board may take the following actions, on behalf of the Community Company, to obtain compliance with the Community Documents without prior notice or a hearing:

(i) enter any portion of the Property and exercise self-help or take action to abate a violation of the Community Documents in any situation which requires prompt action to avoid potential injury or damage or unreasonable inconvenience to persons or their property, and any such entry shall not be deemed a trespass,

(ii) enter any portion of the Property and exercise self-help or take action to abate a violation on any Common Element under any circumstances (specifically including , but not limited to the towing of vehicles that are in violation of the Rules), and any such entry shall not be deemed a trespass,

(iii) require an Owner or an Association, at its own expense, to perform any maintenance, or repair, replace or remove any structure or improvement on such Owner's Site or on such Association's property, respectively, that is in violation of

the Community-wide Standard or other requirements under the Community Documents and to promptly restore the property to its previous condition,

(iv) enter the property and exercise self-help to remove or cure a violating condition if an Owner or Association fails to take action as required pursuant to Section 15.2(b)(ii); provided that, except in the event of an emergency, the Community Company shall provide written notice to the violating Owner or Association, and a reasonable period of at least ten days within which to cure the violating condition, prior to taking the action permitted under this Section; and, any entry under this Section shall not be deemed a trespass, and

(v) bringing suit at law for monetary damages or in equity to stop or prevent any violation, or obtain any other available legal or equitable remedy.

(c) ***Additional Powers Relating to Associations.***

(i) In addition to the foregoing sanctions, the Community Company shall have the power to veto any action that an Association proposes to take if the Board reasonably determines the proposed action to be adverse to the interests of the Community Company or its members or inconsistent with the Community-wide Standard. The Community Company also shall have the power to require specific action to be taken by any Association in connection with its obligations and responsibilities, such as requiring specific maintenance or repairs or aesthetic changes to be effectuated and requiring that a proposed budget include certain items and that expenditures be made therefor.

(ii) An Association shall take appropriate action required by the Community Company in a written notice within the reasonable time frame set by the Community Company in the notice. If such Association fails to comply, the Community Company shall have the right to effect such action on behalf of the Association and levy Limited Assessments to cover the costs, as well as an administrative charge and sanctions.

(d) ***Remedies Not Exclusive.*** All rights and remedies set forth in this Article XV are cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy.

15.3 Board Decision to Pursue Enforcement Action.

(a) ***Decision to Enforce.*** The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. For example, the Board may determine that, in a particular case: (i) the Community Company's position is not strong enough to justify taking any or further action, (ii) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law, (iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Community

Company's resources, or (iv) that it is not in the Community Company's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

(b) *Non-Waiver.* A decision not to enforce a particular provision shall not prevent the Community Company from enforcing the same provision at a later time or prevent the enforcement of any other covenant, restriction, or rule.

15.4 Attorneys' Fees.

In the event of any dispute under or with respect to this Declaration or any other Community Document, the prevailing party shall be entitled to recover from the non-prevailing party all of its costs and expenses in connection therewith, including the fees and disbursements of any attorneys, accountants, engineers, appraisers or other professionals engaged by the prevailing party.

15.5 Interest.

If an Owner or Association fails to pay to the Community Company any Assessment or other amount due to the Community Company as and when the same becomes due, the Owner or Association shall pay to the Community Company interest on such unpaid amount from the due date thereof until paid at a rate per annum to be determined by the Board and set forth in the Rules.

ARTICLE XVI TERM AND AMENDMENTS

16.1 Term.

This Declaration shall be of perpetual duration unless terminated in accordance with Section 16.2.

16.2 Termination.

This Declaration shall be terminated if Owners representing at least 80% of the votes in the Community Company, and Founder at any time prior to the close of the First Director Election Meeting After Completion, vote to direct the Board to execute and Record a termination agreement or ratification thereof stating that this Declaration is terminated. Upon Recordation of such termination agreement or ratification, Mesa del Sol and this Declaration shall be terminated, this Declaration shall have no further force or effect, and the Community Company shall be dissolved (in accordance with New Mexico law) effective as of the date(s) set forth therefore in the termination agreement or ratification. Notwithstanding the foregoing, the termination of this Declaration and Mesa del Sol shall not terminate any easement created by this Declaration or created pursuant to rights retained under this Declaration without the written consent of the holder of such easement.

