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**ANASAZI TRAILS SUBDIVISION  
COMPREHENSIVE DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS**

33735

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## ANASAZI TRAILS SUBDIVISION

### COMPREHENSIVE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION is made on the date and year below by DELASHE INVESTMENTS, LLC, a New Mexico limited liability company (hereinafter referred to as the "Declarant").

#### RECITALS

1. Declarant is the owner of that certain real property described in Section 1.27 hereof (the "Property").

2. The purpose of this Declaration is to create and carry out a uniform plan for the improvement, development, sale and use of the Property; to preserve so far as possible the natural beauty of the Property; to guard against the erection of poorly designed or proportioned Improvements, or the use of unsuitable materials; to encourage and secure the erection of well designed, attractive Improvements which are harmonious with their sites and consistent with existing Improvements; and in general, to enhance the environmental quality and economic value of the Property.

NOW, THEREFORE, Declarant hereby declares that the Property described above shall be held, sold, used, developed, occupied, leased and conveyed subject to the following reservations, easements, restrictions, covenants and conditions and which shall run with the Property and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

#### ARTICLE I

##### DEFINITIONS

Section 1.1. "Architectural Control Committee" shall mean and refer to the committee created pursuant to Article VIII hereof. Such Architectural Control Committee shall hereinafter sometimes be referred to as "ACC" or "Committee."

Section 1.2. "Architectural Control Committee Rules" shall mean and refer to such rules as are adopted by the ACC pursuant to Article VIII hereof.

Section 1.3. "Assessments" shall mean and refer collectively to all regular maintenance charges and assessments, any special assessments or charges, and any fines or other fees provided in Article X hereof.

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Section 1.4. "Association" or "Homeowners Association" shall mean and refer to the Anasazi Trails Homeowners Association, Inc., a New Mexico non-profit corporation, which Declarant has caused or will cause to be incorporated.

Section 1.5. "Common Facilities" shall mean and refer to all existing and subsequently provided Improvements upon or within the Common Properties, except those as may be expressly excluded herein. Also, in some instances, Common Facilities may consist of Improvements for the use and benefit of all Owners constructed on a portion of one or more Lots or on acreage owned by Declarant (or Declarant and others), which is not a part of the Common Properties. By way of illustration, Common Facilities may include, but are not necessarily limited to, the following: structures for recreation, storage or protection of equipment, fences, walls, common driveways, landscaping, guardhouses, street lights, utility equipment, water pumps, water storage tanks and lines, swimming pools, tennis courts, private access easements, open space easements, slope easements, pedestrian trail easements, entry wall easements, and any portions of public roads not accepted for maintenance by the County of Sandoval, and other similar and appurtenant Improvements. References herein to the "Common Facilities (any Common Facility) in the Subdivision" shall mean and refer to Common Facilities as defined respectively in this Declaration.

Section 1.6. "Common Properties" shall mean and refer to the public roadways shown on the Plat (including such roads that are dedicated to the County as public roads) until such time if any as the Declarant petitions the County of Sandoval to maintain the public roadways and the County accepts such maintenance, together with such other tracts and Lots as the Association may, at any time or from time to time, acquire by deed from Declarant, subject, however, to the easements, limitations, restrictions, dedications and reservations applicable thereto by virtue hereof and/or by virtue of the Subdivision Plat, and/or by virtue of prior grants or dedications by Declarant or Declarant's predecessors in title. References herein to "the Common Properties in the Subdivision" shall mean and refer to Common Properties as defined respectively in this Declaration.

Section 1.7. "Declarant" shall mean and refer to DELASHE INVESTMENTS, LLC, or its successors or assigns, and the rights of the Declarant hereunder shall run to any members of DELASHE INVESTMENTS, LLC, should any portion of the Property be distributed or otherwise conveyed to such member.

Section 1.8. "Declaration" shall mean the covenants, conditions, and restrictions herein set forth in this entire document, as the same may be from time to time amended.

Section 1.9. "Development Plan" shall mean the plan for development of a Lot, which is required to be submitted to the ACC pursuant to Sections 6.1 and 8.12 hereof.

Section 1.10. "Drainage Easement" shall be any area designated on the Subdivision Plat as such and in addition shall include any and all arroyos, creeks, streams, sedimentation basins or bar ditches located, designated or constructed on the Property.

Section 1.11. "Emitted Light" shall mean light coming directly from a source or reflected from the Fixture, but not light reflected from a building or the ground.

Section 1.12. "Fixture" shall mean a complete lighting unit, less any support. A lighting unit containing multiple light sources is considered to be a single Fixture.

Section 1.13. "Fully Shielded" shall mean shielded or constructed so that no Emitted Light is emitted onto adjacent or nearby lots or public roads, or at an angle above the horizontal plane. The required shielding need not necessarily be built into the Fixture itself.

Section 1.14. "House Structure(s)" shall mean any improvement constructed, erected, placed, laid or installed in, on, or over real property which is a part of a house, (for example, without limitation, portals, garages, buttresses), the use of which requires a location on or in the ground.

Section 1.15. "Improvement(s)" shall mean the buildings, garages, carports, streets, roads, antennas, driveways, parking areas, walls, fences, hedges, plantings, planting or removal of trees or shrubs or hedges or ground cover or any other landscaping, lighting and all other House Structures or Other Structures or landscaping improvements of every kind and type affecting the natural condition of the land or the drainage of surface waters on, across or from the land.

Section 1.16. "Light Trespass" shall mean excessive light or glare visible from adjacent or nearby lots or public roads.

Section 1.17. "Light Pollution" shall mean any light directed upward, i.e., at any angle above the horizontal plane.

Section 1.18. "Lot" shall mean each parcel of land shown as a lot on the recorded Subdivision Plat of the Property and designated thereon by a separate Lot number, or any subsequent subdivision of a Lot.

Section 1.19. "Member(s)" shall mean and refer to all those Owners who are members of the Association as provided in the Declaration.

Section 1.20. "Multi-Family Covenants" shall mean the covenants, conditions, and restrictions, if any, set forth in a supplement to this Declaration or in a separate declaration, as may be adopted at such time, if any, as Declarant rezones a portion of the Property for Multi-Family Use.

Section 1.21. "Multi-Family Use" shall mean the occupancy or use of a House Structure as two Single-Family Residential Units joined by a party wall, which use or occupancy is in conformity with this Declaration, any Multi-Family Covenants, and any requirements imposed by applicable zoning laws or any other state, county or municipal laws, rules, regulations, codes or ordinances.

Section 1.22. "Modular Dwelling" shall mean a factory-fabricated transportable building designed to be used by itself or to be incorporated with similar units at a building site into a modular structure on a permanent foundation. The term applies to major assemblies designed to be permanently affixed to real property in conformance with the local building code, and does not include prefabricated sub-elements such as panels, trusses, or plumbing trees which are to be incorporated into a structure at a building site.

Section 1.23. Other Structure(s) shall mean any improvement constructed, erected, placed, laid or installed in, on, or over real property which is not part of a house, (for example, fences and walls), the use of which requires a location on or in the ground but not including vegetation, trees, shrubs or plantings.

Section 1.24. "Owner(s)" shall mean and refer to the record Owner, whether one or more persons, associations or entities, of legal, equitable or beneficial title of or to any Lot. Owner shall include purchaser of a Lot under an executory contract for sale of real property. The foregoing does not include persons or entities who hold an interest in any Lot or in the Property merely as security for the performance of an obligation. Any reference herein to Owners shall include Owners as defined herein. If any Lot is leased, the term Owner(s) shall include lessees, provided the lease is in writing and for a term of at least one year.

Section 1.25. "Partially Shielded" shall mean shielded or constructed so that some, but no more than a very small fraction, of the Emitted Light is emitted onto adjacent or nearby Lots or public roads, or at an angle above the horizontal plane. The required shielding need not necessarily be built into the Fixture itself.

Section 1.26. "Private Waste Disposal Systems" shall mean any septic tank, tank, septic system, evapotranspiration ("ET") or other system for the disposal of sewage or waste from a residential structure including all pipes, fittings, lines and other related equipment or attachments thereto.

Section 1.27. "Property" shall mean and refer to the real property located in Sandoval County, New Mexico, and more specifically described in Exhibit A to this Declaration.

Section 1.28. "Security Lighting" shall mean lighting, which is turned on, and off by a timer, motion sensor, infra-red detector, photo-electric cell, or other such automatic control.

Section 1.29. "Single-Family Residential Use" shall mean the occupation or use of a Structure as a residence by a single person, a family or a family-sized unit in conformity with this Declaration and the requirements imposed by applicable zoning laws or any other state, county or municipal laws, rules, regulations, codes or ordinances.

Section 1.30. "Single-Family Residential Unit(s)" shall mean a residential dwelling unit designed for occupancy by a single person, a family or a family-sized unit in conformity with this Declaration and the requirements imposed by applicable zoning laws or any other state, county or municipal laws, rules, regulations, codes or ordinances.

Section 1.31. "Single-Family Residential Lots" shall mean Lots zoned for Single-Family Residential Use.

Section 1.32. "Structure(s)" shall mean House Structure(s) or Other Structure(s).

Section 1.33. The "Subdivision" or "Anasazi Trails" shall mean all of Anasazi Trails Subdivision as set forth on the Subdivision Plat filed in real property records of the Sandoval County Clerk on March 6, 2003, Vol. 3, Pg 2264B, as amended or replatted from time to time.

Section 1.34. "Subdivision Map" or "Subdivision Plat" or "Plat Map" or "Plat" or "Final Plat" shall mean the recorded map or plat of the Anasazi Trails Subdivision, as amended or replatted from time to time, covering any or all of the Property referred to in this Declaration.

Section 1.35. "Visible From Neighboring Property" shall mean that with respect to any given House Structure or Other Structure or other object, that such House Structure or Other Structure or object is or would be visible to a person six (6) feet tall, standing on any part of a neighboring property. A neighboring property shall be any Lot from which a person can view another Lot or a structure or object on that Lot with the naked eye. In instances where roof equipment is visible from above, no additional requirements will be imposed so long as equipment is shielded from side view.

Section 1.36. "Water Cooperative" shall mean and refer to the Anasazi Trails Water Cooperative, if any, or its successors or assigns, established pursuant to applicable law, for the purpose of providing domestic water service to Lots, and such other uses as permitted by the Water Cooperative Article of Incorporation and By-Laws.

## ARTICLE II

### PROPERTY SUBJECT TO RESTRICTION

Section 2.1. General Declaration. Declarant hereby declares that the Property within the Subdivision is and shall be held, conveyed, developed, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part, subject to this Declaration, as amended or modified from time to time. This Declaration is declared and agreed to be in furtherance of a general plan for the subdivision, improvement and sale of the Property, and is established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property and every part thereof. All of this Declaration shall run with all of the Property for all purposes and shall be binding upon and inure to the benefit of Declarant, all Owners and their successors in interest.

Section 2.2. Description of Property. The property subject to this Declaration is all Property described in Section 1.27 hereof.

## ARTICLE III

### LAND USE

Section 3.1. A. Single-Family Residential Use. Each Lot is restricted to Single-Family Residential Use and is restricted to one Single-Family Residential Unit per Lot, with the exception of that portion of the Property, if any, as may be rezoned for Multi-Family Use.

B. Multi-Family Use. With respect to Property, if any, as may be rezoned in the future for Multi-Family Use, each Lot so rezoned shall be restricted to two Single-Family Residential Units joined by a party wall to allow for Multi-Family use .

