



## NEW MEXICO PUBLIC REGULATION COMMISSION

### *Certificate Of Incorporation*

OF

**VISTA DE LA LUZ HOMEOWNERS' ASSOCIATION, INC.**

**4579100**

The Public Regulation Commission certifies that the Articles Of Incorporation, duly signed and verified pursuant to the provisions of the

**Nonprofit Corporation Act**

**(53-8-1 To 53-8-99 NMSA 1978)**

have been received by it and are found to conform to law. Accordingly, by virtue of the authority vested in it by law, the Public Regulation Commission issues this Certificate Of Incorporation and attaches hereto a duplicate of the Articles Of Incorporation.

Dated : **May 1, 2012**

In testimony whereof, the Public Regulation Commission of the State of New Mexico has caused this certificate to be signed by its Chairman and the seal of said Commission to be affixed at the city of Santa Fe.

*Stacy Starr-Garcia*

**Bureau Chief**

*Patrick H. Lyons*

**Chairman**

**ARTICLES OF INCORPORATION  
OF  
VISTA DE LA LUZ  
HOMEOWNERS' ASSOCIATION, INC.  
(A Nonprofit Corporation)**

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**THE UNDERSIGNED**, being desirous of forming a non-profit corporation under the laws of the State of New Mexico, has prepared and hereby adopts the following Articles of Incorporation:

**ARTICLE I  
NAME**

The name of the corporation is VISTA DE LA LUZ HOMEOWNERS' ASSOCIATION, INC., hereafter called the "Association".

**ARTICLE II  
PRINCIPAL OFFICE**

The principal office of the Association is located at 8500 Jefferson St NE, Suite B Albuquerque, New Mexico 87113.

**ARTICLE III  
REGISTERED AGENT**

The New Mexico street address of the corporation's initial registered office is Lastrapes, Spangler & Pacheco P.A, 333 Rio Rancho Drive, Suite 401, Rio Rancho, New Mexico, 87124. The name of the initial registered agent at the address of the initial registered office is Christopher Pacheco.

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**ARTICLE IV**  
**PURPOSE AND POWERS OF THE ASSOCIATION**

This Association does not contemplate pecuniary gain or profit of the members thereof, and the specific purposes for which it is formed are to provide for the maintenance, preservation and architectural control of the residence, lots and common areas within those portions of Vista de la Luz Subdivision, City of Albuquerque, County of Bernalillo, State of New Mexico, that are subjected to the Declaration of Protective Covenants Imposed Upon Vista De la Luz Subdivision Albuquerque, New Mexico (the "Declaration") recorded in the office of the County Clerk of Bernalillo County, New Mexico on December 18, 2008 as Doc. # 2008030445. The Association will further act to promote the peace, health, safety and general welfare of the owners within the Subdivision (as defined in the Declaration) and for this purpose will:

(a) exercise all of the powers and privileges and perform all of the duties and obligations of the Association as set forth in the Declaration, as the same may be amended from time to time as therein provided, said Declaration being incorporated herein as if set forth fully;

(b) fix, levy, collect and enforce payment by any lawful means, of all assessments pursuant to the terms of the Declaration and will pay all expenses in connection therewith and all operating costs of the association, including, without limitation, licenses, taxes or other governmental charges levied or imposed against the Association or Common Areas (as defined in the Declaration);

(c) participate in mergers and consolidations with other nonprofit corporations organized for the same purposes, provided that any such merger or consolidation shall have the assent of two-thirds (2/3) of the members of each class;

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(d) have and exercise any and all powers, rights and privileges which a corporation organized under the Nonprofit Corporation Act of the State of New Mexico by law may now or hereafter have and exercise.

## **ARTICLE V** **MEMBERSHIP**

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject to Assessment, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities that hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association.

## **ARTICLE VI** **VOTING RIGHTS**

The Association shall have two classes of voting membership as follows:

**Class A:** Shall be all the Owners, except the Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one person holds interest in the same Lot, all such persons shall be members, but shall be entitled to only one (1) vote, collectively.

**Class B:** Shall be the Declarant and for so long as the Declarant owns any Lot or tract within the Subdivision, Declarant shall have the sole right to appoint the members of the Board of Directors of the Association. The Class B membership shall cease and be converted to Class A membership upon the happening of either of the following events, whichever occurs earlier:

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a. Declarant having no further ownership of any Lots or tracts within the Subdivision.

b. On December 31, 2027.

## **ARTICLE VII** **INCORPORATOR**

The name and address of the incorporator is:

Christopher Pacheco  
c/o Lastrapes, Spangler & Pacheco P.A.  
333 Rio Rancho Drive, Suite 401,  
Rio Rancho, New Mexico, 87124

## **ARTICLE VIII** **BOARD OF DIRECTORS**

The affairs of this Association shall be managed by a Board of three (3) Directors, who need not be members of the Association. The number of directors may be changed by amendment to the Bylaws of the Association or in accordance with the Declaration. The names and addresses of the person who are to act in the capacity of directors until the selection of their successors are:

<b><u>NAME</u></b>	<b><u>ADDRESS</u></b>
Keith D. Cheshire	8500 Jefferson St NE, Suite B Albuquerque, New Mexico 87113
Keith A Cheshire	8500 Jefferson St NE, Suite B Albuquerque, New Mexico 87113
Ken Cheshire	8500 Jefferson St NE, Suite B Albuquerque, New Mexico 87113

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The Corporation shall indemnify any director or officer or former director or officer of the Corporation against reasonable expenses, costs, and attorneys' fees actually and reasonably incurred by him in connection with the defense of any action, suit or proceeding, civil or criminal, in which he is made a party by reason of being or having been a director or officer. The director or officer shall not be indemnified if he shall be adjudged to be liable for fraud or willful misconduct. The indemnification shall include any amounts paid to satisfy a judgment or to compromise or settle a claim. Advance indemnification shall be allowed of a director or officer for reasonable expenses to be incurred in connection with the defense of the action, suit or proceeding provided that the director or officer must reimburse the Association if it is subsequently determined that the director or officer was not entitled to indemnification.