16.3 Amendments.

(a) **By Founder.** In addition to specific amendment rights granted elsewhere in this Declaration, until the close of the First Director Election Meeting After Completion, Founder may unilaterally amend this Declaration for any purpose. Thereafter, Founder may unilaterally amend this Declaration if such amendment is deemed by Founder to be necessary or desirable: (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination, (ii) to enable any reputable title insurance company to issue title insurance coverage on any portion of the Property, (iii) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans (including Housing and Urban Development, the Federal Housing Administration, the Veteran's Administration, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association or the Federal National Mortgage Association) to make, purchase, insure, or guarantee mortgage loans on any portion of the Property, or (iv) to satisfy the requirements of any local, state, or federal governmental agency.

(b) **By Owners.**

(i) Except as set forth in Section 16.3(b)(ii), and subject to Section 16.3(c) and 16.3(d), the Delegates and Owners of Commercial Spaces may amend this Declaration upon by the affirmative vote of Delegates and Owners of Commercial Spaces holding at least 60% of the votes in the Community Company, unless a greater percentage is expressly required by law.

(ii) Notwithstanding Section 16.3(b)(i), with respect to any amendment to Section 4.2(e), 4.2(f), or this Section 16.3, or any other amendment to this Declaration directly affecting the rights or obligations of the Delegates or Alternates, the votes allocated to Residential Units and Time Share Interests shall be cast by the Owners of such Residential Units and Time Share Interests and not by the Delegates (or Alternates). The Board shall determine if any matter directly affects the rights or obligations of the Delegates or Alternates.

(c) **Founder Approval.** Notwithstanding any other provision herein: (i) prior to the close of the First Director Election Meeting After Completion, this Declaration may not be amended without the prior written consent of Founder, and (ii) after the close of the First Director Election Meeting After Completion, this Declaration may not be amended in any manner that could remove, revoke, modify, hinder, impede or frustrate any right or privilege of Founder without the prior written consent of Founder.

(d) **Consent Required.** Notwithstanding any other provision herein, this Declaration may not be amended in any manner that subjects any Community Facility used exclusively as a school, college or university to any Residential General Assessment, Commercial General Assessment, Limited Assessment, Special Assessment, Real Estate Transfer Assessment or new type of assessment not already provided in this Declaration without the prior written consent of the Owner of that Site.

(e) **Validity of Consent.** If an Owner consents to any amendment to this Declaration, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

(f) **Effective Date.** Any amendment shall become effective upon its Recording unless a later effective date is specified in the amendment.

(g) **Challenge.** Any procedural challenge to an amendment to this Declaration must be made within six months after its Recordation or such amendment shall be presumed to have been validly adopted.

ARTICLE XVII

DISCLOSURES, ACKNOWLEDGMENTS AND WAIVERS

17.1 Media and Communications Services.

(a) **Bulk Services Agreements.** Each Owner of a Residential Unit hereby acknowledges that the Community Company may enter into one or more bulk service agreements with one or more service providers ("**Bulk Service Agreements**") to provide HOA Service Units with a fiber-optic media and communications network capable of providing cable television, high speed internet/intranet, local and long distance telephone services, security monitoring services and/or other media and communications services (the "**Media and Communications Services**"). The Community Company expressly reserves the right to enter into exclusive or non-exclusive Bulk Service Agreements for Media and Communications Services on such terms, and with affiliated or non-affiliated third parties, as may be determined by the Community Company in its sole discretion.

(b) **Required Services.** Each Owner of a Residential Unit hereby acknowledges that any Bulk Service Agreement may require HOA Service Owners to pay for certain Media and Communications Services (the "**Required Services**"), whether or not any of such services are desired, utilized or needed by the HOA Service Owners. Charges for the Required Services will be levied against the HOA Service Units, and, accordingly, each HOA Service Owner covenants and agrees to pay Limited Assessments therefor in accordance with the provisions of this Declaration. If a HOA Service Owner fails to pay such Limited Assessments, the Required Services and the Optional Services that the HOA Service Owner subscribes to, if any, may be restricted or disconnected for such HOA Service Unit. In such event, such HOA Service Owner will remain liable for all Limited Assessments for those services for which the Community Company levies a Limited Assessment and may also incur re-activation charges if such HOA Service Owner elects to resume receiving Required Services and Optional Services.

