

**RULES AND REGULATIONS**  
**FOR**  
**MESA DEL SOL**  
**COMMUNITY COMPANY, INC.**



**JACOBS CHASE**  
ATTORNEYS

## Table of Contents

<b>ARTICLE I GENERAL PROVISIONS</b> .....	1
1.1 Purpose.....	1
1.2 Authority.....	1
1.3 Input.....	1
1.4 Adoption.....	1
1.5 Publication.....	2
1.6 Failure to Receive Rule.....	2
1.7 Amendment to Rules.....	2
1.8 Supplement to Law.....	2
1.9 Deviations.....	2
1.10 Severability.....	2
<b>ARTICLE II RECORDS INSPECTION</b> .....	3
2.1 Permanent Records.....	3
2.2 Access to Records; Online Access.....	4
2.3 Requests for Inspection of Records.....	4
2.4 Inspection of Records.....	4
2.5 Owner and Delegate Lists.....	5
2.6 Confidential Information.....	5
2.7 Damages.....	5
<b>ARTICLE III COLLECTION OF ASSESSMENTS</b> .....	5
3.1 Due Date.....	5
3.2 Late Charges and Interest Charges.....	6
3.3 "Three Letter" Notice Procedure.....	6
3.4 Liens.....	7
3.5 Referral of Delinquent Accounts to Third Parties.....	7
3.6 Referral of Delinquent Accounts to Attorneys.....	7
3.7 Attorneys' Fees on Delinquent Accounts.....	7
3.8 Ongoing Evaluation.....	7
<b>ARTICLE IV RESERVES</b> .....	8
4.1 Purpose of the Reserves.....	8
4.2 Investment of Funds in the Reserves.....	8
4.3 Limitation on Investments.....	8
4.4 Independent Professional Investment Assistance.....	8
4.5 Review and Control.....	8
4.6 Reporting.....	9
4.7 Standard of Care.....	9
<b>ARTICLE V CONFLICTS</b> .....	9
5.1 Conflicting Interest Transactions.....	9
5.2 Loans.....	10



**RULES AND REGULATIONS  
FOR  
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COMMUNITY COMPANY, INC.**

**ARTICLE I  
GENERAL PROVISIONS**

**1.1 Purpose.**

The purpose of these Rules and Regulations (these "Rules") is to provide for the regulation and management of Mesa del Sol and to set forth certain guidelines relating to the ownership, use and operation of Sites located within Mesa del Sol. Any term initially capitalized herein but not otherwise defined in these Rules shall have the meaning given to such term in the Declaration of Covenants, Conditions and Restrictions for Mesa del Sol, dated *December 20,* 2010 and recorded in the official real property records maintained by the County Clerk's Office for Bernalillo County, New Mexico at Document No. *2010132184* (the "Declaration").

**1.2 Authority.**

These Rules are authorized to be made and promulgated by the Community Company, acting through the Board, pursuant to Section 3.2(a)(v) of the Declaration. The authority to create, adopt, enforce, amend and repeal Rules lies with the Board.

**1.3 Input.**

Prior to adopting any Rule, the Board has the right, but not the obligation, to solicit input regarding the Rule from the Owners. Input may be gathered by distributing draft policies, forming a committee, conducting an informational meeting or any other method determined by the Board.

**1.4 Adoption.**

In making its determination whether to adopt a Rule the Board may evaluate the scope and importance of the issue, determine whether or not the Rule already exists, certify that the existing documents are inadequate to address the issue and evaluate the immediate impact and long-term implications of adopting the Rule. In addition, pursuant to New Mexico law the

Board may rely upon information, opinions, reports or statements of its professional advisors in making its determination of the need for the Rule.

When the Board, in the exercise of its discretion, determines that a Rule is appropriate, it shall adopt the Rule either at a meeting of the Board or by written consent in lieu of a meeting, or by any other method authorized by the Community Documents or pursuant to New Mexico law.

**1.5 Publication.**

The Board shall then publish the Rule by such means determined by the Board, which may include email to Owners and Delegates and web posting. The Rule shall become effective on the date specified by the Board; if the Board does not specify an effective date, then the Rule shall become effective ten days after being published. The Rule shall be available for inspection and copying in accordance with Article II.