## **ARTICLE IX** **DISSOLUTION**

The Declarant shall have the sole ability to dissolve the Association until the earlier of (i) Declarant not owning any Lot or tract within the Subdivision or (ii) December 31, 2027. Thereafter, the Association may be dissolved with the written assent of not less than two-thirds (2/3) of each class of members. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association, if any, shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to such similar purposes.

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The corporation shall exist perpetually.

These Articles may be amended, changed, modified or repealed only by the Declarant until the earlier of (i) Declarant not owning any Lot or tract within the Subdivision or (ii) December 31, 2027. Thereafter, by the affirmative vote of seventy-five percent (75%) of the entire membership, in person or by proxy at a meeting duly called for that purpose. Written notice of such meeting, setting forth the purpose thereof, shall have been sent to all members not less than fifteen (15) nor more than thirty (30) days prior to such meeting.

IN WITNESS WHEREOF, the undersigned Incorporator of this Corporation has made and signed these Articles of Incorporation this 27<sup>th</sup> day of April, 2012.

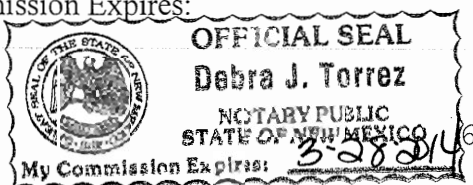
  
Christopher M. Pacheco

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

SUBSCRIBED AND SWORN TO BEFORE me this 27 day of April, 2012, by  
Christopher M. Pacheco.

Debra G. Jones  
Notary Public

My Commission Expires:



**AFFIDAVIT OF ACCEPTANCE OF APPOINTMENT**  
**BY DESIGNATED INITIAL REGISTERED AGENT**

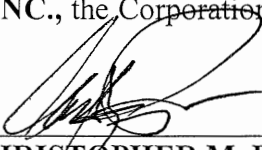
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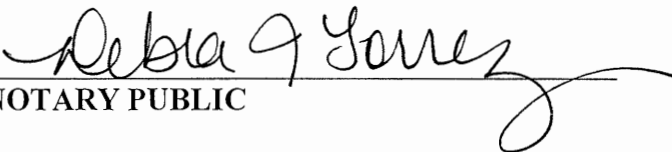
To: The Public Regulatory Commission

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

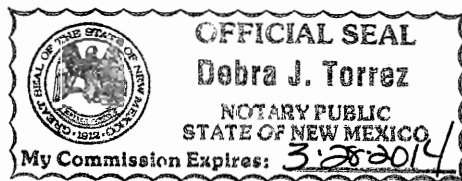
On April 27<sup>th</sup>, 2012, before me, a Notary Public in and for the State and County aforesaid, personally appeared **CHRISTOPHER M. PACHECO** who is to me known to be the person and who, being by me duly sworn, acknowledged to me that he does hereby accept his appointment as the initial Registered Agent of **VISTA DE LA LUZ HOMEOWNERS' ASSOCIATION, INC.**, the Corporation which is named in the annexed Articles of Incorporation.

  
\_\_\_\_\_  
**CHRISTOPHER M. PACHECO**, Registered Agent

**SUBSCRIBED AND SWORN** to before me the day, month and year first above set forth.

  
\_\_\_\_\_  
**NOTARY PUBLIC**

My Commission Expires:



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# **BYLAWS OF**

## **VISTA DE LA LUZ**

### **HOMEOWNERS' ASSOCIATION, INC.**

#### **ARTICLE I**

#### **NAME AND LOCATION**

The name of the corporation is **VISTA DEL LA LUZ HOMEOWNERS' ASSOCIATION, INC.** The principal office of the corporation shall be located at 8500 Jefferson St NE, Suite B Albuquerque, New Mexico 87113, but meetings of members and directors may be held at such places within Bernalillo County, New Mexico, as may be designated by the Board of Directors.

#### **ARTICLE II**

#### **DEFINITIONS**

Section 1. "Association" shall mean and refer to **VISTA DE LA LUZ HOMEOWNERS' ASSOCIATION, INC.** its successors and assigns.

Section 2. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners.

Section 3. "Declarant" shall mean and refer to KCRW Properties, LLC, its successors and assigns.

Section 4. "Declaration" shall mean and refer to the Declaration of Protective Covenants Imposed Upon Vista De la Luz Subdivision Albuquerque, New Mexico as recorded in the office of the County Clerk of Bernalillo County, New Mexico.

Section 5. "Member" shall mean and refer to those persons entitled to membership as provided in the Declaration.

Section 6. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a party of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 7. "Properties" shall mean and refer to that certain real property described in the Declaration, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

### **ARTICLE III MEMBERS**

Section 1. General. Every person or entity who is a record owner of any Lot in the Properties shall automatically be a Member of the Association. There shall be two classes of membership, as set forth in the Declaration and in Section 2 below.

Section 2. Classes of Membership.

**Class A:** Shall be all the Owners, except the Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one person holds interest in the same Lot, all such persons shall be members, but shall be entitled to only one (1) vote, collectively.