(c) **Optional Services.** Media and Communications Services other than the Required Services, that are provided pursuant to, or in connection with, a Bulk Service Agreement, or otherwise ("**Optional Services**") may also be available to certain HOA Service Units within the Property, and, if any HOA Service Owner elects to

subscribe to any of those Optional Services any such election shall not diminish such HOA Service Owner's obligations under Section 17.1(b) and such HOA Service Owner may be billed for those services directly by the service providers or by the Community Company in the form of Limited Assessments should the Community Company so agree to facilitate such billings.

(d) **Activation Charges.** Each HOA Service Owner hereby acknowledges that (i) it may be subject to standard initiation of service fees (e.g., installation charges and equipment fees) charged by service providers upon the initiation of the Required Services and/or Optional Services to its HOA Service Unit, and (ii) the provision of the Required Services and Optional Services will be subject to the standard usage policies and minimum equipment requirements of such service providers with respect to the Required Services and Optional Services.

(e) **Exclusive Marketing Rights for Service Providers.** Each Owner hereby acknowledges that Founder and its Affiliates and the Community Company may grant the exclusive right to market and promote the Media and Communications Services on or within the Common Elements to service providers and infrastructure facilities providers under Bulk Service Agreements or other agreements.

(f) **Percentage of Premiums Paid to Founder or Affiliates.** Founder and/or its Affiliates may fund the cost of, or any portion thereof, the installation and construction of equipment and infrastructure necessary for the provision of the Media and Communications Services to HOA Service Units (the "**Media and Communications Infrastructure**"). In the event that the Community Company elects to enter into any Bulk Service Agreement with any service provider, the Founder and/or Founder's Affiliates may recover their costs for funding the installation and constructions of such Media and Communications Infrastructure plus a reasonable return on their investment by entering an agreement to receive payment of a percentage of the premiums paid by HOA Service Owners for Optional Services. Each HOA Service Owner acknowledges those payments to Founder and its Affiliates and agrees to release and waive any claims such HOA Service Owner may have as a result of those payments to Founder and/or its Affiliates.

17.2 Systems.

Each HOA Service Owner acknowledges that interruptions in Required Services, Optional Services, and other services and systems will occur from time to time. Neither Founder, any of its Affiliates, the Community Company, nor any of their respective successors or assigns shall be liable for, and no Owner or Guest shall be entitled to a refund, rebate, discount or offset in applicable fees for, any interruption in such systems and services, regardless of whether such interruption is caused by reasons within any of their control or within the control of any other Person. Each HOA Service Owner further acknowledges that it should contact the service providers or their designees directly to resolve those problems with Required Services, Optional Services, and other services and systems.

17.3 Facilities and Services Open to Public.

Certain facilities and services within Mesa del Sol, including certain Common Elements, may be open for use and enjoyment by the public.

17.4 Safety.

Each Owner and Guest shall be responsible for their own personal safety and the security of their property. The Community Company may, but shall not be obligated to, maintain or support certain activities within Mesa del Sol designed to promote or enhance the level of safety or security therein. However, neither the Community Company nor Founder shall in any way be considered insurers or guarantors of safety or security within Mesa del Sol, not shall either be liable for any injury, loss or damage to persons or property by reason of failure to provide adequate security or the ineffectiveness of security measured undertaken. No representation or warranty is made that any systems or measures, including security monitoring systems or any mechanism or system for limiting access to the Property, cannot be compromised or circumvented, nor that any such system or security measured undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges that it is responsible for informing its Guests that the Community Company and Founder are not insurers or guarantors of security or safety and that each Person within the Property assumes all risks or personal injury and loss or damage to property resulting from the acts of third Persons.

17.5 Development Plans.

Each Owner acknowledges that the plans presently envisioned for completion of Mesa del Sol may change at any time and from time to time. Founder makes no warranties or representations whatsoever that the plan presently envisioned for the completion of Mesa del Sol (or any part thereof) can or will be carried out or that any land now owned or hereafter acquired by Founder or its Affiliates is or will be subjected to this Declaration, or that any such land, whether or not it has been subjected to this Declaration, is or will be committed to or developed for a particular use, or that, if such land is once used for a particular use, such use will continue in effect. Each Owner acknowledges and agrees that neither the Community Company nor any Association, shall engage in, or use its funds to support, any protest, challenge or other form of objection to changes in uses or density of any portion of the Property or any other property owned or controlled by Founder or any Founder Affiliate.