#### Section 3.2. Replatting and Rezoning.

Declarant has the right in its sole discretion, without the consent or approval of the Owner of any Lot, to replat the Lots owned by Declarant into a greater number of lots, thereby exceeding the original number of Lots in the Subdivision, or to revise lot lines, subject to Section 3.3 herein. Declarant has the right in its sole discretion, without the consent or approval of the Owner of any Lot, to obtain revision of the FEMA floodplain zone and to replat Flood Zone A as designated on the Plat, or any portion thereof, into Lots for Single-Family or Multi-Family Use. Declarant has the right in its sole discretion without the consent or approval of the Owner of any Lot or of the Homeowners Association, to replat Lots 1 through 7 and 26 through 28 and/or to rezone such Lots for Multi-Family Use, to the extent said Lots are at such time still owned by the Declarant. With respect to any portion of the Property rezoned for Multi-Family Use, Declarant has the right in its sole discretion, but not the obligation, to bind such rezoned Property to Multi-Family Covenants to further restrict the rezoned Property, consistent with this Declaration or amendments or supplements hereto; and to create a Multi-Family Architectural Control Committee, and to form a nonprofit corporation in the form of a Multi-Family Association to which the Lot Owners of the Property rezoned for Multi-Family Use shall belong.

With respect to this Section, each Owner hereby makes, constitutes and appoints Declarant, with full power of subdivision, as the Owner's lawful attorney-in-fact, with power to execute, acknowledge, file and record with any governmental authority any appropriate documents for the purpose of effecting the resubdivision or rezoning of any Lot or portion thereof (including replatting the Subdivision into a greater number of Lots or revising Lot lines), in accordance with the terms of this Declaration. The foregoing power (i) is coupled with an interest, (ii) is irrevocable, (iii) shall survive the dissolution of or resignation of Declarant, (iv) may be exercised for each Owner individually or by listing all of the Owners and executing any instrument with a single signature as attorney-in-fact for all of them, and (v) shall be binding upon all assignees and successors of each Owner.

Section 3.3. Limitations on Rezoning and/or Replatting. Unless such Owner obtains written consent of the Declarant, no Owner (other than Declarant) shall (1) subdivide or separate into smaller Lots or parcels any Lot, (2) seek rezoning of any Lot, or (3) convey or transfer any portion of any Lot or other interest (other than a security interest or a rental or lease). Additionally, no Owner (other than Declarant) shall convey or transfer any easement without the written consent of Declarant



or , if the Declarant no longer own any Lot in the Subdivision, without the written consent of the Association. The provisions in Section 3.3 herein do not prevent a Lot Owner from transferring the whole Lot to a subsequent purchaser or prevent joint ownership or ownership as tenants in common.

Section 3.4. Combining of Lots. An Owner of two (2) or more contiguous Lots may, with prior written approval of the ACC or the Declarant, combine said Lots into one Lot. Such combination shall be at the sole expense of said Owner. After combination, the resulting Lot shall be treated as one (1) Lot for all purposes of this Declaration, including voting rights within the Association and resubdivision.

Section 3.5. Restrictions On Business And Commercial Activity And Rental or Leasing of Property. No business or commercial activity frequented by and open to the general public (and in any event no business or commercial activity which takes place outdoors) shall be conducted within the Subdivision. Home occupations of the Owner are permissible if conducted in the home or studio and in compliance with any rules and regulations governing home occupations hereafter adopted by the ACC. Nothing contained herein shall be deemed to prevent the rental or leasing of a Single-Family Residential Unit by the Owner thereof, subject to all the provisions of this Declaration ,or the business of lot sales, including without limitation a sales office, sanctioned by the Declarant.

Section 3.6. Tennis Courts: At the Declarant's sole discretion, the Declarant may establish a tennis court or tennis courts which, if established, shall be maintained by the Association.

## ARTICLE IV

### EASEMENTS

Section 4.1. Existing Easements. The Subdivision Plat has or shall dedicate for use as such, subject to the limitations set forth therein, certain roadways, streets, rights-of-way and easements shown thereon and such Subdivision Plat will establish dedications, limitations, reservations and restrictions applicable to the Property. Further, Declarant and Declarant's predecessors in title may, prior to the Property becoming subject to this Declaration, grant, create and dedicate by recorded instrument(s) certain other easements, restrictions, rights-of-way and related rights affecting the Property. All dedications, limitations, restrictions and reservations shown on the Subdivision Plat and all grants and dedications of easements, restrictions, rights-of-way and related rights made by Declarant or Declarant's predecessors in title, prior to the Property becoming subject to this Declaration, are incorporated herein by reference and made a part of this Declaration for all purposes as if fully set forth herein and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the Property.

Section 4.2. Changes and Additions. Declarant reserves the right to make changes in and additions to the above easements and rights-of-way for the purpose of efficiently and economically installing the Improvements. Further, Declarant reserves the right, without the necessity of including or obtaining the consent of any Owner or other person or entity, to grant, dedicate, reserve or otherwise create, at any time or from time to time, rights-of-way and easements for public utility

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purposes (including, without limitation, gas, water, electricity, telephone and drainage), in favor of any person or entity, along and on either or both sides of any Lot line, with such easement having a maximum width of seven and one-half (7.5) feet on each side of such Lot line.

Section 4.3. Utility Installation and Maintenance. There is hereby created an easement upon, across, over and under all of the Property for ingress and egress in connection with installing, replacing, repairing and maintaining all utilities, including, but not limited to, water, gas, telephones, electricity, cable television and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies, Water Cooperative and other entities supplying service to install and maintain pipes, wires, conduits, service lines or other utility facilities or appurtenances thereto on, above, across and under the Property, within the public utility easements from time to time existing and from service lines situated within such easements to the point of service on or in any Structure. Notwithstanding the fact that this easement allows access to the utilities from above the Property, this allowance is for access only and does not allow for overhead, that is aerial, utilities. Aerial utilities are prohibited. This prohibition does not exclude connections to the house by cables running from the underground utility to the house, provided such connections are as flush as possible to the house. Notwithstanding anything contained in this Section, no electrical lines, water lines or other utilities or appurtenances thereto may be relocated on the Property until approved by Declarant or the ACC.

Section 4.4. Maintenance of Slopes. Each Owner covenants and agrees to the creation hereby of an easement in favor of Declarant, the ACC, the Association, and Sandoval County to enter upon his Lot to maintain a cut or fill side slope along any publicly dedicated right-of-way to insure the proper maintenance and drainage of roads in the Subdivision.

Section 4.5. Drainage Easements. Each Owner covenants to provide easements for drainage and water flow as contours of land and the arrangement of Declarant's Improvements and Improvements approved by the ACC thereon require. Each Owner further covenants not to disturb or displace any trees or other vegetation within the Drainage Easements as defined in this Declaration or shown on the Plat. There shall be no development, Improvements or Structures, temporary or permanent, in any Drainage Easement, except as approved in writing by the ACC. There shall be no development, Improvements or Structures, temporary or permanent, in the hundred-year flood plain in any event, except as allowed by Section 6.3(c) herein .

Section 4.6. Easements for Access by Declarant/or ACC. Declarant, the ACC, and the Association shall have the right and permanent easement to enter upon any and all Lots in the Subdivision for the purpose of maintenance, repair, removal of drainage obstructions and for inspections as to compliance with this Declaration. Declarant, the ACC, and the Association shall have the right to enter any Lot for the purpose of correcting any violation of any obligation herein.

Section 4.7. Surface Areas. The surface of easement areas for underground utility services may be used for planting of shrubbery, trees, lawns or flowers. However, neither Declarant nor any supplier of any utility service using any easement area shall be liable to any Owner or to the Association for any damage done by them or either of them or their respective agents, employees, servants or assigns to any of the aforesaid vegetation as a result of any activity relating to the construction, maintenance, operation or repair of any facility in any such easement area.

Section 4.8. Pedestrian Trail Easements and Entry Wall Easement. As shown on the Subdivision Plat, there are certain easements dedicated to pedestrian trails. Such pedestrian trail easements shall be used for pedestrian and non-motorized vehicular use only and such use shall only be within (and not outside of) the trails built on the easements. As well, as shown on the Subdivision Plat, there is an easement for the entry wall at the entrance of the Subdivision.

## ARTICLE V

### MAINTENANCE OF ROADS AND EASEMENTS

Section 5.1. Maintenance of Public Roads. All of the roadways shown on the Plat are public roadways maintained at the expense of the Association, until such time if any as the Declarant petitions the County of Sandoval to maintain the roadways and the County accepts. The term "roadway" does not include the thirty-foot private access and public utility easements shown on the Plat.

Section 5.2. Maintenance of Shared Private Access Easements and Public Utility Easements.

(a) General Maintenance and Repair. The shared private access and public utility easements ("Private Access Easement(s)") shown on the Plat will not be paved by Declarant. Declarant will improve each Private Access Easement with a gravel surface prior to the sale of those Lots through which the Easement runs. Responsibility for the repair and maintenance of the shared Private Access Easement does not rest with the Association or Declarant. Responsibility for the general repair and maintenance of the full length of the shared Private Access Easement rests with those Owners, who utilize the Easement for ingress and egress ("Responsible Lot Owners"). The cost generally of maintaining and repairing each Private Access Easement and the gravel driveway thereon shall be split evenly between the Responsible Lot Owners, unless one or more of the Responsible Lot Owners has not yet started construction on his/her/their Lot, in which case only the Responsible Lot Owner or Owners who have commenced construction shall be responsible for the costs of maintaining and repairing the applicable Private Access Easement prior to the construction by the second user and so on. Repairs or maintenance shall be determined by a consensus of a majority of the Responsible Lot Owners.

(b) Minimum Standards for Maintenance. The Responsible Lot Owners shall follow the minimum standards for maintenance of the Private Access Easement: the Private Access Easement must have a 2" base course gravel crowned for drainage into a bar ditch and compacted over subgrade with adequate bar ditches to drain the road properly. No other work shall commence until a majority of the Responsible Lot Owners agrees on the scope and cost of improvements in advance.

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(c) Utility Service Work and Repairs. With respect to utility service work and repairs, the cost of repairs to a Private Access Easement which is not borne by the utility company itself is to be borne by the Lot Owner whose utility service is affected, or split evenly between the Lot Owners if the utility service of more than one Lot Owner is benefited by the installation, maintenance or repair of the utility service. Any portion of the Private Access Easement affected by utility service work shall be restored to the same condition as existed prior to such work.

(d) Barriers and Landscaping. None of the Lot Owners shall erect or construct or cause to be erected or constructed, any fence, wall, curb, gate or other barrier which blocks or otherwise interferes with or restricts the full and complete use of a Private Access Easement by all of the Lots Owners through whose Lots the Private Access Easement runs, unless all of such Lot Owners have consented to the same and such barrier or landscaping does not otherwise violate any covenants, conditions or restrictions that the Lots are subjected to. This does not, however, preclude the Lot Owners from planting trees or other ground cover, approved by the ACC, on those portions of the Private Access Easement not actually used for the road. The Lot Owners shall not be liable to one another for injury or damage to such trees or ground cover planted on a Private Access Easement if such damage or injury occurs in connection with the use of a Private Access Easement for its intended purposes.

(e) Entrance onto Lot by Other Lot Owners. Each Lot Owner shall allow the Responsible Lot Owners with whom they share a Private Access Easement, their agents and employees, to temporarily, and with advance notice, enter upon that portion of his Lot, outside of the Private Access Easement, as is reasonably necessary due to terrain or other extraordinary conditions, for the purpose of maintaining and repairing the Private Access Easement. There shall be no disturbance of trees or other ground cover during such entry.

(f) Failure to Pay Lot Owner's Share. If any Lot Owner should neglect or refuse to pay his share of the cost to maintain and/or repair a Private Access Easement, as required by this Declaration, the other Responsible Lot Owners may pay such costs and shall be entitled to a Mechanic's Lien and Lis Pendens on the property of the Lot Owner failing to pay his or her share.