**Class B:** Shall be the Declarant and for so long as the Declarant owns any Lot or tract within the Subdivision, Declarant shall have the sole right to appoint the members of the Board of Directors of the Association. The Class B membership shall cease and be converted to Class A membership upon:

- a. Declarant having no further ownership of any Lots or tracts within the Subdivision.
- b. On December 31, 2027.

### **ARTICLE IV MEETING OF MEMBERS**

Section 1. Annual Meetings. The first annual meeting of the members shall be held within one year from the date of incorporation of the Association, and each subsequent regular annual meeting of the members shall be held in the same month of each year thereafter on a day and time to be determined by the Board.

Section 2. Special Meetings. Special meetings of the members may be called at any time by the president or by the Board of Directors, or upon written request of the members who are entitled to vote one-fourth (1/4) of all of the votes of the Class A membership.

Section 3. Notice of Meetings. Written notice of each meeting of the members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least fifteen (15) days before such meeting to each member entitled to vote, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 4. Quorum and Voting. The presence at the meeting of members entitled to cast, or of proxies entitled to cast, fifteen percent (15%) of the votes of each class of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote shall have power to (a) adjourn the meeting from time to time, without notice other than announcement at the

meeting, until a quorum as aforesaid shall be present or be represented; or (b) adjourn the meeting, without notice other than announcement at the meeting, re-notice the issues to be heard and voted on in accordance with Section 3 above, and at the re-noticed hearings ten (10) owners shall constitute a quorum for the purposes of the items re-noticed. All matters requiring vote or action of members shall be made by the stated percentages of members appearing in person or by proxy as a duly called meeting at which there is a quorum present.

Section 5. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his/her Lot.

## **ARTICLE V**

### **BOARD OF DIRECTORS: SELECTION AND TERM OF OFFICE**

Section 1. Initial Three-Person Board. The affairs of this Association shall be initially managed by a Board of three (3) directors, each of whom and each of whose replacement, shall be an employee, representative or designee of Declarant, and who shall be elected and subject to removal by Declarant only. The members of the initial Board need not be members of the Association and may also serve as directors of one or more subsidiary associations, as defined in the Declaration. The members shall be entitled to elect the entire Board, including the three directors, or their respective successors, theretofore elected by Declarant, upon the first to occur of the following events:

- a. Declarant having no further ownership of any Lots or tracts within the Subdivision; and
- b. On December 31, 2027.

Section 2. Term of Office. At the first annual meeting the Declarant shall elect one director for a term of one year, one director for a term of two years and one director for a term of three years. Thereafter, each director shall hold office for a term of one (1) year. Any director added pursuant to Section above shall serve a term of one year.

Section 3. Removal. The directors constituting the initial three person Board, or their successors, are subject to removal and replacement only by Declarant until the first to occur of the following events:

- a. Declarant having no further ownership of any Lots or tracts within the Subdivision; and
- b. On December 31, 2027.

Thereafter, any director may be removed from the Board, with or without cause, by a majority vote of the members of the Association. In the event of death,

resignation or removal of a director, his/her successor shall be selected by the remaining members of the Board and shall serve for the unexpired term.

Section 4. Compensation. No director shall receive compensation for any service rendered to the Association. However, directors may be reimbursed for reasonable expenses actually incurred in the performance of their respective duties, with approval of the Board.

Section 5. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

## **ARTICLE VI NOMINATION AND ELECTION OF DIRECTORS**

Section 1. Nomination. Nomination for election to the Board of Directors shall be made by a nominating committee. Nominations may also be made from the floor at the annual meeting. The nominating committee shall consist of the Chairman, who shall be a member of the Board, and two or more members of the Association. The nomination committee shall be appointed by the Board prior to each annual meeting of the members to serve from the close of such annual meeting until the close of the next annual meeting, and such appointment shall be announced at each annual meeting. The nominating committee shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among members or non-members.

Section 2. Election. Election to the Board of Directors shall be by secret written ballot. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

Section 3. Declarant's Right to Select Initial Three-Person Board  
Notwithstanding anything contained in this Article to the contrary, the Declarant shall have the exclusive right to select the initial three person Board, and their successors, in accordance with Article V above.

## **ARTICLE VII MEETINGS OF DIRECTORS**

Section 1. Regular Meetings. Regular meetings of the Board may be held monthly without notice to the members, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2.     Special Meetings.     Special meetings of the Board shall be held when called by the president of the Association, or by any two directors, after not less than three (3) days notice to each director.

Section 3.     Quorum.     A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

## **ARTICLE VIII POWERS AND DUTIES OF BOARD OF DIRECTORS**

Section 1.     Powers.     The Board shall have the power to:

(a)     adopt and publish rules and regulations governing the use of the Common Areas and facilities, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;

(b)     suspend the voting rights and right to use of the recreational facilities of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days for an infraction of published rules and regulations;

(c)     exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation, of the Declaration;

(d)     declare the office of a member of the Board to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board; and

(e)     employ a manager, an independent contractor, attorney, accountant or such other employees as they deem necessary, and to prescribe their duties and compensation.

Section 2.     Duties. It shall be the duty of the Board to:

(a)     cause to be kept a complete record of all of its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing in accordance with these Bylaws;

(b)     supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

(c)     as more fully provided in the Declaration, to:

(1) fix the amount of the annual assessment against each Lot and send written notice to each Owner thereof at least thirty days in advance of each assessment period, such assessment may be paid annually, semi-annually, quarterly or monthly; and

(2) file a lien, bring an action or foreclose the lien against any Lot for which assessments are not paid within thirty (30) days after the due date or to bring an action at law against the Owner personally obligated to pay the same.