17.6 Construction.

Each Owner acknowledges and agrees that, inasmuch as such Owner may have acquired its Interest prior to completion of all construction within Mesa del Sol and surrounding areas, there may be certain inconveniences to such Owner during any construction or reconstruction of improvements within Mesa del Sol or surrounding areas. Inconveniences may include noise, dust, odors and debris associated with construction, interference with access and temporary interruptions of utility services. Owner waives all claims against Founder and Founder's Affiliates with respect to any such inconveniences.

17.7 Views.

Neither Founder, any Affiliate of Founder nor the Community Company guarantees or represents that any view over or across any property within or outside of Mesa del Sol will be preserved without impairment. This Declaration shall not be deemed to create any express or implied easement for views or for the passage of air or light.

**ARTICLE XVIII
MISCELLANEOUS**

18.1 Agreement to Encourage Resolution of Disputes Without Litigation.

(a) ***Bound Parties.*** The Founder, the Community Company and its Directors, Officers, and committee members, and all Persons who are subject (or who agree to be subject) to this Declaration (collectively, "**Bound Parties**"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving Mesa del Sol without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim, unless and until it has first made a good-faith effort to resolve such Claim and submitted such Claim to the alternative dispute resolution procedures set forth in Section 18.2.

(b) ***Claims.***

(i) As used in this Declaration, the term "**Claim**" shall refer to any claim, grievance, or dispute arising out of or relating to:

- (A) the interpretation, application, or enforcement of the Community Documents,
- (B) the rights, obligations, and duties of any Bound Party under the Community Documents, or
- (C) the design or construction of improvements within the Property,

(ii) The following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 18.2:

- (A) any suit by the Community Company to collect Assessments or other amounts due from any Owner or Association,
- (B) any suit by the Community Company to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo

and preserve the Community Company's ability to enforce its rights under the Community Documents,

- (C) any suit that does not include Founder or the Community Company as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Community Documents,
- (D) any dispute which affects the material rights or obligations of a party who is not a Bound Party and has not agreed to submit to the procedures set forth in Section 18.2, and
- (E) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 18.2(a), unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim's statute of limitations to comply with this Article XVIII.

18.2 Dispute Resolution Procedures.

(a) **Notice.** The Bound Party asserting a Claim ("**Claimant**") against another Bound Party ("**Respondent**") shall give written notice ("**Notice**") by mail or personal delivery to each Respondent and to the Board, stating plainly and concisely:

- (i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim,
- (ii) the legal basis of the Claim (*i.e.*, the specific authority out of which the Claim arises),
- (iii) the Claimant's proposed resolution or remedy, and
- (iv) the Claimant's desire to meet with the Respondent to discuss, in good faith, ways to resolve the Claim.

(b) **Negotiation.** The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good-faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) **Mediation.**

(i) If the parties have not resolved the Claim through negotiation within 30 days after the date of the Notice (or within such other agreed upon period), the Claimant shall have 30 additional days to submit the Claim to mediation with

an entity designated by the Community Company (if the Community Company is not a party to the Claim) or to an independent agency providing dispute resolution services in the Albuquerque area. Each Bound Party shall present the mediator with a written summary of the Claim.

(ii) If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

(iii) If the parties do not settle the Claim within 30 days after submission of the matter to mediation, the Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

(iv) Each Bound Party shall bear its own costs of the mediation, including attorneys' fees, and each Bound Party shall pay an equal share of the mediator's fees.

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designated Articles, Sections, and other subdivisions of this Declaration, (iii) a reference to an Exhibit without a further reference to the document to which the Exhibit is attached is a reference to an Exhibit to this Declaration, (iv) the words "herein", "hereof", "hereunder" and other words of similar import refer to this Declaration as a whole and not to any particular provision, (v) the word "including" means "including, but not limited to" and "including without limitation", (vi) all captions and titles of headings of Articles and Sections in this Declaration are for the purpose of reference and convenience and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof, and (vii) all reference to statutes shall mean such statutes as amended or replaced from time to time.