(g) Arbitration and Attorneys' Fees and Costs. THESE PROVISIONS IN SECTION 5.2 REGARDING PRIVATE ACCESS EASEMENTS ARE SUBJECT TO ARBITRATION UNDER THE NEW MEXICO UNIFORM ARBITRATION ACT. In the event that a bona fide dispute should arise between Responsible Lot Owners concerning these provisions, including without limitation interpretation and performance under these provisions, and such dispute cannot in good faith be resolved completely and to the mutual satisfaction of the Responsible Lot Owners involved in the dispute within ten (10) days after the beginning of the dispute, then the Responsible Lot Owner (s) agree that any disputes or claims between the Responsible Lot Owners in any way related to these provisions, shall be settled by binding arbitration in accordance with the American Arbitration Association ("AAA") Rules except as specifically modified herein or dictated by applicable statutes including the New Mexico Uniform Arbitration Act. Although the AAA rules shall be followed, the AAA shall not be used to arbitrate the matter. There shall be a single neutral arbitrator selected by the parties, and if the parties cannot agree to an arbitrator, then the parties shall each choose a neutral party who will then agree to a third neutral party as arbitrator. The arbitrator must be a lawyer holding a valid license to practice law in the State of New Mexico. Discovery will be allowed in accordance with the New Mexico Rules of Civil Procedure, and the place for arbitration shall be in Albuquerque, New Mexico. The decision of the arbitrator shall be in writing

and signed by the arbitrator and shall be final and binding upon the parties. Each party shall bear the fees and expenses of counsel, witnesses and employees of such party, and any other costs and expenses incurred for the benefit of such party, and shall share in the cost of the arbitrator.

(h) Indemnity. Each Responsible Lot Owner is bound to indemnify the other Responsible Lot Owners with whom he shares a Private Access Easement, against the former's share of any liability for personal injury or property damage, when such injury or damage shall result from, arise out of, or be attributable to any construction, maintenance or repair undertaken in connection with a Private Access Easement or pursuant to this Section 5.2.

(i) Binding on Future Lot Owners. The covenants and restrictions of this Section 5.2 shall run with and bind the Property and Lots and shall be for the benefit of and be enforceable by the Lot Owners, their respective heirs, successors and assigns of Lots through which the applicable Private Access Easement runs.

Section 5.3. Subsequent Dedications. The Declarant or the Association, with the consent of the Responsible Lot Owners, has the right to dedicate the Private Access Easements as public thoroughfares. Upon acceptance of the dedication by the County of Sandoval of a Private Access Easement as a public thoroughfare, the Association shall maintain such Private Access Easement (changed to a public thoroughfare) until such time if any as the Declarant petitions the County of Sandoval to maintain the same and the County accepts such maintenance obligations.

Notwithstanding any other provisions hereof to the contrary, no Owner (other than Declarant) of any portion of the Property shall, or shall have the right or authority to, dedicate or purport to dedicate to the public all or any portion of any Lot, private road or private access easement without the prior written consent of the Declarant and the County of Sandoval.

Section 5.4. Driveway Design. The ACC shall have the right to impose limitations on driveway design, including materials, aprons, location and point of contact with dedicated roads, streets or other private driveways in the Subdivision. The ACC may require the installation and maintenance of culverts at the point of contact with dedicated roads. Each Owner must install and maintain culverts where private driveways cross the bar ditches.

Section 5.5. County Maintenance. Declarant shall have the right to petition the County to maintain the roadways (including pedestrian trail easements) and Private Access Easements in the Subdivision at any time and to release the roadways and Private Access Easements to the County for that purpose, without obtaining the approval or consent of any Owner, the Association or other entity.

Section 5.6. Maintenance of Pedestrian Trail Easements and Entry Wall Easement. All of the pedestrian trail easements shown on the Plat are public easements maintained at the expense of the Association, until such time if any as the Declarant petitions the County of Sandoval to maintain the roadways and the County accepts. As well, the Association shall maintain the Entry Wall Easement.

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## ARTICLE VI

### IMPROVEMENTS AND STRUCTURES

Section 6.1. Development Plan. Each Owner shall be required to submit a detailed Development Plan, pursuant to the Rules of the ACC, and such plan must be approved in writing prior to the commencement of construction of any Improvement. No construction whatsoever, including, without limitation, site preparation, clearing of trees or excavation, shall commence **without the prior written approval of the ACC.** All construction and development shall comply strictly with the approved Development Plan. Any person purchasing any portion of the Property subject to this Declaration acknowledges that the breach or violation of this Section 6.1 is likely to result in irreparable harm to the rights and interests of other Owners in the Subdivision and that the ACC or the Association, on behalf of such Owners, shall be entitled to injunctive relief, temporary or permanent, in order to prohibit such violation; provided, however, that this provision shall be in addition to any other remedies available here under or at law or equity.

#### Section 6.2. Time for Construction.

(a) Construction of any Structure or Improvement, including without limitation minimal restoration of vegetation disturbed during or due to construction, or other approved landscaping, shall be continuous and proceed in an orderly fashion without interruptions and any Structure or Improvement on a Lot shall be completed in a reasonable time, not to exceed twelve (12) months from the commencement of construction. Declarant has the sole right to commence site preparation without the obligation to complete the construction of any Structure or Improvement within any given time frame.

(b) The foundation for any Structure or Improvement shall be completed as soon as is practically possible after the commencement of construction.

(c) Commencement of construction shall mean the first on-site work for construction, including, but not by way of limitation, clearing of trees, excavation or site preparation for the purpose of foundation.

(d) Materials and equipment necessary for construction, and all debris resulting from clearing or construction, shall be confined to the Lot, and shall not be left on any other Lots, Common Areas or roadways.

#### Section 6.3. Terrain Management.

(a) On-Site Detention. Owners are required to construct on-site detention areas to intercept and contain all runoff from developed impermeable surfaces, or, where soils and slope permit, alternatively, use water harvesting swales to harvest run-off water to apply beneficial water to vegetation or gardens. If used instead of on-site detention, swales must be included into the initial design concept for site development and terrain management. The Owner should consult a registered engineer regarding the size and location of detention areas and water harvesting swales as well as consult the pamphlet "Rainwater Harvesting, Supply from the Sky" from the City of Albuquerque. Based on the Lot, the driveway, the soil, and Improvements or Structures proposed, the Lot Owner may, need the following: (1) holding ponds, (2) walled courtyard areas to retain runoff, or (3) use of

dry wells, to reduce the effect of potential increased runoff within each Lot. The Lot Owner, not the ACC or the Declarant, shall be responsible for the proper engineer of these items and neither the ACC, the Association or the Declarant shall be liable to any Owner or any other person, association, or entity, for any damage, loss or prejudice suffered or claimed on account of the approval or disapproval of any plan.

(b) Sloping. Portions of each lot have areas with slopes of 8% or greater. The Owner is responsible for grading to allow for leach fields to be constructed in areas with a slope less than 8% on each of these lots. The leach fields should be designed and constructed parallel to the contour lines of the Lot. Certain lots have slopes of 25% or greater. The Owner must give consideration to the slope of these lots when designing the required detailed Development Plan. The Declarant makes no warranty or representation that all locations on the Lot are suitable for all house (or septic) designs or sizes or plans. The Lot Owner bears all risk and responsibility from not consulting geotechnical and civil engineers and the Lot Owner's licensed contractor regarding the siting and construction needs for buildings, roads, and installation of septic systems on the Lot.

(c) Prohibition Against Building in 100-Year Flood-Plain. A portion of Tracts A, B and C on the Subdivision Plat is located in Flood Hazard Zone A (a special flood hazard area inundated by the 100-year flood; no base flood elevations have been determined) designated on Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRM) 35043C0925C (effective July 16, 1996). There will be no home construction in Flood Zone A unless FEMA approves a map revision allowing such construction to take place or until such time that Sandoval County approves a flood plain development permit that meets with the Federal Flood Insurance Program and the County Flood Damage Prevention Ordinance.

(d) Soil Considerations. The Owner will be responsible for implementing measures necessary to overcome any soil and/or topographic limitations associated with construction of a building pad, vehicular entrance, access drive, and septic tank absorption fields for their lots. The Soils will vary depending on the specific lot, and in some instances a particular lot may have multiple soil types. The Owner should consult geotechnical and civil engineers and the Owner's licensed contractor regarding the siting and construction needs for buildings and roads and for installation of septic systems with respect to the Lot.

Section 6.4. Residential Structures. All Structures on residential property shall be subject to the following requirements, and each enumerated item must be included in the Development Plan submitted and approved in writing by the ACC prior to the commencement of construction. Once approved, no Structure or Improvement may vary from the Development Plan without further approval of the ACC.

(a) Setbacks: With the exception of Property rezoned for Multi-Family Use, the following setbacks shall apply unless varied or modified by the ACC. All House Structures are subject to a twenty-five (25) foot setback requirement from any Lot line. Other Structures, including yard walls and fences, are subject to a two-foot setback from the Lot line. The ACC shall have the right to impose additional and/or modified setback requirements from all Lot lines due to topographical or other considerations at the ACC's discretion so long as such additional and/or modified setback requirements are in compliance with applicable law. No set back applies between Single-Family Residential Units joined for Multi-Family Use on Property rezoned for Multi-Family Use. The Declarant has the sole discretionary power in the Multi-Family Covenants or by contract to

establish any setback requirements from the Lot lines for Lots rezoned for Multi-Family use.

(b) Minimum Floor Areas: With the exception of Property rezoned for Multi-Family Use, all Single-Family Residential Units, shall have a floor area of not less than two thousand two hundred (2,000) square feet, exclusive of portals, porches (open and closed), patios, garages, carports, balconies or decks. With respect to Property rezoned for Multi-Family Use, the Single-Family Residential Units shall have a floor area of not less than one thousand two hundred (1,200) square feet, exclusive of portals, porches (open and closed), patios, garages, carports, balconies or decks.

(c) Subdivision Design and Architectural Style: All Structures and Improvements shall be constructed in Southwestern/ New Mexico Pueblo, New Mexico territorial, and Spanish Mission building styles, utilizing traditional materials, including adobe and/or stucco in natural earth-tones or other colors approved in writing on a case by case basis by the ACC. Hereafter, these elements shall be referred to as the "Subdivision Design and Architectural Style." The ACC shall have the right to impose limitations on the design and architectural style of Structures and Improvements, including, but not limited to, the overall design, the exterior color, building materials, and roofing materials to be used in all Structures and Improvements, consistent with Subdivision Design and Architectural Style. The ACC will keep stucco color charts with acceptable colors, which may, with the advent of new manufacturers and colors, be updated from time to time.

(d) Height Limitations: The following height limitations shall apply unless varied or modified by the ACC. The height limitation of Residential Lots is 17 feet from average natural grade. This can be accomplished by establishing the footprint on the topo and averaging the four corners of the building. However, the ACC shall have the right to vary the height limitation on a Lot by Lot basis in an attempt to preserve lines of sight and views enjoyed by neighboring Lots and to insure adherence to the Subdivision Design and Architectural Style. (This may not be possible in every case and the ACC has discretion to impose height limitations it deems reasonable under the circumstances). Two story residences will not be allowed on ridge Lots. Two-story construction may be allowed on a case-by-case basis by the ACC for Lots with lower topography where the Owner can demonstrate that the additional height of the Structure will not adversely affect the view from surrounding Lots.