(d) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states that an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) procure and maintain adequate liability and hazard insurance on Common Areas and property;

(f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate; and

(g) cause the Common Areas to be maintained.

## **ARTICLE IX OFFICERS AND THEIR DUTIES**

Section 1. Enumeration of Offices. The officers of this Association shall be president and vice-president, who may be members of the Board, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board following each annual meeting of the members.

Section 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he/she shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer being replaced.

Section 7. Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

(a) President. The president shall preside at all meetings of the Board; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds, and other written instruments and shall co-sign promissory notes.

(b) Vice President. The vice president shall act in the place and stead of the president in the event of the absence of, inability or refusal to act by the president, and shall exercise and discharge all other duties as may be required by the Board.

(c) Secretary. The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Board.

(d) Treasurer. The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the members.

## **ARTICLE X COMMITTEES**

The Board shall appoint an Architectural Control Committee as provided in the Declaration, and a nominating committee as provided in the Bylaws. The Board shall appoint other committees as deemed appropriate in carrying out its purpose.

## **ARTICLE XI BOOKS AND RECORDS**

The books, records and papers of the Association shall at all times during reasonable business hours, be subject to inspection by any member. The Declaration, the Articles of Incorporation and the Bylaws of the Association shall be available for inspection by any

member at the principal office of the Association, where copies may be purchased at a reasonable cost.

## **ARTICLE XII ASSESSMENTS**

As more fully provided in the Declaration, each member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien on property against which the assessment is made. Any assessments which are not paid when due shall be delinquent and shall bear interest thereafter at the rate of twelve percent (12%) per annum until paid, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property. In any such actions by the Association or in the event the collection of assessments is turned over to an attorney, the Association shall be entitled to recover interest, costs and attorney's fees. No owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Areas or abandonment of their Lot.

## **ARTICLE XIII CORPORATE SEAL**

The Association shall have a seal in circular form having within its circumference the words: Vista de la Luz Homeowner's Association, Inc.

## **ARTICLE XIV AMENDMENTS**

Section 1. These Bylaws may be amended, at a regular or special meeting of the members, by an affirmative vote of two-thirds of a quorum of members present in person or by proxy.

Section 2. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

## **ARTICLE XV MISCELLANEOUS**

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December every year, except that the first fiscal year shall begin on the date of incorporation.

**IN WITNESS WHEREOF**, we, being all the directors of the Vista de la Luz Homeowners' Association have hereunto set our hands this \_\_\_\_th day of \_\_\_\_\_, 2012.

---

Keith D. Cheshire, Director/President

---

Ken Cheshire  
Director/Vice President/Secretary

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Keith A. Cheshire  
Director/Treasurer

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FT 1068562 RAD

**DECLARATION OF PROTECTIVE COVENANTS,  
IMPOSED UPON VISTA DE LA LUZ SUBDIVISION  
ALBUQUERQUE, NEW MEXICO**

THIS DECLARATION OF PROTECTIVE COVENANTS, is made as of March 11, 2008, by MONTEREY LAND GROUP, LLC, a New Mexico limited liability company (the "Declarant"), with respect to that certain real property situated in Bernalillo County, New Mexico, more particularly described below.

**Background:**

A. Declarant is the owner the following real property located in Bernalillo County, New Mexico (the "Real Property"):

Lots 1-P1 through 72-P1 of Block A and Lots 1-P1 through 65-P1 of Block B of VISTA DE LA LUZ, a subdivision within the city of Albuquerque, New Mexico, as the same are designated on the Plat of said subdivision filed in the office of the county Clerk of Bernalillo County, New Mexico in Book 2006C, page 331; but excluding Tracts J and K, as shown on said Plat.

B. It is hereby declared that the Real Property is subject to this Declaration which is for the purpose of creating and maintaining a residential development on the Real Property and for the improvement and protection of the value, desirability and attractiveness of the Real Property.

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

**ARTICLE 1  
Definitions**

Unless the context otherwise specifies or requires, the terms defined in this Article 1 shall have the meanings assigned in this Article.

"**Association**" shall mean the Vista de la Luz Homeowners Association constituted pursuant to this Declaration.

"**Committee**" shall mean the Architectural Control Committee constituted pursuant to this Declaration.

"**Common Areas**" shall mean the common areas designated on the Plat and include landscape and access easements required to be maintained by the Association, as required by the Plat.

"**Declaration**" shall mean this Declaration of Protective Covenants Imposed upon Vista de la Luz Subdivision.

"**Declarant**" shall mean MONTEREY LAND GROUP, LLC, a New Mexico limited liability company, and its successors and assigns. Declarant may assign, in writing, all or part of Declarant's powers and responsibilities for all or a specific area or portion of the Subdivision to any person or entity who accepts such powers and responsibilities in writing. Any such assignment shall be Recorded. Each person or entity named as Declarant in an assignment may exercise the rights of Declarant provided by this Declaration for the area assigned, but any general power, such as the power to annex, that has been

Doc# 2008030445

03/18/2008 10:42 AM Page 1 of 15  
DEC R: \$37.00 M. Toulouse, Bernalillo County



assigned, must be consented to by all persons to whom the Declarant has assigned its rights hereunder as Declarant.

**“Home(s)”** shall mean the single-family residential units to be constructed on the Lots.

**“Improvements”** shall include, without limitation, buildings, roads, driveways, parking areas, patio walls, subdivision exterior walls or fences, stairs, decks, windbreaks, poles, antennas, signs, rocks, plantings, utility or communication installations (whether above or underground), affixed recreational equipment, and any structure and excavation of any type or kind and all other structures or landscaping of every type and kind. The term shall include Homes, unless the context otherwise requires.