18.4 Severability.

Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity and enforceability of any other provisions hereof.

18.5 Condominium Act.

Notwithstanding anything to the contrary in this Declaration or the other Community Documents, in the event of any inconsistency between the Condominium Act, to the extent applicable, and the Community Documents, the provisions of the Condominium Act shall control.

18.6 Reference to Declaration and Deeds.

Deeds to and instruments affecting any portion of the Property may contain the provisions set forth herein by reference to this Declaration, but regardless of whether any such reference is made in any deed or instrument, each and all of the covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth herein shall be binding upon the grantee Owner or other Person claiming through any deed or other instrument and his or her heirs, executors, administrators, successors and assigns.

18.7 Successors and Assigns of Founder.

Any reference in this Declaration to Founder shall include any successors or assignees of Founder's rights and powers hereunder, on the condition that the Founder Rights may only be transferred or assigned only by a written Recorded instrument expressly transferring or assigning such rights.

18.8 Covenants Running With the Land.

All covenants, conditions, restrictions, reservations, easements, charges, liens and other provisions of this Declaration are covenants running with the land, or equitable servitudes, as the case may be. The obligations, burdens and benefits created by this Declaration shall bind and inure to the benefit of Founder, the Owners (as such term is defined below), all other parties having any right, title or interest in the Property or any portion thereof and their respective successors, assigns, heirs, devisees, executors, administrators and personal representatives.

18.9 Notices.

All Owners of each Site shall have one and the same registered mailing address to be used by the Community Company or other Owners for notices, demands, and all other communications regarding the Community Company matters. The Owner or the representative of the Owner(s) of a Site shall furnish such registered address to the secretary of the Community Company within ten days after transfer of title to the Site to such Owner(s). Such registration shall be in written form and signed by all of the Owners of the Site or by such persons as are authorized to represent the interests of all Owners of the Site. If no address is registered or if all of the Owners cannot agree, then the address of the Site shall be deemed the registered address of the Owner(s), and any notice shall be deemed duly given if delivered to the Site. All notices and demands intended to be served upon the Community Company shall be sent to the following address or such other address as the Community Company may designate from time to time by notice to the Owner(s):

Mesa del Sol
5700 West University Blvd.
Suite 310
Albuquerque, New Mexico 87106
Attention: President

All written notices required to be sent to or served upon the Community Company under this Declaration shall be personally delivered or sent by certified mail, return receipt requested, postage prepaid or by a national overnight delivery service which maintains delivery records. All such notices shall be effective upon delivery (or refusal to accept delivery). The Community Company may change its address for purposes of this Section 18.9 by Recording a Supplement setting forth such new address.

18.10 No Public Dedication.

Nothing contained in this Declaration shall be deemed to be a dedication of any portion of the Property to the general public or for the general public or for any public purpose whatsoever.

18.11 Priority of Community Documents.

All declarations of covenants, conditions and restrictions or similar documents and instruments and those related thereto which are Recorded against the Property on or after the date this Declaration is Recorded shall be subject and subordinate to the Community Documents. If there is any conflict or inconsistency between the terms and conditions of this Declaration, such other documents and instruments Recorded on or after the date this Declaration is Recorded, then the terms and conditions of this Declaration shall control.

18.12 Rule Against Perpetuities.

If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void, or voidable for violating the rules against perpetuities, then

such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of George W. Bush, the former President of the United States, Richard B. Cheney, the former Vice President of the United States, Barack H. Obama, the President of the United States, and Joseph R. Biden, Jr., the Vice President of the United States.

18.13 Exhibits Incorporated.

All Exhibits attached to this Declaration are hereby incorporated by this reference and made a part hereof.

18.14 Counterparts.

This Declaration may be executed in two or more counterparts, each of which shall be deemed an original, and both or all of which together shall constitute one and the same instrument.

* * * * *

**SIGNATURE PAGE TO THE DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR MESA DEL SOL**

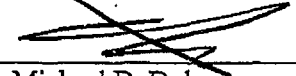
THIS DECLARATION is made by Mesa del Sol, LLC, a New Mexico limited liability company, as Founder, and in witness thereof, it has executed this Declaration this 20th day of December, 2010.