(e) Private Waste Disposal Systems: Private waste disposal systems shall be constructed or allowed to remain or to be used on any Lot only when approved as to design, capacity, location and construction by all appropriate public health agencies including the State of New Mexico Environmental Improvement Division and approved in writing by the ACC. The New Mexico Environment Department limits the maximum amount of daily sewage flow, based on the total design flow of the septic system that can be disposed of on each lot depending on the lot size. With respect to Lots zoned for Single-Family Residential Use, the current restrictions are as follows:



# of Bedrooms	TOTAL DESIGN FLOW (gallons per day)	MINIMUM LOT SIZE REQUIRED (acres)
2 bedrooms	Less than 375	0.75
3 bedrooms	375	0.75
4 bedrooms	450	0.90
5 bedrooms	600	1.20
6 bedrooms	750	1.50

Due to this limitation, the number of occupants per each lot is limited. For example, lots with an area of less than 0.90 acres will be limited to a three-bedroom house occupied by a maximum of five residents. Owners should review the current New Mexico Environment Department regulations and guidelines for specifics regarding the aforementioned restrictions.

The Owner of a Lot rezoned for Multi-Family Use shall submit the plans to the New Mexico Environment Department for the private waste disposal system to determine the specific private waste disposal restrictions for that Lot and Development Plan.

Each Lot Owner agrees not to place their drain field within two hundred feet of a well.

(f) Garbage Containers: The ACC shall have the right to require each Owner to specify a specific location for trash service, and shall require each Owner to construct a permanent facility of acceptable design and materials at such approved location for the placement of garbage containers for collection purposes. Each Lot Owner will be responsible for placing solid waste in plastic bags and contracting with an independent trash removal service or taking the waste to the Sandoval County landfill site.

(g) Tanks, Air Conditioners and Swamp Coolers: The ACC shall have the right to approve the location of any tank, air conditioner, swamp cooler or any other mechanical equipment used or proposed in connection with a House or Other Structure. All tanks, mechanical equipment, air conditioners, and swamp coolers shall be screened with a four-sided full height stucco wall or parapet so as not to be Visible From Neighboring Property, or from any street, road, easement or right-of-way. Oil or gasoline tanks are prohibited on any Lot.

(h) Exterior Lighting: The ACC shall have the right to approve or disapprove the location, number, size and design of all proposed exterior lighting.

(i) Permitted Lighting: All Fixtures must use incandescent sources only, and must be shielded to minimize Light Pollution. Fixtures must be Fully Shielded if 60 watts or more. Fixtures must be Partially Shielded if less than 60 watts. Temporary seasonal decorative lighting may be Unshielded if very low wattage.

(2) Prohibited Lighting: No street lamp, security lights (except for automatic security lights) or neon arc lamps will be permitted. All exterior lighting must be shielded so that the actual light bulbs are not visible. Automatic security lights (spot lights) are allowed, however, they must be pointed downwards and not exceed 100 watts. Timers or motion sensors must be adjusted for minimum distance and duration. Exterior lighting shall be installed so as to minimize glare. No mercury or sodium vapor or high intensity lights are permitted on any Lot. Exterior spot or floodlights must be shielded and aimed so as to present a minimum of illumination to other Lots and roads. All reasonable precautions shall be taken to avoid such lighting arrangements as would be offensive to a reasonable neighbor. Neither excessive numbers of Fixtures nor excessive light levels will be permitted; and all Fixtures, including Security Lighting, must be shielded to prevent Light Trespass. The following types of lighting are prohibited: Neon/Argon/Krypton Tubes; High Intensity Lights; Mercury Vapor Lights; Sodium Vapor Lights; Metal Halide Lights, Laser Lights, Searchlights, and Quartz Lamps. For the purpose of these standards, quartz lamps are not considered incandescent light sources. Fluorescent light sources are also prohibited, unless explicitly approved by the Architectural Control Committee.

The ACC may establish and publish further guidelines to be followed with respect to exterior lighting.

Section 6.5. Trees, Shrubs and Landscaping. Landscaping and site-grading plans are a mandatory element of each Development Plan and must comply with this Declaration. At minimum, basic restoration of natural grasses or plantings is required either through the use of hydro seeding/planting or a combination of the two. This work will be required prior to refund of the compliance deposit. The ACC shall have the right to approve the removal and/or addition of trees, shrubs, hedges, ground cover and all other landscaping. There shall be no disturbance of trees or other ground cover during construction without the written approval of the ACC.

Section 6.6. Windmills, Towers, Antennas, and Sports Equipment. No windmills or towers will be allowed in the Subdivision. No visible antenna or satellite dishes, with the exception of approved dishes not more than twenty (20) inches in diameter, or other service for the transmission or reception of television signals, radio signals or other form of electromagnetic radiation shall be erected, used or maintained on any Lot, whether attached to a building or Structure or otherwise, without prior approval of the ACC. No radio signals, television signals, or any other form of electromagnetic radiation shall originate from any Lot which may unreasonably interfere with the reception of any television or radio signal on any other Lot. Satellite dishes less than twenty (20) inches in diameter must be installed as to be as inconspicuous as possible in its approved location to minimize visual impact. All metal vents shall not exceed twelve (12) inches off of the parapet and shall be painted to match. Sports equipment including but not limited to basketball hoops, volleyball, and tennis courts will be approved or not approved on a case by case basis and may require additional remediation or plantings, hours of operation or other conditions imposed by the ACC at the ACC's discretion.

Section 6.7. Underground Utility Lines. No utility lines, including, but not limited to, wires or other devices for the communication or transmission of telephone or electric current or power, cable television or any other type of line or wire shall be erected, placed or maintained anywhere in or upon any Property, by any Owner other than Declarant, within the Subdivision unless the same shall be contained in conduit or cables installed and maintained underground or concealed in, under or on buildings or other Structures as approved in writing by the ACC.

Section 6.8. Temporary Structures. No trailer, mobile home, basement of any incomplete building, tent, shack, garage or barn and no temporary building of any kind shall be utilized at any time for a residence on the Property within the Subdivision either on a temporary or permanent basis.

Section 6.9. Out-buildings. Acceptable out-buildings include a garage for not more than three vehicles and either a studio, guesthouse or workshop. Any proposed out-buildings must be included in the Development Plan and approved in writing by the ACC and any applicable government agencies. Storage sheds are only allowed if concealed by a courtyard wall.

Section 6.10. Signs. Except for "For Sale" signs not exceeding six (6) square feet, no sign, billboard, or advertising structure shall be erected or maintained on any Lot or parcel of property within the Subdivision, unless approved in writing by the ACC or otherwise consistent with signage rules issued by the ACC.

Section 6.11. Improvements and Alterations. No Improvements (including without limitations House Structure or Other Structure, alterations, repairs, excavations or other work which in any way alters the exterior appearance of any House Structure or other Structure on any Lot within the Subdivision or the appearance of any other Improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee to the current Owner, Purchaser or annexed by Declarant, whichever is later, shall be made or done without the prior written approval of the ACC.

Section 6.12. Solar Equipment. Request for approval of installation of any type of solar equipment shall be included in the Development Plan and must be approved in writing by the ACC.

Section 6.13. Chemical Fertilizers, Pesticides or Herbicides. No commercial chemical fertilizers, pesticides or herbicides other than those approved by the ACC shall be used on any of the Property. This provision in no way limits the use of those products which are readily available for consumer use and approved by an agency, such as the Food and Drug Administration, for the purpose intended.

Section 6.14. Access to Common Properties. No Owner (other than Declarant) shall construct or cause to be constructed any ramps, paths, roads, walls, private streets or other access, from or over a Lot or Common Property or roadway to any other Lot, to the Common Property, or to any contiguous lands outside the Property, unless the same is approved in writing by the ACC and (if the Declarant still owns any Lots) the Declarant. Declarant has the right in its sole discretion, without the consent or approval of Owners of Lots, to give itself or others access through any Lot or tract within the Subdivision owned by Declarant or any of its principals to any other Lot, or to any Common Property, or to contiguous lands outside the Property (and to construct any ramps, paths, roads, walls, private streets, or other access, in connection with the same).

Section 6.15. Wells and Water Cooperative. Each Owner shall be responsible for drilling and maintaining a well to serve his or her Lot, at his or her expense, unless he or she can share a well with a neighboring Lot, or unless Declarant decides to and is able to establish a community water system. If Declarant is able to establish a community water system, Declarant shall create a nonprofit water cooperative, which would be called the Anasazi Trails Water Cooperative and Declarant will obtain certain water rights for the Anasazi Trails Water Cooperative and install the

necessary storage tanks, pumps, controls and distribution pipes to bring water to the Lot line of each Lot. In such event, each Lot Owner shall automatically become a member of the Water Cooperative and shall be required to abide by the Water Cooperative's articles of incorporation and by-laws and subsequent amendments thereto.

In the event that the Water Cooperative is created, Lots Owners will not be permitted to drill, or use, individual or shared wells from that time forward, and will be required to become members of the Water Cooperative, and Lot Owners will be subject to the Articles of Incorporation and Bylaws of the Water Cooperative and any rate schedule set forth by the Water Cooperative.

As set forth by the Water Cooperative By-Laws, Owners will also be required to reimburse Declarant for a portion of its expenses in establishing the Water Cooperative and designing and constructing the community water system. As well, the Declarant reserves the right in its sole discretion to expand such water system and the Water Cooperative to include other lands outside of the Subdivision.

Section 6.16. Water Conservation/Fire Protection/Water Quality. Owners are responsible for complying with all applicable governmental rules and regulations, including those of Sandoval County and the Office of the New Mexico State Engineer, with regard to water conservation. In addition, the following conservation measures are noted:

(a) Requirements. The maximum amount of water rights initially allotted for each home (including outdoor use) will be limited to .3826 acre feet per household per year, which calculates to an average of 10,248 gallons per 30 day month. Each home shall be individually metered and monitored. Households shall be limited to not more than 600 square feet of turf, and plantings can only be made in areas adjacent to the house. The only water use permitted is water use (1) for domestic uses normally associated with a residence, (2) for recreational uses sponsored by the Association if conducted in compliance with this Declaration, (3) for home occupations if conducted in compliance with this Declaration, (4) for fire protection, and (4) for the Common Facilities of a tennis courts or tennis courts if the Declarant chooses in its sole discretion to establish such facilities. Additionally, the ACC requires the installation of low flow toilets and similar devices in all new construction. With respect to water quality, each Lot Owner shall install a reverse osmosis point of use water treatment system. Such system need only provide a separate spigot for drinking water only, usually in the kitchen.

(b) Encouragements. The following are encouraged: a selection of grasses that are well adapted to local climatic conditions, low water use landscaping, techniques applying the principles of xeriscape, drip irrigation whenever possible, water conserving plumbing, fixtures, water softeners of the type that monitor water changes in hardness to minimize regeneration, water harvesting from rooftops into courtyards or underground cisterns to be used for irrigation (see state regulations regarding cisterns), irrigation with rain water collected by means confined to the property with recycled household gray water. Gray water systems shall meet the requirements of the New Mexico Construction Industries Division and the Uniform Plumbing Code. Instruments to facilitate water conservation and fire protection are strongly encouraged.

(c) Discouragements. The following are discouraged: Decorative ponds, waterfalls and fountains, as they allow evaporation to occur, and non-native grasses with high water requirements such as Kentucky Bluegrass and tall fescue.

(d) Hot Tubs and Pools. Hot Tubs and pools are allowed but should have covers that minimize evaporation and loss.