**1.6 Failure to Receive Rule.**

Any Owner's failure to receive the Rule shall not be a defense to any attempt by the Community Company to enforce the Rule or to levy fines, expenses, or attorneys' fees as a result of a violation of the Rule.

**1.7 Amendment to Rules.**

The Community Company reserves the right to amend, repeal or revoke these Rules by resolution of the Board at any time in accordance with the terms and conditions of the Declaration and Bylaws.

**1.8 Supplement to Law.**

These Rules shall be in addition to and in supplement of the terms and provisions of the Community Documents and applicable law.

**1.9 Deviations.**

The Board may deviate from the procedures set forth in these Rules if in its sole discretion such deviation is reasonable under the circumstances.

**1.10 Severability.**

In the event a court of competent jurisdiction finds any provision of these Rules void or otherwise unenforceable, the other provisions shall remain in full effect.

**ARTICLE II**  
**RECORDS INSPECTION**

**2.1 Permanent Records.**

(a) ***Permanent Records Kept by the Community Company.*** The Community Company shall keep as permanent records:

- (i) minutes of all meetings of Owners and Delegates and the Board;
- (ii) a record of all actions taken by the Owners and Delegates or the Board by written ballot or written consent in lieu of a meeting;
- (iii) a record of all actions taken by a committee of the Board in place of the Board on behalf of the Community Company;
- (iv) a record of all waivers of notices of meetings of Owners and Delegates and of the Board or any committee of the Board; and
- (v) a record of Owners and Delegates in a form that permits preparation of a list of the names and addresses of all Owners and Delegates, showing the number of votes each Owner and Delegate is entitled to vote.

(b) ***Records Kept at Principal Office.*** In addition to the above, the Community Company shall keep a copy of each of the following records at its principal office:

- (i) the Community Documents, including all amendments thereto;
- (ii) any resolutions adopted by the Board relating to the characteristics, qualifications, rights, limitations and obligations of Owners;
- (iii) the minutes of all meetings of the Owners and Delegates and records of all actions taken by Owners and Delegates without a meeting for the past three years;
- (iv) all written communications within the past three years from the Board or the Community Company to Owners generally as Owners;
- (v) a list of the names and business or home addresses of the Community Company's current Directors and Officers;
- (vi) the Community Company's most recent annual report, if any; and

(vii) all financial audits or reviews of the Community Company conducted during the immediately preceding three years.

## **2.2 Access to Records; Online Access.**

Upon the request of an Owner or Delegate or an Owner's or Delegate's duly appointed representative, the Community Company's financial and other records shall be made reasonably available for examination and copying by such Owner or Delegate or such Owner's or Delegate's duly appointed representatives, subject to certain time and content restrictions listed below. In addition, the Community Company may choose to make certain documents and records available by web posting. If, and when, the Community Company's web site is created, Owners and Delegates are encouraged to check such web site for immediate access to frequently requested records, minutes and documents. The Community Company may choose to make records available on such web site for self-service copying at no cost.

## **2.3 Requests for Inspection of Records.**

In lieu of using the Community Company's web site, an Owner or Delegate, or an Owner's or Delegate's duly appointed representative, may request an opportunity to inspect and copy the Community Company's financial and other records during regular business hours at the Community Company's principal office. In order for the Community Company to have the desired books, records and personnel available, a written Notice of Intent to Inspect and Copy Community Company Records should be submitted to the Community Company at least five business days prior to the date the Owner or Delegate expects to inspect and copy the records. Notices can be sent to the Community Company's office at the following address: Mesa del Sol Community Company, Inc., 5700 West University Boulevard, SE, Suite 310, Albuquerque, New Mexico 87106, by, (a) mail; or (b) such other means as may be acceptable to the Board. The Owner's or Delegate's request should be made on the Community Company's Notice of Intent to Inspect and Copy Community Company Records form, but in any event, the request to inspect and copy the records must (x) be made in good faith and for a proper purpose, (y) describe with reasonable particularity the records sought and the purpose of the inspection, and (z) the records sought must be relevant to purpose of the request. The notice must also include the Owner's or Delegate's contact information - name, address, phone number, and email address (if available). The Community Company may decide not to make requested records available for inspection and copying at the Community Company's office, but rather provide the requested records at the next regularly scheduled meeting of the Community Company so long as such meeting occurs within 30 days after the request for inspection has been made.