MESA DEL SOL, LLC, a New Mexico limited liability company

By: FC Covington Manager, LLC, a New Mexico limited liability company, Member

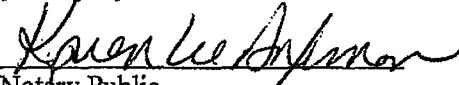
By: Forest City NM, LLC, a New Mexico limited liability company, Member

By: Forest City Commercial Group, Inc., an Ohio corporation, Member

By: 
Michael D. Daly
Vice President

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

The foregoing instrument was duly acknowledged before me this 20th day of December, 2010 by Michael D. Daly, Vice President of Forest City Commercial Group, Inc., an Ohio corporation, Member of Forest City NM, LLC, a New Mexico limited liability company, as Member of FC Covington Manager, LLC, a New Mexico limited liability company, as Member of Mesa del Sol, LLC, a New Mexico limited liability company.


Notary Public
Karen Lee Aftman
(Printed Name)

My Commission Expires:
11-18-2013
(SEAL)

EXHIBIT A

Initial Property

TRACTS A, 23 AND 24, BULK LAND PLAT FOR MESA DEL SOL INNOVATION PARK
(A REPLAT OF TRACTS 4-A-1 & 4-B, MESA DEL SOL), ALBUQUERQUE, NEW
MEXICO, FILED IN THE OFFICE OF THE COUNTY CLERK OF BERNALILLO COUNTY,
NEW MEXICO ON SEPTEMBER 13, 2007 IN BOOK 2007C, PAGE 259 AS DOCUMENT
NO: 2007131551.

EXHIBIT B

Additional Property

TRACTS 1-15, BULK LAND PLAT OF MESA DEL SOL TRACTS 1-15, SECTIONS 13-15, 20-24, 26-29, 32-35, TOWNSHIP 9 NORTH, RANGE 3 EAST, N.M.P.M., SECTIONS 2-6, TOWNSHIP 8 NORTH, RANGE 3 EAST, N.M.P.M., ALBUQUERQUE, NEW MEXICO, FILED IN THE OFFICE OF THE COUNTY CLERK OF BERNALILLO COUNTY, NEW MEXICO ON JUNE 21, 2006 IN BOOK 2006C, PAGE 195 AS DOCUMENT NO. 2006091342.

LESS AND EXCEPT THE INITIAL PROPERTY AS DEFINED HEREIN.

EXHIBIT C

Marks



EXHIBIT D

Initial Delegate District

Delegate District A is comprised of Tracts A, 23 and 24, Bulk Land Plat Mesa del Sol Innovation Park. All Residential Units and Time Share Interests located within Tracts A, 23 and 24, Bulk Land Plat Mesa del Sol Innovation Park, are assigned to Delegate District A.

EXHIBIT E

RETA Exemptions

Unless otherwise defined in this Exhibit E, all initially capitalized terms used herein shall have the same meaning given to such terms in the Declaration.

1.1 Additional Exemption Transfers. Notwithstanding anything to the contrary contained in the Declaration, the Community Company shall not levy or collect a Real Estate Transfer Assessment for any Transfers described below unless such Transfer was made for the purpose of avoiding a Real Estate Transfer Assessment (including, but not limited to, any such Transfer prior to the time a certificate of occupancy has been issued by the appropriate governmental authority that was made for the purpose of avoiding a Real Estate Transfer Assessment).

(a) Transfers to Governmental Entities. Any Transfer to (i) the United States or any agency or instrumentality thereof, or (ii) the State of New Mexico or any county, city and county, municipality, district or other political subdivision of the State of New Mexico.

(b) Community Company Transfers. Any Transfer to or from the Community Company or its successors.

(c) Transfers for Estate Planning Purposes. Any Transfer, whether outright or in trust, that is for the benefit of the Transferor or the Transferor's relatives, but only if the Consideration for the Transfer is no greater than ten percent of the Fair Market Value of the Interest, or portion thereof Transferred. For the purposes of this exclusion, (i) the relatives of a Transferor shall include all lineal descendants of any grandparent of the Transferor, and the spouses of such descendants, and (ii) stepchildren and adopted children shall be considered lineal descendants. A distribution from a trust shall be treated as a Transfer made by the grantors of the trust to the beneficiaries of the trust.