## ARTICLE VII

### RESTRICTIONS

Section 7.1. Animals-Household Pets. No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained or cared for on the Property. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed on the Property other than on the Lot of its Owner unless confined to a leash or under voice control. Upon written request of any Owner, the ACC shall conclusively determine at its sole discretion, in accordance with its rules, whether an animal is a domestic household pet, whether an animal is being allowed to run at large or whether an animal is a nuisance. Upon receiving a complaint, the ACC may refer the matter to the Sandoval County Animal Control for resolution. Any decision of the ACC in such matters is final, conclusive and shall be enforced as other restrictions contained herein. No animal may be stabled, maintained, kept, cared for or boarded for hire or remuneration on the Property and no kennels or breeding operation will be allowed. No animal shall be allowed to run at large and all animals shall be kept within an enclosed area which must be clean, sanitary and reasonably free of refuse, insects and waste at all times.

Section 7.2. Non-Disturbance of Natural Vegetation and Maintenance of Lawns and Plantings. No Owner shall cut, tamper, destroy or remove any living pinion or juniper tree on any Lot except pursuant to the Development Plan for said Lot approved in writing by the ACC. Each Owner shall keep all shrubs, trees, grass and planting of every kind on his Lot, which are Visible From Neighboring Property, or from a dedicated road, Common Property or Common Facility, properly cultivated, pruned and free of trash and other unsightly material. Declarant, the Association and the ACC shall have the right at any reasonable time to enter upon any Lot to replace, maintain and cultivate shrubs, trees, grass or other plantings located thereon, at cost to Owner.

Section 7.3. Clothes Drying Facilities. Outside clothes lines or other facilities for drying clothes or airing clothes shall not be erected, placed or maintained on any Lot unless they are concealed in such a manner so as not to be Visible From Neighboring Property or from streets or from access roads.

Section 7.4. Hunting/Trapping/Firearms and Explosives. Hunting, trapping and discharge of firearms or other explosives are expressly prohibited within the Subdivision.

Section 7.5. Dumping. Dumping of ashes, trash, rubbish, sawdust, garbage, land fill, solid waste and any type of refuse and other unsightly or offensive material is expressly prohibited within the Subdivision.

Section 7.6. Waste. The commission of waste is expressly prohibited within the Subdivision.

Section 7.7. Mineral Exploration. No mining, quarrying, tunneling, excavation or drilling for exploration or removal of any minerals including oil, gas, gravel, rocks, earth or earth substances of any kind shall be permitted within the Subdivision.

Section 7.8. Business Activities. No business or commercial activity frequented by and open to the general public (and in any event no business or commercial activity which takes place out of doors), and no business or commercial activity that creates a nuisance, shall be conducted within the Subdivision. Home occupations of the Owner are permissible if conducted in the home or studio and in compliance with any rules and regulations governing home occupations hereafter adopted by the ACC. Nothing contained herein shall be deemed to prevent the rental or leasing of a Single-Family Residential Unit by the Owner thereof, subject to all of the provisions of this Declaration.

Section 7.9. Obnoxious Activities. No nuisance, obnoxious or offensive activities shall be permitted on any Lot, nor shall any rubbish or debris of any kind be placed or permitted to accumulate on or adjacent to any of the Property within the Subdivision, and no odors shall be permitted to arise there from, so as to render any such Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provision, no exterior speakers, horns, whistles, bells or any other devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such Property, which are audible from neighboring Property.

Section 7.10. Garbage. No garbage or trash shall be placed or kept on any Lot except in covered containers located and constructed in accordance with Section 6.4(f). In no event shall such containers be maintained so as to be Visible From Neighboring Property. All rubbish, trash, and garbage shall be removed from Lots and shall not be allowed to accumulate thereon. No incinerator shall be kept or maintained on any Lot. No garbage, trash, or debris shall be permitted to be buried on any Lot at any time nor shall the burning thereof be permitted.

Section 7.11. Vehicles and Equipment. No bus, truck larger than a one-ton pickup, semi-trailer, tractor, machinery or equipment shall be kept, placed (except during the course of making deliveries for the purpose of loading or unloading), maintained, constructed, reconstructed, or repaired on the Property. No motor vehicle or trailer of any type shall be constructed, reconstructed or repaired on the Property in such a manner as will be Visible From Neighboring Property. Motor homes, recreational house trailers, horse trailers, truck campers, boats, boat trailers and recreational vehicles of any sort or type which are intended to be kept on the Property by the Owner must be garaged. No motorized vehicle of any kind may be operated in any manner which is dangerous, noisy or which creates a nuisance.

Section 7.12. No Overnight Parking. No vehicle of any kind shall be allowed to park overnight on any dedicated roadway within the Subdivision.

Section 7.13. Emergency or Temporary Maintenance Vehicles. The provisions of this Declaration shall not prevent any emergency vehicle repairs or operation of an emergency vehicle, ambulance, etc., within the Subdivision. The provisions of this Declaration shall also not prevent the operation or temporary use of construction vans, trucks, and machinery/equipment maintained during and used exclusively in connection with the construction of any Improvement approved in writing by the ACC.

Section 7.14. Motorcycles. The use of motorcycles in the Subdivision shall be limited to those, which have been approved and are legal for street use. Such use shall be limited to the public streets. No off-road use of any motorcycles shall be permitted and all motorcycles operated within the Subdivision shall have mufflers installed in good condition, which limits the exhaust noise to no more than eighty (80) decibels, ten (10) feet from the end of the exhaust pipe.

Section 7.15. Continuing Adequacy of Repair or Maintenance. No building or Structure upon the Property within the Subdivision shall be permitted to fall into disrepair, and each such building and Structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. Such duty to repair shall include the maintenance of any exterior Structures and finish which was included in the Development Plan approved by the ACC.

Section 7.16. Service Yards and Storage Yards. Any service yard, storage yard, woodpile or storage pile shall be located so as not to be Visible From Neighboring Property, dedicated roadways, Common Facilities or Common Property. Any Structure of a permanent nature is to be built with regard to these items and must be included in the Development Plan and approved in writing by the ACC.

Section 7.17. Gates, Walls, and Fences. Gates, walls and fences will be permitted on a case-by-case basis with prior approval from the ACC. Owners may not wall or fence entire Lot lines. All gates, walls, and fences must be described in the Development Plan and approved by the ACC prior to construction. Wooden split rail fencing and coyote fencing may be allowed on a case-by-case basis. No other types of fences will be allowed.

Section 7.18. Horses Prohibited. Horses will not be permitted on individual Lots in the Subdivision.

Section 7.19. Mobile Homes and Modular Dwellings. Mobile homes and modular dwellings are not allowed.

## ARTICLE VIII

### ARCHITECTURAL CONTROL COMMITTEE

Section 8.1. Establishment and Composition. There is an Architectural Control Committee ("ACC"), which consists of three (3) permanent members and two (2) alternate members. The following persons are designated as the permanent members:

<u>Position</u>	<u>Name</u>	<u>Type</u>	<u>Address</u>
Office No. 1	Steven M. Gudelj	Permanent	01 Ridge Court Placitas, NM 871043
Office No. 2	Thomas J. Ashe	Permanent	46 Sandia Lane Placitas, NM 87043
Office No. 3	Wendy A. Gudelj	Permanent	01 Ridge Court

Members of the ACC shall serve without salary or pay and none of the members shall be required to be an architect or to meet any other particular qualifications for membership.

Section 8.2. Voting and Status of Alternate Members. Except as otherwise provided herein, a vote or written consent of a majority of the permanent members of the ACC at a meeting or otherwise shall constitute the act of the Committee. Except as hereinafter provided, alternate members shall not be entitled to vote. In the event of absence or disability of one (1) or more permanent members, the remaining member or members, even though less than a quorum, may designate an alternate member to act or substitute for the absent or disabled permanent member for the duration of such absence or disability. The alternate member so designated shall be entitled to vote in place of the permanent member for whom the alternate member so substitutes. Notwithstanding the foregoing provisions, the ACC is not authorized to act unless at least one (1) permanent member is present or, in the event action is taken without a meeting, unless at least one (1) permanent member consents in writing thereto.

Section 8.3. Terms of Office. The term of each ACC member appointed shall be for a period of three (3) years and thereafter until the appointment of a successor. Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term. Members who have resigned or whose terms have expired may be reappointed. At such time as the composition of the ACC is added to or altered, a writing referring to and identifying this Declaration by recording data shall be recorded in the real property records of Sandoval County, New Mexico, setting forth the name and address of each member of the Committee as it is constituted.

Section 8.4. Appointment and Removal. Except as provided below, the right to appoint and remove all permanent members and alternate members of the ACC at any time, with or without cause, shall be, and hereby is, vested solely in the Declarant. At such time as Declarant has sold all of the Lots or records a waiver of the right herein retained, whichever event occurs first, then the right to appoint and remove permanent and alternate members of the ACC shall automatically be transferred to the Association in accordance with the Bylaws of the Association.

Section 8.5. Resignations. Any permanent member or alternate member of the ACC may resign at any time from the Committee by giving written notice thereof to Declarant or the Association as the situation requires.

Section 8.6. Vacancy. Vacancies on the ACC, however caused, shall be, except as provided in Section 8.4 of this Article, filled by the Board of Directors. A vacancy shall be deemed to exist in cases of death, resignation or removal of any permanent or alternate member.

Section 8.7. Transfer of Authority to the Association. The duties, rights, powers and authority of the ACC constituted hereby may be assigned at any time, at the sole election of the Declarant (or if Declarant has sold all of the Lots or has recorded a waiver of the rights herein, at the sole election of a majority of the permanent members of the ACC), to the Association, and from and after the date of such assignment, and the acceptance thereof by the Association, the Association shall have full right, authority and powers, and shall be obligated to perform the functions of the ACC as provided herein (and in the Bylaws of the Association).



Section 8.8. Address. The address of the ACC shall be 46 Sandia Lane, Placitas, New Mexico 87043, or such other place as may from time to time be designated by the ACC by written instrument recorded in the real estate records of Sandoval County, New Mexico; and the last instrument so recorded shall be deemed the Committee's proper address.

Section 8.9. Duties.

(a) General: It shall be the duty of the ACC to receive, consider and act upon all proposals, plans, complaints, request for determination, Development Plans or other matters submitted pursuant to the terms of this Declaration, and to carry out all other duties imposed on it by this Declaration.

(b) Development Plan Submission Fees: The ACC shall require a nonrefundable ACC Review Fee in an amount to be determined by the ACC, currently set at \$250.00 for the review of each proposed Development Plan. The ACC may adjust this fee annually at the ACC's sole discretion based on the costs associated with the running of the ACC. Such fee is a filing requirement of the Development Plan and such Plan will not be considered unless and until such fee is paid. The ACC shall also require a building compliance deposit, currently set at \$1,000, to assure compliance of the Improvements with this Declaration and the rules promulgated by the ACC. The ACC may adjust this building compliance deposit annually at the ACC's sole discretion. The ACC may refund this building compliance deposit after completion of the Improvements if in the ACC's sole discretion the ACC has evidence satisfactory to the ACC that all of the Improvements were completed in compliance with this Declaration. The ACC has the right to spend all or a portion of this deposit, without recourse, to accomplish items not accomplished in a timely manner by the Owner or builder, for example, without limitation, trash removal, damage to neighboring property, attorneys' fees in connection with compliance issues, and other items. If the ACC does not set a new ACC fee or building compliance deposit amount for the year, then the ACC Review Fee or building compliance deposit amount applicable to the previous year shall apply until changed by the ACC.

(c) Additional Improvements After a Deposit is Returned: If Improvements still need to be submitted to the ACC even after satisfactory completion of a Development Plan and after the compliance deposit has been returned, the ACC may require a deposit by the Owner for the proposed improvements at the ACC's sole discretion.

Section 8.10. Meetings. The ACC shall meet from time to time as necessary to perform its duties hereunder. Subject to provisions of Section 8.2 above, and except as otherwise provided herein, the vote or written consent of a majority of the permanent members at a meeting or otherwise shall constitute the act of the Committee. The Committee shall keep and maintain written records of all actions taken by it at such meetings or otherwise.