## **2.4 Inspection of Records.**

At the discretion of the Board, certain records may only be inspected in the presence of a Director or any other person designated by the Board. No records may be marked on, altered, or removed from the Community Company's office without the express prior written consent of the Board. Further, if an Owner or Delegate requests to inspect records, the Community Company may photocopy and deliver the requested records to the Owner or Delegate in lieu of the Owner's or Delegate's inspection of the records if consented to by the Owner or Delegate.

## **2.5 Owner and Delegate Lists.**

(a) *List of Owners and Delegates.* Notwithstanding anything to the contrary contained in this Article II, a list of Owners or Delegates or any part thereof may not be obtained or used by any person for any purpose unrelated to an Owner's or Delegate's interest as an Owner or Delegate without the prior written consent of the Board.

(b) *Restriction on Use of Membership Lists.* Without limiting the generality of the foregoing, without the prior written consent of the Board, a membership list or any part thereof may not be:

- (i) used to solicit money or property unless such money or property will be used solely to solicit the votes of the Owners or Delegates in an election to be held by the Community Company;
- (ii) used for any commercial purpose; or
- (iii) sold to or purchased by any person.

## **2.6 Confidential Information.**

Consistent with individual Owners' or Delegate's rights to privacy, attorney-client confidentiality and other considerations, the following records will not be made available without the prior written consent of the Board: (a) confidential personnel records; (b) confidential litigation files and matters covering consultation with legal counsel concerning disputes that are subject of pending or imminent court proceedings or are privileged or confidential between attorney and client; (c) files dealing with investigative proceedings concerning possible or actual criminal misconduct; (d) any matter the disclosure of which would constitute an unwarranted invasion of individual privacy; and (e) inter-office memoranda, preliminary data, working papers and drafts, and general information or investigations which have not been formally approved by the Board.

## **2.7 Damages.**

The Community Company reserves the right to pursue any individual for damages or injunctive relief or both, including reasonable attorneys' fees, for abuse of the rights set forth in this Article II, including, but not limited to, use of any records for a purpose other than what is stated in the Notice of Intent to Inspect and Copy Community Company Records, a copy of which is available from the Community Company upon request.

# **ARTICLE III COLLECTION OF ASSESSMENTS**

## **3.1 Due Date.**

The Community Company will levy an annual Residential General Assessment or Commercial General Assessment, as applicable, on each Unit pursuant to Section 6.3 of the

Declaration. An invoice for the Residential General Assessment or Commercial General Assessment, as applicable, shall be delivered to each Owner pursuant to Section 6.3 of the Declaration. The Residential General Assessment, Commercial General Assessment and Limited Assessments shall be due and payable as and when determined by the Board from time to time. Assessments (including Default Assessments) not received by the Community Company within 30 days after becoming due shall be considered past due and delinquent.

### **3.2 Late Charges and Interest Charges.**

The Community Company shall be entitled to impose a late charge, to be determined by the Board and to be charged as a Default Assessment. If any Assessment is not paid within 30 days after its due date, the amount due shall bear interest at a rate of 18% per annum or such other rate as the Board may establish (not to exceed 21% per annum), from the due date until paid. All late charges and interest charges shall be due and payable immediately, without notice, in the manner provided for payment of Assessments.

### **3.3 "Three Letter" Notice Procedure.**

Once an account has become delinquent, the Community Company may, but shall not be required to, use to the following "three letter" procedure:

(a) ***First Letter.*** The Community Company may, but shall not be required to, deliver a "reminder letter" to a delinquent Owner informing the Owner of the unpaid balance on the account, the amount of accrued interest and any applicable late charges.

(b) ***Second Letter.*** The Community Company may, but shall not be required to, deliver a "violation letter" to a delinquent Owner informing the Owner that if the appropriate payments are not received within a period specified by the Board, the Community Company may Record a Notice of Assessment Lien against the real property of the delinquent Owner subject to the Assessment or take any other appropriate action including, but not limited to, referral of the delinquent account to the Community Company's attorneys or collection agency.