**“Lot”** shall mean each of the Lots located within the Subdivision and shown on the Plat together with the improvements located on each such Lot.

**“Owner”** shall mean the persons or entities, including Declarant, holding the beneficial ownership of the fee of a Lot or Lots, including the purchaser under a real estate contract and shall not include persons holding only a security interest or a seller under a real estate contract. For the purposes of Article 3, unless the context otherwise requires, Owner shall include the family, invitees, licensees and tenants of any Owner.

**“Party Wall”** shall mean a wall or fence constructed on or immediately adjacent to the common boundary of Lots or tracts or the common boundary of Common Areas and a Lot or tract.

**“Perimeter Walls”** shall mean all the walls designated as perimeter walls on the Site Plan for Subdivision.

**“Plat”** shall mean the Plat for Vista de la Luz, filed in the Bernalillo County Clerk’s Office, as set forth above.

**“Recorded”** shall mean filed for record in the real property records of Bernalillo County, New Mexico.

**“Site Plan for Subdivision”** means that certain site Plan for Subdivision Vista de La Luz Subdivision, as approved by the city of Albuquerque, New Mexico on August 30, 2006, Project No. 1004675; Application No. 06DRB-01097.

**“Subdivision”** shall mean the Real Property which is subject to this Declaration, which excludes Tracts J and K as shown on the Plat. Tracts J and K are zoned for commercial use and are not subject to this Declaration.

## **ARTICLE 2**

### **Property Subject to Declaration**

The Subdivision, and each Lot therein, shall be held, transferred, sold, occupied, and used solely in accordance with these covenants, which shall run with the land and bind and inure to the benefit of all parties having or acquiring any right, title, or interest in the Subdivision, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivision as a whole and enhancing the noncommercial residential quality of life within the Subdivision.

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

**3.1 Use of Subdivision, Homes and Common Areas.** No part of the Subdivision shall be used for any purpose except single-family Homes and the common purposes for which the Common Areas were designed. All homes within the subdivision shall be single-family detached homes except for homes to be constructed on Lots 12-P1 through 20-P1; Lots 23-P1 through 30-P1; Lots 33-P1 through 40 P1; Lots 43-P1 through 50-P1; Lots 53-P1 through 60-P1; Lots 63-P1 through 70-P1 in Block A, which may be improved with townhome style Homes having a common wall. Each Home shall be used as a residence for a single family, its servants and guests.

**3.2 Permitted Structures.** Upon each Lot there may only be erected:

(a) One principal residence for one family, of not less than 1000 square feet of interior heated space for the single-family townhome style Homes and 1100 square feet for the single-family detached homes in the subdivision. Accessory structures permissible by applicable building codes and other Codes of the City of Albuquerque ("City") must be similar in design and must be constructed of the same materials. All structures are for residential use only.

(b) Each lot must have a garage which is of sufficient size and which is maintained to accommodate at least two automobiles at all times, except for Lot 61 in block A, which may, because of the size of the Lot, have a single-car garage.

(c) No other structures of any kind may be built or placed upon any Lot, the only exceptions being: a swimming pool (if permitted by City Code), gates, Common Walls, Perimeter Walls, Retaining Walls and accessory structures if permitted under Section 3.25.

(d) Homes built on Lots 1-P1 through 11-P1 and Lots 12-P1, 21-P1, 22-P1, 31-P1, 32-P1, 41-P1, 42-P1, 51-P1, 52-P1, 61-P1, 62-P1 and 72-P1 of Block A and on Lots 12-P1 through 23-P1 of Block B, shall be one (1) story, flat-roofed and shall not exceed fifteen (15) feet in height measured from the height of the top of the finished pad elevation as shown on the Grading and Drainage Plan approved for the Subdivision by the City of Albuquerque, to the top of any parapet or other structure on the home, and Lots 10-P1, 11-P1, 24-P1, 25-P1, 55-P1 and 56-P1 of Block B, shall be one (1) story, flat-roofed and shall not exceed fifteen (15) feet in height measured from the height of the top of the finished pad elevation as shown on the Grading and Drainage Plan approved for the Subdivision by the City of Albuquerque, to the top of any parapet or other structure on the home. Homes built on the remaining Lots in the Subdivision may be two (2) story homes, not exceeding twenty six (26) feet in height above the above finish pad elevation shown on the Grading and Drainage Plan. The provisions of this Paragraph 3 (d) and Paragraph 3.5 (b) and the last sentence of Paragraph 3.22, herein, shall not be amended without the prior written consent of the Quaker Heights Neighborhood Association and the Taylor Ranch Neighborhood Association.

(e) The Homes built in the subdivision shall comply with the Site Plan for Subdivision; Design Standards, which are incorporated herein by reference.

**3.3 Trash Disposal.** All garbage and trash must be placed in the proper receptacle designated for refuse and recycling collection and shall be stored so as not be visible from the street except on trash collection day. No garbage or trash shall be placed in or on any of the Common Areas. All rubbish, trash, and garbage shall be regularly removed from the Home and Lot and shall not be allowed to accumulate thereon.

**3.4 Home Maintenance.** Each Owner shall keep such Owner's Home and Lot in a good state of preservation, repair and cleanliness to include all landscaping.