Section 8.11. Action Without Formal Meeting. The ACC, in accordance with Sections 8.2 and 8.10 hereof, may take action without formal meeting by unanimously consenting in writing on any matter, which they might consider at a formal meeting. Such unanimous written consent shall constitute the act of the Committee. For the purposes hereof, unanimous written consent shall mean a writing by the three (3) permanent members of the ACC except as the provisions of Section 8.2 may apply.

Section 8.12. Procedure for Submission and Approval of Development Plan.

(a) Submission of a Development Plan shall be in accordance with the Rules promulgated by the ACC, as authorized by Section 8.14 hereof.

(b) If the ACC fails to approve or disapprove any Development Plan submitted to it hereunder within thirty (30) days after the date shown on the submittal receipt or fails to give notice of its actions as above required, it shall be conclusively presumed that the ACC has approved such Development Plan as submitted; provided no House Structure or Other Structure or other Improvement shall be erected which violates this Declaration. If the ACC requests additional or amended materials or an amended or modified Development Plan during the initial thirty (30) day period, or approves on condition that certain additional or amended materials be submitted, the ACC shall set a deadline for delivery of such additional or amended materials and the ACC's review period shall automatically be extended to fifteen (15) days following the date upon which such additional or amended materials are received by and receipted for by the ACC, provided they are delivered before the deadline imposed by the ACC. Additional fifteen (15) day extensions shall occur if further additional or amended materials are requested or required during any subsequent extension period. If the additional or amended materials are not received on or before the required date, then the Development Plan shall be automatically disapproved.

Section 8.13. Waiver and Estoppel. The approval by the ACC of any Development Plan, specifications or drawings or any materials accompanying it for matters requiring approval of the ACC shall not be deemed to constitute a waiver of or create any right of estoppel against the Committee's right to withhold approval of any similar Development Plan, drawing, specification or matter subsequently submitted for approval.

Section 8.14. ACC Rules. The ACC shall have the authority to adopt, amend, add to, replace and rescind, from time to time, procedural and/or substantive rules to make more definite and certain, and to carry out the purpose of and intent of the provisions of this Declaration. Any conflict between such rules and any provision of this Declaration shall be resolved in favor of the provision of this Declaration. A copy of such rules, as in effect from time to time shall be provided to any Owner requesting the same in writing; provided that the failure to deliver a copy of any such rules, or the failure of the ACC from time to time to adopt any such rules shall not in any manner inhibit or impair the requirement that a Development Plan be approved by the ACC prior to construction or any other provision of this Declaration.

Section 8.15. Basis for ACC Approval or Disapproval. The Subdivision is intended by Declarant to be a unique and cohesive development composed of homes of the highest quality and elegant appearance. Toward this end, it is intended that the ACC have the greatest degree of discretion possible in reviewing, approving or disapproving Development Plans. Declarant intends that the ACC shall have the right to consider as the basis for any approval or disapproval of a Development Plan: (a) compliance or noncompliance with certain objective standards set out in this Declaration or in any rules or guidelines subsequently published or adopted by the ACC, (b) the nature and quality of the building materials and methods of construction to be used, (c) the location of the proposed Structures or Improvements on the Lot, (d) the visual impact of the proposed Structures or Improvements from the standpoint of style and consistency with other Structures or Improvements constructed or approved by the ACC for construction in the Subdivision, (e) the

experience and expertise of the general contractor, such other subjective factors as the ACC shall, in its discretion, deem relevant or appropriate. ANY PERSON PROPOSING TO PURCHASE ANY LOT IN THE SUBDIVISION IS CAUTIONED TO CONSULT WITH THE ACC CONCERNING INTENDED IMPROVEMENTS PRIOR TO BECOMING UNCONDITIONALLY OBLIGATED TO PURCHASE SUCH LOT.

Section 8.16. Decisions Conclusive. All decisions of the ACC shall be final and conclusive, and no Owner or any other person, association or entity shall have any recourse against the ACC, or any member thereof, for its or such member's approval or refusal to approve all or any portion of a Development Plan or of any materials submitted therewith, or for any other decision rendered under the authority of this Declaration.

Section 8.17. Limitation of Liability of the Declarant, the ACC, and the Association.

(a) Generally. Neither the Declarant nor the ACC or any member thereof nor the Association or any officer, director or member thereof shall be liable to any Owner, or any other person, association, or entity, for any damage, loss or prejudice suffered or claimed on account of: (i) the approval or disapproval of any Development Plan or any materials submitted therewith, whether or not defective; (ii) the construction or performance of any work, whether or not pursuant to an approved Development Plan or any materials submitted therewith; (iii) the development of the Property including the construction or operation of related facilities; (iv) the structural capacity or safety features of the proposed Improvement or Structure; (v) whether or not the location of the proposed Improvement or Structure on the building site is free from possible hazards from flooding or from any other possible hazards, whether caused by conditions occurring either upon or off the Property; (vi) soil erosion causing sliding conditions; (vii) compliance with governmental laws, ordinances and regulations; (viii) any decision made or action taken or omitted to be taken under the authority of this Declaration; (ix) any act taken or decision made in connection with any land contiguous to the Subdivision, including, but not limited to any decision to annex or refuse to annex to the Subdivision other contiguous land or property or any decision to merge with another homeowners association; or (x) the execution and filing of any estoppel certificate, whether or not the facts therein are correct, provided, however, that with respect to the liability of a member, such member has acted in good faith on the basis of such information as may be possessed by him. Without in any way limiting the generality of any of the foregoing provisions of this Section, the ACC, or any member thereof, may, but is not required, to consult with or determine the view of any other Owner with respect to any Development Plan, or any materials submitted to the ACC.

(b) Regarding Soils Characteristics. Whether the soil, or a certain site on the Lot, is suitable for the design of the house that the Lot Owner ultimately builds depends on the footing and foundation design, and plans used for construction on the Lot. Declarant (and its members and officers and agents and contractors) and the ACC and its members and the Association and its members make no warranty or representation that the soil characteristics, and all locations on the Lot, are suitable for all house designs, sizes, or plans or liquid waste disposal systems or drainage/detention plans. Neither does Declarant (or its members or officers or agents or contractors) or the ACC or its members or the Association or its members make any warranty or representation regarding any specific house design, size, or plan. The suitability of the soils and the construction needs based on the soils will vary depending on the specific Lot, location of the house or disposal system, and house design, size, or plan. The Lot Owner bears any and all risk and responsibility resulting from not consulting geotechnical and civil engineers and the Lot Owner's

licensed contractor regarding the siting and construction needs for buildings, roads, and installation of septic and drainage/detention systems on a Lot. From time to time, the Declarant may construct a building pad or a driveway on a Lot as a sales tool. Such a site pad or driveway does not constitute site preparation or final grading that may be needed, and neither Declarant or its members or officers or agents or contractors are responsible for such site pad in any way, and the Owner of a Lot with such a site pad shall bear any and all risk and responsibility associated with the soil on said Lot. The Owner should consult with a geotechnical and/or civil engineer and the Owner's licensed contractor regarding the site pad and driveway and any testing that may be required to prove suitability for construction of Improvements.

(c) Scope of Limitation: The limitations of liability in this Section 8.17 include all types of liability, including the negligence, gross negligence, and reckless conduct of such entities, with the exception of consciously willful conduct with the intent to injure.

Section 8.18. Modifications and Waivers or Variance. The ACC, upon such terms and conditions, upon the payment of such fees or expenses, and for such procedures as it may prescribe, may, but is not required to, adopt, review and approve or disapprove, in whole or in part, with or without conditions, applications for the modification or waiver or variance of those requirements herein over which, according to this Declaration, the ACC has authority or any requirement of the ACC rules applicable to any Improvement or use of, in, on or abutting any Lot. Such applications shall contain such information as the Committee may prescribe and shall affirmatively show that the application of such requirements, under the circumstances, creates unnecessary and undue hardship, and that a modification or waiver or variance will not be detrimental (aesthetically, economically, or otherwise) to the Owner of any other Lot. The Committee may decide the matter upon the application and any materials or written statements accompanying it or may allow oral presentations in support of or in opposition to the application prior to the decision, at its sole discretion. The Committee shall render a decision in writing, which decision need not contain any reasons, findings, or conclusions for the decision and shall forward one (1) copy to the applicant, and retain one (1) copy in its records and have the variance filed of record. Without limiting the general applications of this Section 8.18, the provisions of Section 8.15 and Section 8.16 of this Article shall apply to the actions and the decisions of the Committee and its members under this Section.

Section 8.19. Governmental Agency Approval. Nothing in this Declaration shall relieve or be interpreted as purporting to relieve any Owner from also securing such approval(s), certificate(s) or permit(s) of any governmental agency or entity with jurisdiction as may be required by law as a condition to the commencement, construction, maintenance, addition, change or alteration to or of any Improvement, and the Committee may require that a copy of such approval(s), certificate(s) or permit(s) be provided to the Committee as a final condition to approval of a Development Plan, or as additional insurance to the Committee that the Improvements and uses of an approved Development Plan meet governmental requirements, or for both such purposes.

Section 8.20. Receipt Indicating the Return of the Compliance Deposit. Upon completion of a House Structure or Other Structure or other Improvement the plans and specifications approved by the ACC and upon written request by the Owner of the Lot, the ACC shall issue a receipt indicating the return of the compliance deposit. The return of the compliance deposit and the receipt therefore shall not be construed to certify the acceptability, sufficiency or approval by the ACC of the workmanship of the actual construction of the Structure or Improvement or of the materials used

therein nor of any compliance with any law or authority, but merely the adherence to the restrictive covenants at that time. The Owner is hereby notified that the ACC in no way warrants the sufficiency, acceptability or approval by the ACC of the workmanship, materials or equipment of the Structure or Improvement or of its compliance with any law or other authority.

Section 8.21. Assessments and Liens for Non-Compliance with the Declaration or the Development Plan. All Development Plans approved in writing by the ACC must be complied with strictly and any deviation, change or alteration not in compliance with said Plan must be further approved in writing by the ACC. Violation hereof shall be subject to enforcement in accordance with the provisions of this Declaration. After notice and a hearing in accordance with the procedures set forth in Section 10.9, the ACC may (1) impose sanctions by means of a fee or fine for violation of this Declaration or the approved Development Plan, and the ACC may impose a fee or fine which may accrue periodically, for example, on a weekly basis (the amount and timing of which is at the sole discretion of the ACC) until the violation ceases, or (2) go on to the Lot and red tag the construction or other work that is in violation of this Declaration or of the approved Development Plan, which red tagging immediately requires the construction or other work to cease, or (3) do both 1 and 2 in this sentence, and/or may take any other enforcement action set forth in Section 10.9. Pursuit and imposition of one remedy shall not preclude the pursuit and imposition of any other remedy. Such fine or assessment shall constitute an assessment for the purpose of Article X of this Declaration and a lien upon the Lot as provided in Article X. The ACC shall not be obligated to take any enforcement action if the ACC determines in the ACC's sole discretion that the costs of such enforcement proceedings outweigh the benefits of the enforcement proceedings. Such a decision shall not be construed as a waiver of the right of the ACC, and or as otherwise estopping the ACC from subsequently enforcing such provision or any other provision in this Declaration.

Section 8.22. Multi-Family Architectural Control Committee. At the Declarant's sole discretion, Declarant may exclude Property rezoned pursuant to this Declaration for Multi-Family Use from the control of the ACC and, instead, make such Property subject to a Multi-Family Architectural Control Committee which shall govern the proposals, plans, complaints, request for determination, Development plans or other matters submitted pursuant to the terms of the Multi-Family Covenants. Any Property rezoned for Multi-Family use shall, however, be subject to this Declaration and any Multi-Family Covenants adopted specifically for the rezoned Property subject to Multi-Family Use.