(c) ***Third Letter.*** The Community Company may, but shall not be required to, deliver a "lien letter" to a delinquent Owner informing the Owner that a Notice of Assessment Lien will be recorded against the real property of the delinquent Owner subject to the Assessment as of the date of the lien letter because the Owner has not responded to the previously delivered "violation letter".

All payments by a delinquent Owner accepted and applied by the Community Company shall be time-stamped with the date of receipt and applied in the following order of priority: (i) costs of collection; (ii) late charges, return check charges and other fees; (iii) interest due on any delinquent Assessments; and (iv) the outstanding balance of any Assessments.



### **3.4 Liens.**

If payment in full for any fines, late charges, penalties, interest and attorneys' fees, disbursements or costs of collection imposed against an Owner is not received by the due date specified by the Community Company, the Community Company shall be entitled to exercise all remedies available to it at law, including, without limitation, suspension of such Owner's voting rights in the Community Company and the Recording of a Notice of Lien against the property of the delinquent Owner. The lien shall include fees, charges, late charges, attorneys' fees, fines and interest owed by the delinquent Owner. The Notice of Lien shall be duly signed by an Officer or agent of the Community Company, and acknowledged, and shall be served upon the delinquent Owner by mail to the address of the Owner's Unit or at such other address as the Community Company may have in its records for the Owner. Such lien shall not be removed until the account has been paid in full. No Owner may sell or otherwise convey such Owner's Unit until all Assessments and other charges on such Unit which are due and payable as of the date of the conveyance are paid in full.

### **3.5 Referral of Delinquent Accounts to Third Parties.**

The Community Company may, but shall not be required to, assign delinquent accounts to one or more third parties for collection. Upon referral to a third party, such third party may take all appropriate action to collect the accounts referred.

### **3.6 Referral of Delinquent Accounts to Attorneys.**

The Community Company may, but shall not be required to, refer delinquent accounts to its attorneys for collection. After consultation with the Board, the Community Company's attorneys shall be entitled to exercise all available remedies to collect the amounts due, including judicial foreclosure and appointment of a receiver of the delinquent Owner's property.

### **3.7 Attorneys' Fees on Delinquent Accounts.**

The Community Company, pursuant to its right to recover legal costs of collection, shall be entitled to recover from a delinquent Owner the Community Company's reasonable attorneys' fees and all other collection costs incurred in the collection of delinquent accounts. All reasonable attorneys' fees and other collection costs shall be due and payable immediately.

### **3.8 Ongoing Evaluation.**

Nothing in this Article III shall require the Board to take specific actions at a specific time but the Board shall not take any action in less than the time stated herein for a particular action. The Board has the option and right to continue to evaluate each delinquency on a case by case basis.

**ARTICLE IV**  
**RESERVES**

**4.1 Purpose of the Reserves.**

In accordance with Section 6.14 of the Declaration, the Community Company has the right to maintain one or more reserve funds (collectively the "**Reserves**"). The purpose of the Reserves shall be to undertake Capital Improvements and to pay costs and expenses related thereto.

**4.2 Investment of Funds in the Reserves.**

The Board shall invest funds, if any, held in the Reserves to generate revenue that will accrue to the Reserves pursuant to the following goals, criteria and policies:

(a) ***Safety of Principal.*** Safety of principal is the foremost objective of the investment program. Investments shall be undertaken in a manner that seeks to ensure the preservation of capital with the objective of mitigating credit risk and interest rate risk.

(b) ***Liquidity and Accessibility.*** Maturities should be structured to ensure availability of assets for projected expenditures.

(c) ***Minimal Costs.*** Investments costs (redemption fees, commissions, and other transactional costs) should be minimized.

(d) ***Diversification.*** Appropriate diversification should mitigate the effects of interest rate volatility upon the assets of the Reserves.

(e) ***Return.*** Funds should be invested to seek the highest level of return after giving reasonable weight to the preceding investment criteria.

**4.3 Limitation on Investments.**

Unless otherwise approved by the Board, all investments of funds held in the Reserves will be FDIC (Federal Deposit Insurance Corporation) insured and/or guaranteed by the United States Government.

**4.4 Independent Professional Investment Assistance.**

The Board may hire a qualified investment counselor to assist in formulating a specific investment strategy.