**3.5 Landscaping.**

(a) General Obligation. All Lots and common Areas shall be landscaped as required by the Site Development Plan. All landscaping located within any Owner's yards will be properly maintained at all times by the Owner. Each Owner will keep all shrubs, trees, and plantings of every kind on his Lot cultivated, pruned, free of trash, and other unsightly material. Each Owner of a Lot shall keep all shrubs, trees, hedges, grass and plantings of every kind located on his Lot including set back areas and immediately adjoining Common Areas, and in the Public Right-of Way areas between sidewalks and the street curb in front of such Owner's property, neatly trimmed and mowed, and shall keep all such areas properly cultivated and maintained and free of trash, weeds and other unsightly material.

(b) Trees. No tree or trees in lots 1-P1 through 31-P1 in Block A and lots 6-P1 through 29-P1 and 51-P1 through 60-P1 in Block B shall be allowed to grow to a height in excess of twenty five (25) feet. No tree or trees in the remaining portion of the Subdivision shall be allowed to grow to a height in excess of forty five (45) feet.

**3.6 Nuisance, Offensive Activities and Noise.**

(a) Nuisance. It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition in, on, or around his or her Home. No Home shall be used, in whole or in part, for the storage of any property, substance, material or thing that causes or has the potential to cause any of the following (i) such Home to appear to be in an unclean or untidy condition or be obnoxious to the eye (ii) such Home to emit foul or obnoxious odors or (iii) any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the Owners or occupants of other Lots. No obnoxious or offensive activities shall be carried on within or upon any Home or Lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any nearby Owners or occupants. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Subdivision.

(b) Activities Causing Unsightly Conditions. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Subdivision.

**3.7 Mobile Homes.** No prefabricated or mobile homes, even if proposed to be placed upon a non-mobile, permanent foundation, shall be permitted for any purpose anywhere on a Lot.

**3.8 Parking: Campers, Boats and Recreational Vehicles.**

(a) Parking. Vehicles may be parked only in garages, driveways, or on the street, never on any landscaped areas and/or front yards, side yards or rear yards. However, buses, trucks (except pick-up trucks of one ton or less), trailers, boats, recreational or commercial vehicles shall be parked only as provided in Section 3.8(b) below and may not be parked in driveways or on the street.

(b) Campers, Boats, Recreational Vehicles. No campers, boats, marine craft, hovercraft, boat trailers, travel trailers, motor homes, camper bodies, golf carts, or other types of oversized vehicles, recreational vehicles and non-passenger vehicles, equipment, implements or accessories may be kept on

any Lot unless the same are fully enclosed within a garage located on such Lot or, if approved by the Committee, said vehicles and /or accessories may be screened from view from outside of the Lot by a screening structure or fencing not less than five (5) feet high. The use of motorbikes, snowmobiles, unmuffled vehicles, dunebuggies and all terrain vehicles is prohibited within the Subdivision.

**3.9 Commercial Vehicles.** No commercial vehicle with a gross vehicle weight ratio greater than one (1) ton will be parked on any street right-of-way or Lot unless such vehicle is temporarily parked and in use for the construction, maintenance or repair of a Home, improvements or landscaping in the immediate vicinity, or for delivery of items or household moving. No trucks or vehicles of any size, which transport flammable or explosive cargo, may be kept in the Subdivision at any time.

**3.10 Motor Vehicles.** No vehicles or similar equipment will be parked or stored in any area visible from any street except passenger automobiles, passenger vans, motorcycles, pick-up trucks, and pick-up truck with attached bed campers that are in operating condition and have current license plates and are in daily use. No abandoned, derelict, inoperable or unlicensed vehicles may be stored or located on any Lot.

**3.11 Business Operation.** Owner or occupant residing in a Home may conduct business activities within the Home so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Home; (b) the business activity conforms to all zoning requirements for the Subdivision; (c) the business activity does not involve persons coming into the Subdivision who do not reside in the Subdivision or door-to-door solicitation of residents of the Subdivision; and (d) the business activity is consistent with the residential character of the Subdivision and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Subdivision.

**3.12 Signs.** Except for signs permitted by the last sentence of this Paragraph, no signs, including but not limited to sports signs, business or personal signage, or other window displays or advertising shall be maintained or permitted on any part of the Subdivision or in any Home. The right is reserved by the Declarant or any home builder to place "For Sale," "For Rent," or "For Lease" signs on any unsold or unoccupied homes. In no event will any sign described in this Paragraph be larger than one foot by two feet other than signs which are commercially purchased or those customarily used by licensed real estate brokers in residential transactions. Owners are permitted to post one "For Sale," "For Rent" or "For Lease" sign, signs advertising garage sales and yard sales, and signs endorsing political candidates, ballot issues and similar matters which are the subject of upcoming elections; provided, that such signs otherwise conform to the requirements of this Paragraph and are removed promptly following the events to which they pertain.

**3.13 Leasing.** Homes may be leased for residential purposes. All leases shall have a minimum term of six (6) months. All leases shall require, without limitation, that the tenant provide written acknowledgment of receipt of a copy of this Declaration. Further, no Home shall be used or rented for transient, hotel or motel purposes. Owner shall continue to have financial liability for all acts or omissions of their tenant.

**3.14 Window Coverings.** Appropriate window covering must be installed by each Owner on all windows of such Owner's Home and must be maintained thereon at all times. Foil, sheets, blankets, newspapers, cardboard and other makeshift window coverings are prohibited. Appropriate window coverings include curtains, drapes and blinds.

**3.15 Exterior Holiday Decorations.** Lights or decorations may be erected on the exterior of Homes in commemoration or celebration of publicly observed holidays provided that such lights or decorations do not unreasonably disturb the peaceful enjoyment of adjacent Owners by illuminating bedrooms, creating

noise or attracting sightseers. All lights and decorations must be removed within thirty (30) days after the holiday has ended. Christmas decorations or lights may not be displayed prior to November 1<sup>st</sup> of any year. For other holidays, decorations or lights may not be displayed more than thirty (30) days in advance of the holiday.