## ARTICLE IX

### ANASAZI TRAILS HOMEOWNERS ASSOCIATION

Section 9.1. The Association. Declarant has caused or shall cause the formation and incorporation of the Association as a non-profit corporation organized and existing under the New Mexico Non-Profit Corporation Act, charged with the duties and vested with the powers prescribed by law and set forth in the Articles of Incorporation, Bylaws, and this Declaration. Neither the Articles of Incorporation nor the Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

Section 9.2. Membership. Each Owner (whether one or more persons or entities) of a Lot shall, upon and by virtue of becoming such Owners, automatically become a Member of the

Association and shall remain a Member thereof until the Owner's ownership ceases for any reason, at which time the Owner's Membership in the Association shall automatically cease. Membership in the Association shall be appurtenant to and shall automatically follow the legal ownership of each Lot and may not be separated from such ownership. Whenever the legal ownership of any Lot passes from one person to another, by whatever means, it shall not be necessary that any instrument provide for transfer of Membership in the Association, and no certificate of Membership will be issued. Declarant may contribute but shall not be obligated to membership dues or any other assessments by the Association, but shall have all rights of a Member.

Section 9.3. Voting. Until the Declarant has sold all of the Lots or has recorded a written waiver of the rights herein, the Declarant shall be entitled to cast three (3) votes for each Lot it owns. Subject to the provisions of Section 9.5, all other Members of the Association in good standing shall be entitled to one (1) vote for each Lot owned at any meeting of Members of the Association or with respect to any matter submitted to a vote of the Members of the Association. If more than one person holds an interest in any Lot, all such persons shall be Members of the Association. The vote for such multiply owned Lot shall be exercised as the Owners among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. The Article of Incorporation and Bylaws of the Association may provide more specific rights with respect to voting by Members.

Section 9.4. Board of Directors and Officers. The affairs of the Association shall be conducted by a Board of Directors and such officers as the Directors may elect or appoint, in accordance with this Declaration, the Articles of Incorporation and the Bylaws, as the same may be amended from time to time.

Section 9.5. Control of the Association. The Members shall have the right to elect the members of the Board of Directors and to vote on all other matters properly put before the Members of the Association, all in accordance with this Declaration, and the Articles of Incorporation and Bylaws of the Association.

Section 9.6. Powers and Duties of the Association. The Association shall have such rights, powers and duties as set forth in the Articles of Incorporation and Bylaws, as the same may be amended from time to time.

Section 9.7. Personal Liability. No member of the Board of Directors or any Committee of the Association or members thereof (including without limitation the Architectural Control Committee and its permanent and alternate members) or any of the Officers of the Association shall be personally liable to any Owner or any other party including the Association for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board of Directors or any other representative or employees of the Association, or Committee of the Association or members thereof, provided, however, that such person has, upon the basis of such information as may be possessed by him, acted in good faith, without willful or intentional misconduct.

## ARTICLE X

### ASSESSMENTS AND ENFORCEMENT OF ASSESSMENTS

Section 10.1. Maintenance Fund. All funds collected by the Association from the regular maintenance charges provided for in this Article, shall constitute and be known as the "Maintenance Fund." The Maintenance Fund shall be held, used, and expended by the Association for the common benefit of all Members to promote the health, safety, recreation, and welfare of the Members, including, without limitation:

- (1) the Association's obligations under Article V of this Declaration;
- (2) maintenance and construction of publicly dedicated (but privately maintained) roadways, bridges, culverts, pedestrian trail easements, the entry wall easement, and related Improvements (unless and until the County takes over maintenance);
- (3) installation, construction, erection, and relocation of Improvements related to the enhancement and beautification of the Common Properties and Facilities in the Subdivision, including without limitation, any tennis court or tennis courts established by Declarant in the Subdivision ;
- (4) installation, construction, erection, and relocation of Improvements related to the enhancement and beautification of any other areas provided by this Declaration to be developed or maintained by the Association, such as shrubbery, trees, walkways and street lights, and the construction, repair, maintenance and replacement of properties, services, improvements and facilities devoted to such purposes and related to the use and enjoyment of the Subdivision by the Members;
- (6) payment of utility charges in connection with the operation of Common Properties or use of Common Properties;
- (7) payment of charges for security guards, maintenance of storage tanks, pumps, pipe lines and hydrants; private fire protection, road maintenance, garbage collection and other services contracted for by the Association;
- (8) charges for liability and property insurance and other insurance related to the Common Facilities, Common Properties and their use and operation; and
- (9) accounting and legal fees, including legal fees incurred by the Association while enforcing the provisions of this Declaration.

In the event Declarant shall designate Common Facilities for the use and benefit of all the Owners in the Subdivision which are situated on property owned by Declarant (or affiliated or subsidiary entities) but which then has not been brought with the scheme of this Declaration, the Association shall have the right and authority to allocate and expend such amounts from the Maintenance Fund for construction, repair, maintenance, upkeep, beautification, improvement or replacement of such Common Facilities as its Board of Directors shall determine, in its sole

discretion. Further, if all or any such Common Facilities situated on property then not subject to the scheme of this Declaration also are for the use and benefit of persons or entities other than the Owners in the Subdivision, the Association shall have the right and authority to enter into agreements with other persons or entities enjoying the use and benefit of such Common Facilities (or their designee), in such instances and on such terms as its Board of Directors may deem appropriate and acceptable, obligating the Association to contribute, from the Maintenance Fund, a ratable portion of the amounts necessary from time to time to provide for the construction, repair, maintenance, upkeep, beautification, improvement or replacement of such Common Facilities, and providing for other agreements relative to the use and enjoyment of such Common Facilities (including limitations on the extent of the use and enjoyment thereof) by the various persons and entities entitled thereto.

The Association may, in its sole discretion, give one or more of the purposes set forth in this Section 10.1 preference over other purposes, and it is agreed that all expenses incurred and expenditures and decisions made by the Association in good faith shall be binding and conclusive on all Members.

Section 10.2. Regular Annual Maintenance Charges. Subject to the provisions set forth below in Section 10.3 relating to the rate at which the maintenance charges and assessments imposed herein shall be paid on unimproved Lots, each and every Lot in the Property is hereby severally subjected to and impressed with a regular annual maintenance charge or assessment in the amount of Two Hundred Fifty Dollars and No/100 (\$250.00) per year per Lot which charge shall commence on January 1, 2004, and be due and payable on said date and on the first day of January of each year thereafter, and which shall run with the land, and shall be subject to increase and decrease in accordance with the Articles of Incorporation and Bylaws of the Association.

Section 10.3. Unimproved Lots (Lots without Houses). Notwithstanding the foregoing, each Owner shall pay One Hundred Twenty-Five Dollars and No/100 (\$125.00) for each Lot owned by it, unless and until a residential Structure has been built thereon. Declarant shall not be obligated to pay any fee (maintenance charge or assessment or otherwise) on any unimproved Lot owned by Declarant to the Association.

Section 10.4. Repayment for Declarant's Operation of Common Facilities. In the event Declarant shall construct or operate or maintain any Common Facility in the Subdivision, or such Common Facility shall be constructed or operated or maintained by others on behalf of Declarant under agreement authorized hereby, including without limitation a tennis court or tennis courts or any other Common Facilities, and the actual costs exceed any proceeds ("excess costs") realized by Declarant from such construction, operation, or maintenance, Declarant shall be entitled to be reimbursed from the Maintenance Fund for all excess costs, as such costs are incurred, to the extent that the balance of the Maintenance Fund from time to time existing exceeds the amount then designated by the Board of Directors of the Association in good faith to be the minimum amount necessary to accomplish the maintenance functions of the Association. Further, Declarant shall be entitled to be reimbursed from the Maintenance Fund for all ad valorem taxes and other assessments in the nature of property taxes fairly allocable to the Common Properties and Facilities and accrued subsequent to the recordation hereof, and prior to the date if any on which title to such Common Properties and Facilities is conveyed to the Association by Declarant, which have been actually paid by Declarant.

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Section 10.5. Covenant for Assessments. Each Owner of a Lot, by the Owner's claim or assertion of ownership or by accepting a deed to any such Lot, whether or not it shall be so expressed in such deed, is hereby conclusively deemed to covenant and agree, as a covenant running with the land, to pay to the Association, its successors or assigns, each and all of the charges and assessments against the Owner's Lot and/or assessed against the Owner by virtue of the Owner's ownership thereof, as the same shall become due and payable, without demand. The charges and assessments herein provided for shall be a charge and a continuing lien upon each Lot, together with all improvements thereon, as hereinafter more particularly stated. Each assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of the Lot at the time the obligation to pay such assessment accrued, and no Member shall avoid personal liability for the payment of any assessment by waiver of the use or enjoyment of the Common Properties or Facilities, or any part hereof, or by abandonment of the Owner's Lot or the Owner's interest therein. This covenant for assessments shall include all amounts assessed by the ACC as well as by the Association itself.

In the event that any occupant of a Lot violates the Declaration and a fine is imposed, the fine shall be assessed against the Owner, who can take redress against the occupant as provided by any agreement between Owner and occupant.

Each Member, by the Member's assertion of title or claim of ownership or by the Member's acceptance of a deed to a Lot, whether or not it shall be so recited in such deed, shall be conclusively deemed to have expressly vested in the Association and the ACC and any Water Cooperative, and in their officers and agents, the right, power and authority to take all action which the Association or the ACC or Water Cooperative shall deem proper for the collection of assessments and/or for the enforcement and foreclosure of the liens securing the same.

Section 10.6. Notice of Annual Assessments. The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Lot or Owner for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the assessment shall there upon be sent to every Owner subject thereto. The Association shall, upon demand at any time, furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid. This Section does not apply to assessments not imposed on an annual basis, such as ACC fees and deposits and fines and non-compliance assessments.

Section 10.7. Liens to Secure Assessment. The regular maintenance charges and assessments, any applicable special maintenance charge, as hereinabove provided for, and any assessment imposed by a Water Cooperative of which an Owner is a member, any assessment by the ACC, and any other charge, fine or fee assessed or allowed hereunder, shall constitute and be secured by a separate and valid and subsisting lien, hereby created and fixed, and which shall exist upon and against each Lot and all improvements thereon, for the benefit, as appropriate, of the entity making the assessment, and the respective members of each. Subject to the condition that the entity making the association must, be made a party to any court proceeding to enforce any lien hereinafter deemed to be superior, the lien hereby created shall be subordinate and inferior to:

(a) all liens for taxes or special assessments levied by City, County and State government, or any political subdivision or special district thereof, and

(b) all liens securing amounts due or to become due under any Real Estate Contract or Contract of Sale, any mortgage or deed of trust filed for record, prior to the date payment of any such charges or assessments become due and payable.

Any judicial foreclosure of any such superior lien under any mortgage, deed of trust, or other security instrument in which the entity making the assessment has been made a party, shall cut off and extinguish the liens securing maintenance charges or assessments which became due and payable prior to such foreclosure date, but no such foreclosure shall free any Lot from the liens securing assessments thereafter becoming due and payable, nor shall the liability of any Member personally obligated to pay maintenance charges or assessments which become due prior to such foreclosure, be extinguished by any foreclosure.