**4.5 Review and Control.**

The Board, or a committee thereof (the "**Financial Committee**"), shall review the Reserves investments no less than annually to ensure that the funds are receiving competitive

yields and are timed appropriately for the needs of the project and shall make prudent adjustments as needed.

#### **4.6 Reporting.**

On an annual basis, an investment report shall be prepared and submitted by the treasurer, the Financial Committee, if any, and/or any independent advisor selected by the Board or the Financial Committee, if any, to the Board in a timely manner, listing the investments of funds held in the Reserves and the current market valuation of the investments. The report shall include a summary of investment earnings during the prior fiscal year.

#### **4.7 Standard of Care.**

The Officers and Directors shall make investment decisions in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the Officer or Director reasonably believes to be in the best interests of the Community Company in accordance with the New Mexico Nonprofit Corporation Act (NMSA §53-8-1 et seq.).

### **ARTICLE V** **CONFLICTS**

#### **5.1 Conflicting Interest Transactions.**

(a) ***Definition.*** A conflicting interest transaction is one involving a contract, transaction, or other financial relationship between the Community Company and a Director, or between the Community Company and a party related to a Director, or between the Community Company and an entity in which a Director or a party related to a Director is a shareholder, partner, member, manager, director or officer or otherwise has a financial interest.

(b) ***Authorized Conflicting Interest Transactions.*** No conflicting interest transaction shall be void or voidable or be enjoined, set aside, or give rise to an award of damages or other sanctions in a proceeding by an Owner or by or in the right of the Community Company, solely because the conflicting interest transaction involves a Director or a party related to a Director or an entity in which a Director or a party related to a Director is a shareholder, partner, member, manager, director or officer or otherwise has a financial interest or solely because the Director is present at or participates in the meeting of the Community Company's Board or of the committee of the Board that authorizes, approves, or ratifies the conflicting interest transaction or solely because the Director's vote is counted for such purpose if:

(i) the material facts as to the Director's relationship or interest and as to the conflicting interest transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes, approves, or ratifies the conflicting interest transaction by the affirmative vote of a majority of the disinterested Directors, even though the disinterested Directors may be less than a quorum,

(ii) The material facts as to the Director's relationship or interest and as to the conflicting interest transaction are disclosed or are known to the Owners entitled to vote thereon, and the conflicting interest transaction is specifically authorized, approved, or ratified in good faith by a vote of the Owners entitled to vote thereon, or

(iii) The conflicting interest transaction is fair as to the Community Company, as determined by a majority of disinterested Directors or a majority of the Owners entitled to vote thereon.

(c) **Establishing a Quorum.** Common or interested Directors may be counted in determining the presence of a quorum at a meeting of the Board or of a committee which authorizes, approves, or ratifies the conflicting interest transaction.

(d) **Party Related to a Director.** For purposes of this Article V, a "party related to a Director" shall mean a spouse, a descendent, an ancestor, a sibling, the spouse or descendent of a sibling, an estate or trust in which the Director or a party related to a Director has a beneficial interest, or an entity in which a party related to a Director is a shareholder, partner, member, manager, director or officer or otherwise has a financial interest.

## 5.2 **Loans.**

(a) **No Loans to Directors or Officers.** No loans shall be made by the Community Company to any of its Directors or Officers. Any Director or Officer who assents to or participates in the making of any such loan shall be liable to the Community Company for the amount of such loan until the repayment thereof.

(b) **Definition of Officer.** For the purposes of this Article V, an "Officer" shall mean any person designated as an Officer of the Community Company and any person to whom the Board delegates responsibilities, including, without limitation, a managing agent, attorney, or accountant employed by the Board.

\* \* \* \* \*


**CERTIFICATION**

We the undersigned do hereby certify:

That we are the duly elected and acting President and Secretary of Mesa del Sol Community Company, Inc., a New Mexico nonprofit corporation (the "**Community Company**"); and

That the foregoing Rules and Regulations were duly adopted by resolution of the Community Company's Board of Directors as of the 20<sup>th</sup> day of December, 2010.

IN WITNESS WHEREOF, we have hereunto subscribed our names this 20<sup>th</sup> day of December, 2010.

  
\_\_\_\_\_  
Manny Barrera, President

  
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Brent Dupes, Secretary