**3.16 Animals.** No animals (except as hereinafter permitted), livestock, horses, insects or poultry of any kind shall be kept, raised, or bred in the Subdivision. Dogs, cats and other household pets in reasonable numbers may be kept, providing they are not kept, raised or bred for commercial or hobby breeding purposes. All household pets must be restrained on a leash or otherwise under the direct control of an individual when outside of a Home or fenced yard in the Subdivision. All City and Bernalillo County ("County") animal control ordinances shall be complied with. No animal will be allowed to run loose, and all animals will be kept within enclosed areas, which must be clean, sanitary, and reasonably free of refuse, insects, and waste at all times.

**3.17 Clothes Drying Facilities.** Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot.

**3.18 Disease and Insects.** No owner shall permit anything or condition to exist upon any Lot which shall induce, breed or harbor infectious plant diseases or noxious insects.

**3.19 Antennae, Satellite Dishes and Solar Collectors.** Except with the written permission of the Committee or as provided herein, no Owner may erect or maintain (a) any direct broadcast satellite ("DBS") antenna greater than one meter (39 inches) in diameter, or (b) any multi-channel multipoint distribution service (wireless cable) ("MMDS") antenna greater than one meter (39 inches) in diameter; provided, however, such DBS or MMDS antenna being less than one meter in diameter may only be placed in the least conspicuous location on a roof where an acceptable quality signal can be received as long as such DBS or MMDS antenna is screened from view (for aesthetic reasons) from outside the Lot. Any other antenna structure, such as a television broadcast service ("TVBS") antenna, will be mounted in the attic of a residential structure. No solar collector panels may be placed anywhere in the Real Property. The installation and operation of satellite dishes and antennae will be in accordance with FCC regulations

**3.20 Machinery and Equipment.** No machinery or equipment of any kind shall be placed, operated or maintained upon, or adjacent to, any Lot except (i) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures, or other improvements; and (ii) that which Declarant, the City, County or any utility provider may require for the provision of services and the operation and maintenance of the Subdivision.

**3.21 Party Walls.** Except as hereinafter provided, the rights and duties of Owners with respect to Party Walls between Lots and tracts shall be as follows: (i) the Owners of contiguous Lots or tracts who have a Party Wall shall both equally have the right to use such wall or fence, provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner, (ii) in the event that any Party Wall is damaged or destroyed through the act of an Owner or any of his Tenants, Lessees, agents, guests, or members of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the Party Wall without cost to the Owner of the adjoining Lot (and any dispute over an Owner's liability for such damage shall be resolved as provided in Subsection (v) below, but any liability imposed on an Owner hereunder shall not prevent the Owner from seeking reimbursement and indemnity therefor from the persons causing such damage); (iii) in the event any Party Wall is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an Owner, his Tenants, lessees, agents, guests or family, it shall be the obligation of all Owners whose Lots adjoin such Party Wall to rebuild and repair and the

costs for such rebuilding and repair shall be apportioned among the Owners in accordance with the frontage of their Lots on the Party Wall; (iv) notwithstanding anything to the contrary herein contained, there shall be no modification of any Party Wall without the prior consent of all Owners of any interest therein, whether by way of easement or in fee.

**3.22 Perimeter Walls; Retaining Walls.** Retaining Walls have been constructed by the Declarant on some Lots and may not be altered or removed by any Lot Owner. The site Plan for Subdivision requires certain Perimeter Walls, which when completed may not be altered or removed by any Lot Owner. The Owner whose lot abuts any Perimeter Wall or Retaining Wall will maintain the structure of and cosmetically maintain the abutting portion of the Perimeter Wall(s) facing the Owner's Lot. The Association will maintain the remainder of any Perimeter Wall and the Retaining Walls.

Areas of the subdivision lying to the north of the Northern Retaining Wall and areas lying west of the Western Retaining Wall have been covered with weed barrier and gravel and no trees, plants or other vegetation shall be permitted thereon. For security purposes, access to these areas has been sealed off by Declarant and shall not be used for any purpose except repair of the Retaining Wall or removal of vegetation and debris that may eventually occupy the affected area.

**3.23 Statues.** Statues, lawn ornaments and yard decorations of any size or type must be placed so as not to be visible from the street. However, this restriction shall not apply to the display of exterior holiday decorations as permitted by Section 3.15.

**3.24 Temporary Structures.** No structure of a temporary nature, including without limiting the generality thereof, any trailer, tent, shack, garage, barn, storage shed, motor home, mobile home, or other outbuilding, and no prefabricated or relocated structure will be used on any Lot at any time as a residence, either temporarily or permanently. This restriction will not be interpreted to limit the right of the Declarant to use trailers, or outbuildings as sales offices, selection centers, construction offices or material storage facilities.

**3.25 Detached Buildings.** No detached accessory buildings, including but not limited to, detached garages (other than provided herein) and storage buildings, will be erected, placed or constructed upon any Lot without the prior written consent of the Committee. Every outbuilding, inclusive of such structures as a storage building or greenhouse, will be compatible with the dwelling to which it is appurtenant in terms of design and material composition. Exterior paint and roofing materials of such outbuildings shall be consistent with the existing paint and roofing materials of the dwelling. Any such building must comply with City codes and (if required) be permitted by the City.