Section 10.8. Effect of Non-Payment. If any assessment, charge, fine or fee owed to the Association or the ACC or a Water Cooperative is not paid within thirty (30) days from the due date thereof, the same shall bear interest from the due date until paid at eighteen percent (18%) per annum, and, if placed in the hands of an attorney for collection or if suit is brought thereon or if collected through probate or other judicial proceedings, there shall be paid to the Association or the ACC or Water Cooperative, as applicable, an additional reasonable amount, but not less than ten percent (10%) of the amount owing, as attorney's fees. The Association or the ACC or Water Cooperative, as a common expense of all Members, may institute and maintain an action at law or in equity against any defaulting Member to enforce collection and/or for foreclosure of the liens against the Owner's Lot. All such actions may be instituted and brought in the name of the Association or the ACC or Water Cooperative, as appropriate, and may be maintained and prosecuted in a like manner as an action to foreclose the lien of a mortgage or deed of trust on real property.

Section 10.9. Enforcement, Notice, and Hearing.

(a) Enforcement. Declarant, the ACC, Association, and/or any Owner shall have the right to enforce by proceeding, at law or in equity, for damages or for injunction or both, all restrictions, covenants, conditions, rights and duties imposed, allowed or granted by the provisions of this Declaration. In any such proceedings, the prevailing parties shall be entitled to recover cost and expenses, including reasonable attorney's fees, and, if the proceeding is to foreclose a lien under Article X, such costs and expenses shall be a part of the total amount secured by the lien. Failure by Declarant, the ACC, Association or Owner to enforce any restriction, covenant, condition, duty or right herein contained shall in no event be deemed a waiver of their respective right to do so at a later time. Notwithstanding the aforesaid or any other provision in this Declaration, the Association and/or the ACC, as applicable, may elect to enforce any provision of the Declaration or any regulations or rules addressed by this Declaration by self-help (for example, but not limited to, the towing of vehicles that are in violation of this Declaration). Any entry onto a Lot for purposes of exercising this power of self-help shall not be deemed a trespass.

(b) Notice Before Enforcement. Except where damage or injury to persons or Property is imminent as a result of the performance or failure to perform or the defective performance of any obligation imposed or restricted by this Declaration or where animals are

involved, no fine shall be levied and no judicial proceeding for the enforcement of the restrictions, covenants, conditions, rights and duties imposed, allowed or granted by this Declaration shall be commenced until thirty (30) days' written notice of wrongful performance, defective performance or failure of performance is given to the person, association or entity responsible for such performance and such wrongful or defective performance or failure to perform has not been cured within such time. Such notice shall be deemed to be given if deposited in the U.S. Mail, mailed postage prepaid, certified, return receipt requested and said thirty (30) days shall commence with the date of mailing thereof. Said notice shall describe (i) the nature of the alleged violation; (ii) the proposed action to be taken such as, without limitation, the judicial action to be taken or the fine to be imposed; (iii) and, with respect to action by the ACC or the Association, a statement that the action shall be taken as contained in the notice unless a challenge is begun within thirty days of the date on the notice by requesting a hearing as set forth in this Section. If a timely challenge is not made to action by the ACC or the Association, the entity giving notice may take the action.

(c) Hearing. If a hearing is requested within the allotted thirty (30) day period, the hearing shall be held before the ACC or the Board of Directors of the Association, as applicable, in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any fine under this Declaration, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the person who delivered such notice. The notice requirements shall also be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the fine, if any, imposed.

## ARTICLE XI

### GENERAL PROVISIONS

Section 11.1. Cost of Performance. Cost and expense in performing any obligation or responsibility in this Declaration shall be borne by the person, association, or entity charged with such performance or responsibility and shall be subject to the provisions of Article X hereof.

Section 11.2. Breach not Ground for Rescission. No breach or continuing breach of the restrictions, covenants, conditions, duties or obligations imposed, allowed or granted by this Declaration shall be grounds for cancellation, termination or rescission of this Declaration or of any provision thereof.

Section 11.3. Attachment of Covenant on Resale or Remodel. This Declaration shall attach to the lease of or resale of the Property or any Lot, and any remodeling or other alteration of any Improvement or House Structure or Other Structure must be approved by the ACC through the Development Plan process.

Section 11.4. Covenants to Run with the Land. The restrictions, easements, covenants, conditions, rights and duties of this Declaration shall run with and bind the all Lots and tracts within the Property, as defined herein, and shall inure to the benefit of the Owner of any Lot therein, their respective legal representatives, heirs, successors and assigns for a term of twenty (20) years from the

date this Declaration is recorded in the real property records of Sandoval County, New Mexico, after which time such restrictions, easements, covenants, conditions, rights and duties shall automatically be extended for successive periods of ten (10) years, unless amended, modified or repealed as hereinafter provided.

Section 11.5. Modification or Repeal During Initial Term. Any of the provisions of this Declaration may be amended or repealed during the initial twenty (20) year term by a recorded written instrument by the Association through its Secretary so long as the Owners of not less than 51% of the Lots sold by the Declarant vote in favor of the modification or repeal, and, provided that if the Declarant or its successors or assigns still owns any Lots, so long as Declarant or its successors or assigns consent to and execute and acknowledge the modification or repeal, and if the Declarant owns no lots, so long as no amendment or repeal shall serve to affect the rights of the Declarant stated herein or the rights of Declarant in any subsequent amendment consented to by Declarant. After the initial twenty (20) year term, the Owners may amend or repeal provisions of this Declaration by the execution of a recorded written instrument by 66% of the Owners of the Lots, but no amendment or repeal shall serve to affect the rights of the Declarant stated herein or the rights of Declarant in any subsequent amendment consented to by Declarant. Said amendment or repeal shall indicate that the appropriate percentage of the Owners of the Lots who voted in favor of the amendment or repeal. By Declarant, this Section refers to the Declarant, its successors or assigns or its members, depending on who would be affected by the amendment or repeal.

Section 11.6. Severability. Invalidation of any of the provisions hereof by a final judgment or decree of any court shall in no way affect or impair the validity of any other provision hereof.

Section 11.7. Joint and Several Obligations. The terms of this Declaration in effect on the date of any lease or recording of a sheriff's deed, trustee's deed, deed in lieu of foreclosure, other deed, other order or decree declaring, settling or confirming title, pursuant to which one or more persons, associations or entities becomes a Lessee or an Owner as hereinbefore defined, shall be binding upon such Lessee or new Owner and such Lessee or new Owner shall be jointly and severally liable with his Lessor or the immediate prior Owner for any continuing performance, failure of performance or defective performance of any act or obligation restricted or imposed hereunder.

Section 11.8. Successors. Deeds of conveyance of any Lot may contain the provisions, restrictions, covenants and conditions contained herein by reference to this Declaration; however, whether or not such reference is made in any or all said deeds, by becoming an Owner as herein defined of any of the Property, each such Owner, for himself or herself or itself, his or hers or its heirs, personal representatives, successors, transferees and assigns, binds himself or herself or itself and such heirs, personal representatives, successors, transferees and assigns to all the provisions, restrictions, covenants and conditions now or hereafter imposed by or under the authority of this Declaration and any amendments thereof.

Section 11.9. Assignment of Rights and Obligations of Declarant. The rights of Declarant hereunder are fully assignable to any person, association or entity and any and all obligations and duties of Declarant are fully delegable and assignable to any person, association or entity.

Section 11.10. Word Meanings. The words such as "herein," "hereafter," "hereof," "hereunder" and "hereinabove" refer to this Declaration as a whole and not merely to a section or paragraph or article in which such words appear unless the context otherwise requires. Singular shall

include the plural and the masculine gender shall include the feminine and neuter and vice versa unless the context otherwise requires.

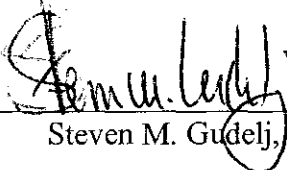
Section 11.11. Captions and Section Headings. The captions and headings of various articles, sections, paragraphs or subparagraphs of this Declaration are for convenience only and are not to be considered as defining or limiting in any way the intent of the provisions hereof or thereof.

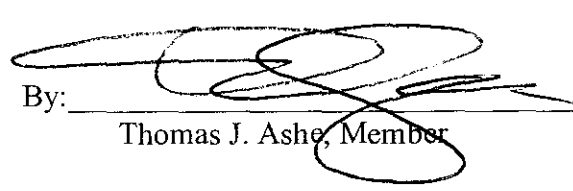
Section 11.12. Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection and maintenance by Declarant of Structures, Improvements or signs necessary or convenient to the development, sale, operation or other disposition of the Property within the Subdivision.

IN WITNESS WHEREOF, the undersigned DELASHE INVESTMENTS, LLC, being Declarant herein, has set its hand and seal this 6th day of March, 2003.

DECLARANT:

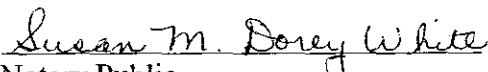
DELASHE INVESTMENTS, LLC

By:   
Steven M. Gudelj, Member

By:   
Thomas J. Ashe, Member

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

The foregoing instrument was acknowledged before me this 6th day of March, 2003, by Steven M. Gudelj, Member, Delashe Investments, LLC, and by Thomas J. Ashe, Member, Delashe Investments, LLC on behalf of said limited liability company.

  
Notary Public

My Commission Expires:  
4/18/2005

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EXHIBIT A

LEGAL DESCRIPTION:

Parcel Nine-A (9-A), CLAIM OF EXEMPTION PLAT, Parcels 9-A, 9-B & 10-D-1, LANDS OF LIBERMAN-GREVEY, projected Sections 22, 23, 26, 27, 28, 33, 34 & 35, T.13N., R.4E., N.M.P.M., Felipe Gutierrez Grant, Sandoval County, New Mexico, as the same is shown and designated on said plat filed in the Office of the County Clerk of Sandoval County, New Mexico on January 29, 2003 in Plat Book Volume 3, folio 2252B.  
More particularly described by metes and bounds survey as follows:

A certain tract of land lying within the Felipe Gutierrez or Bernalillo Grant, in projected Sections 27, 28, 33, 34 & 35, Township 13 North, Range 4 East, N.M.P.M., Sandoval County, New Mexico, and being more particularly described as follows:

Beginning at the southeast corner of the tract herein described, being the northeast corner of PLACITAS TRAILS NORTH SUBDIVISION, plat filed in the office of the County Clerk of Sandoval County, New Mexico, on August 21, 1987 in Vol. 3, Folio 666-A;  
Thence, N 70°13'17" W., 2055.11 feet along the north line of said Placitas Trails North to a point being the northwest corner of said Placitas Trails North;  
Thence, S 19°37'21" W, 744.97 feet along the west boundary of said Placitas Trails North to a point being the southwest corner of said Placitas Trails North;  
Thence, N 69°54'20" W, 1513.69 feet along the north line of Placitas Trails Subdivision, plat filed in the office of the County Clerk of Sandoval County, New Mexico on January 21, 1983, to the southwest corner of the tract herein described;  
Thence, N 19°47'11" E, 2377.68 feet to the northwest corner of the tract herein described;  
Thence, S 70°12'43" E, 3117.99 feet to a point;  
Thence, N 20°24'39" E, 493.95 feet to a point;  
Thence, S 90°00'00" E, 309.66 feet to a point;  
Thence, S 20°54'49" E, 389.49 feet to the northeast corner of the tract herein described, a point on the east boundary of the Felipe Gutierrez or Bernalillo Grant, and a point on the west boundary of Tierra Madre de Placitas, plat filed in the office of the County Clerk of Sandoval County, New Mexico on October 27, 1983;  
Thence, S 35°41'32" W, 292.18 feet along said Grant boundary to an angle point;  
Thence, S 21°57'39" W, 1021.99 feet along said Grant boundary to an angle point;  
Thence, S 18°18'30" W, 641.97 feet along said Grant boundary to the point of beginning and containing 166.0183 acres, more or less.