(d) Joint Tenancy or Partition. Any Transfer arising only from the termination of a joint tenancy of an Interest or the partition of an Interest held under common ownership, except to the extent that additional Consideration is given in connection therewith.

(e) Transfer by Reason of Death. Any Transfer or change of interest by reason of death, whether provided for in a will, trust or decree of distribution, except for a sale of an Interest by the estate of an Owner.

(f) Transfers to Subsidiary. Any Transfer made by (i) a subsidiary to a parent corporation that owns more than 50% of the outstanding stock of the subsidiary, or (ii) by a parent corporation to a subsidiary in which the parent corporation owns more than 50% of the outstanding stock, on the condition that there is no Consideration for the Transfer, other than the issuance, cancellation or surrender of the subsidiary's stock.

(g) Transfer to Affiliated Entity. Any Transfer made by (i) a partner, joint venturer or member to a partnership, joint venture or limited liability company in which the partner, joint venturer or member has not less than a 50% interest, or (ii) by a partnership, joint venture or limited liability company to a partner, joint-venturer or member holding not less than a 50% interest in the partnership, joint venture or limited liability company, on the condition that there is no Consideration for the Transfer, other than the issuance, cancellation or surrender of equity interests in the partnership, joint venture or limited liability company.

(h) Transfer as a Result of Liquidation, Distribution or Dividend. Any Transfer made by a corporation to its shareholders in connection with the liquidation of the corporation or other distribution or dividend in kind to its shareholders, on the condition that the Interest, or portion thereof is transferred generally pro rata to its shareholders and no Consideration is paid for the Transfer, other than the cancellation of such corporation's stock.

(i) Transfer in connection with Liquidation or Distribution of Owner. Any Transfer made by a partnership, joint venture or limited liability company to its partners, joint venturers, or members in connection with the liquidation of the partnership, joint venture or limited liability company or other distribution of property to the partners, joint venturers or members, on the condition that the Interest, or portion thereof is transferred generally pro rata to its partners, joint venturers or members and no Consideration is paid for the Transfer, other than the cancellation of the partners', joint venturers' or members' interests in the partnership, joint venture or limited liability company.

(j) Transfer to Entity owned by Owner. Any Transfer made by a Person owning an Interest, or portion thereof to a corporation, partnership, joint venture, limited liability company or other entity, on the conditions that (i) the corporation, partnership, joint venture, limited liability company or other entity is owned in its entirety by the Person transferring the Interest, or portion thereof, (ii) such Person has the same relative interest in the Transferee as they had in the Interest, or portion thereof immediately prior to such Transfer, and (iii) no Consideration is paid for the Transfer, other than the issuance of each such Person's respective stock or other ownership interests in the Transferee.

(k) Common Ownership and Control. Any Transfer made by any Person to any other Person, whether in a single Transfer or a series of transactions where the Transferor and the Transferee are and remain under common ownership and control as determined by the Board, on the condition that no such Transfer or series of transactions shall be exempt, unless the Board finds that such Transfer or series of transactions (i) is for no Consideration, other than the issuance, cancellation or surrender of stock or other ownership interest in the Transferor or the Transferee, as appropriate, (ii) is not inconsistent with the intent and meaning of Section 6.7 of the Declaration, and (iii) is for a valid business purpose and is not for the purposes of avoiding the obligation to pay any Real Estate Transfer Assessment.

(l) Transfers to Modify or Supplement Prior Transfer. Any Transfer made only for the purpose of confirming, correcting, modifying or supplementing a Transfer previously Recorded, making minor boundary adjustments, removing clouds on titles, or granting easements, rights-of-way or licenses.

(m) Founder Exchange. Any exchange of Interests between Founder (or an Affiliate of Founder) and any other Person acquiring an Interest from Founder (or an Affiliate of Founder). To the extent that Consideration in addition to previously purchased Interests is paid to Founder or an Affiliate of Founder in such an exchange, the additional Consideration shall be subject to the Real Estate Transfer Assessment. To the extent that Founder or an Affiliate of Founder, in acquiring by exchange Interests previously purchased from Founder or an Affiliate of Founder, pays Consideration in addition to transferring Interests, the original Transferee shall be entitled to a refund from the Community Company in an amount equal to the product obtained by multiplying (i) the amount of the additional Consideration, by (ii) the Real Estate Transfer Assessment Rate that was in effect as of the date of the original Transfer.

(n) Transfer Pursuant to a Court Decree or Order. Any Transfer pursuant to any decree or order of a court of record determining or vesting title, including a final order awarding title pursuant to a condemnation proceeding, but only where such decree or order would otherwise have the effect of causing the occurrence of a second Transfer subject to the Real Estate Transfer Assessment in a series of transactions which includes only one effective Transfer of the right to use or enjoy an Interest.

(o) Leases. Any lease of any Site or portion thereof (or assignment or transfer of any interest in any such lease) for a period of less than 30 years.

(p) Mineral Interests. Any Transfer only of minerals or interests in minerals.

(q) Transfer to Secure Debt or Release of Security. Any Transfer to secure a debt or other obligation or to release property which is security for a debt or other obligation.

(r) Foreclosure. Any Transfer in connection with (i) the foreclosure of a deed of trust or mortgage, or (ii) a deed given in lieu of foreclosure.

(s) 1031 Exchange. The Transfer of an Interest or portion thereof to a qualified intermediary in connection with a tax deferred exchange of real property under Section 1031 of the Internal Revenue Code of 1986, as amended, on the condition that the Transferee of the qualified intermediary pays the Real Estate Transfer Assessment.

(t) Transfer to Equity Owner. Any Transfer made by a corporation or other entity, for Consideration, (i) to any other corporation or entity which owns, directly or indirectly, 100% of the Transferor's equity securities, or (ii) to a corporation or entity whose equity securities are owned, directly or indirectly 100% by the corporation or entity that owns 100% of the Transferor's equity securities.

(u) Transfer from Direct or Indirect Subsidiary. Any Transfer from a partially owned direct or indirect subsidiary corporation to its direct or indirect parent corporation where Consideration is paid for, or in connection with, such Transfer, on the condition that, unless such Transfer is otherwise exempt, such exemption shall apply only to the extent of the direct or indirect beneficial interest of the Transferee in the Transferor immediately prior to the Transfer. For example, if corporation A owns 60% of corporation B, and corporation B owns 100% of corporation C and corporation C conveys a Site to corporation A for \$2,000,000, 60% of the Real Estate Transfer Assessment would be exempt and a Real Estate Transfer Assessment would be payable only on \$800,000 (*i.e.*, 40% of the \$2,000,000 Consideration).

(v) Transfer to or from a Tax Exempt Entity. The Transfer of an Interest to or from an organization which is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code, as amended (or any comparable statute), provided that the Board specifically approves, in the Board's sole and absolute discretion, such exemption in each particular case.

(w) Transfer of Community Facility. Any Transfer with respect to the Fair Market Value of any Site or portion of a Site used exclusively as a Community Facility; provided, however, that if, at any time within two years after a Transfer, a Site or a portion of a Site that was used by the Transferor as a Community Facility prior to the Transfer ceases to be used as a Community Facility and is used in manner that would not have exempted the Transfer from a Real Estate Transfer Assessment, then the Community Company may levy and collect, and the Transferee of the Site shall be liable for a Real Estate Transfer Assessment with respect to the Fair Market Value of the Site or portion thereof that is no longer used by the Transferee as a Community Facility, which will be due and payable to the Community Company within five days following the date on which the Transferee ceases such use. If any portion of any Site is used as a Community Facility, the Board shall determine what percentage of the Fair Market Value of the Site is attributable to the Community Facility. Such determination shall be binding and conclusive absent manifest error.

1.2 Consideration. For purposes of the Declaration, a Transfer shall be deemed to be without Consideration only if:

(x) the only Consideration is a book entry made in connection with an intercompany transaction in accordance with generally accepted accounting principles, or no Person which does not own a direct or indirect equity interest in the Interest immediately prior to the Transfer becomes the owner of a direct or indirect equity interest in the Interest by virtue of the Transfer, and

(y) the aggregate interest immediately prior to the Transfer of all direct and indirect owners whose equity interest is increased on account of the Transfer does not increase by more than 20% (out of the total 100% equity interest in the Interest), and

(z) no Person is entitled to receive directly or indirectly any other Consideration in connection with the Transfer.