#### **ARTICLE 4**

##### **Duties and Responsibilities of Owners**

**4.1 Owner's Responsibility to Repair and Insure.** Each Owner shall be responsible for the maintenance and repair of his Home, his Lot and any Improvements and fixtures, and his landscaping, in neat and attractive condition, including prompt rebuilding after any event causing damage or destruction. Each Owner shall keep such owner's Home insured against hazards included under standard policies for fire and extended coverage sufficient to cover the replacement cost of the home, and for personal liability, including personal injury and death and property damage, in amounts and under terms which are standard in the Albuquerque area.

**4.2 Joint Maintenance of Party Walls by Owners.**

(a) Each wall which is built as part of the original construction of the Subdivision and placed on the dividing line between Lots shall constitute a party wall. To the extent not inconsistent with the provisions of this Section or Section 3.21, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omission shall apply.

(b) The cost of reasonable repair, maintenance and replacement of a party wall shall be in accordance with Subsection 3.21 above, which is incorporated herein by this reference. The cost of reasonable repair, maintenance and replacement of any other common structure or joint utility shall be shared by the Owners who make use of the common structure or joint utility in proportion to such use.

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

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

(e) Any wall built by a Lot Owner that is placed solely on the Lot Owner's Lot shall be the sole responsibility of said Lot Owner.

**4.3 Observance of Declaration.** Each Owner shall comply with this Declaration and will cause Owner's family, agents, guest, contractors, employees and any person renting or leasing the Owner's dwelling to do likewise, and the Owner shall be responsible for any noncompliance by such persons.

## **ARTICLE 5**

### **Architectural Control Committee; Building Standards**

**5.1 Building Standards.** All structures permitted within the Subdivision shall conform to Sections III, IV, V, VI and VII of the Site Development Plan. The parapets and roofs and exteriors of all structures, including canales, metal vents, gutters, stove pipes, mechanical equipment, solar collectors, and the like, shall be painted with a non-reflective application and shall be earth colored, provided that Awhite@ or other colors may be used under a portal.

**5.2. Architectural Control Committee.** No Architectural Control Committee is established upon the filing of this Declaration. The written consent and approval of the Owners of fifty-one percent (51%) of the Lots, and, only so long as the Declarant owns any Lots within the Subdivision, the consent of the Declarant, may established an Architectural Control Committee for the purpose of administering the architectural requirements and building standards applicable to of the Subdivision. The Architectural Control Committee shall consist of three (3) persons and shall serve in accordance with the conditions established by the said Lot Owners. All decisions of the Committee shall be in writing and approved and signed by at least two-thirds of the Committee members, and a copy of each decision shall be provided to each member of the Committee and to the person who requested the decision (the "applicant"), and to any other Lot owner who requests a copy. Any decision which is not unanimous shall be made only after a telephonic or face-to-face meeting of all Committee members and the applicant. No member of the Architectural Control Committee shall be liable to any Owner or any other person for any damage, loss or prejudice suffered or claimed on account of:

(a) The approval of any plans, drawings or specifications, whether or not defective;

(b) The construction or performance of any work, whether or not made pursuant to approved plans, drawings or specifications.

An Amendment of this Declaration establishing the Committee shall be signed and acknowledged by at least fifty-one percent (51%) of the Lot Owners and Recorded in the real estate records of Bernalillo County, New Mexico, as set forth in Section 9.1. The Amendment shall set forth the names and addresses of the initial members of the Committee.

**5.3 Construction Application and Submittals.** If a Committee has been established, before any person shall commence building on any Lot within the Subdivision, the installation of, construction of, remodeling of, addition to, or alteration of any structure or improvement of whatsoever kind or nature; and before any person shall paint, repaint, texture or retexture or resurface any exterior walls, there shall be submitted to the Committee for its review an application in such form as required by the Committee establishing compliance with the provisions of the Site Development Plan. The Committee shall have the right and power to disapprove any plans, specifications and details, if the Committee finds that such items are not in accord with the provisions of the Site Development Plan, or if the design and color scheme submittal is not in harmony with the Subdivision or surrounding homes, or if the plans and specifications are incomplete.

## **ARTICLE 6 HOMEOWNERS ASSOCIATION**

### **6.1. Membership.**

(a) Every owner of any Lot or tract within the Subdivision shall be a Member of the Vista de la Luz Homeowners Association (the "Association"), a New Mexico non-profit corporation. Membership shall be appurtenant to and may not be separated from ownership of any Lot or tract within the Subdivision.

(b) The rights, duties, obligations and privileges of an owner of a Lot or tract within the Subdivision, as a member in the Association, shall be those set forth in, and shall be exercised and imposed, in accordance with the provisions of this Declaration, and the Articles of Incorporation and By-Laws of the Association.

**6.2. Voting Rights.** Every member shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot. Notwithstanding the foregoing, while Declarant or either of them own any Lot or tract within the Subdivision, Declarant shall have the sole right to appoint the members of the Board of directors of the Association.

**6.3. Organization.** The Association shall be organized as a non-profit corporation, charged with the duties and empowered with the rights set forth herein.

**6.4. Governance.** The Association's affairs shall be governed by this Declaration, and the Articles of Incorporation and By-Laws of the Association.

**6.5. Powers and Authority of the Association.** The Association shall have all of the powers set forth in its Articles of Incorporation, together with its general powers as a non-profit corporation and shall have the power and authority to do any and all things which are authorized, required or permitted under and by virtue of this Declaration and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any powers of the Association for the peace, health, comfort, safety and general welfare of the owners of Lots and tracts within the Subdivision. The Association shall act through its officers, directors and agents.

**6.6. Maintenance Duties.** The Association is specifically charged with the duty of maintaining all Common Areas and other areas within the Subdivision required to be maintained by the Association by the Plat and any private and common drainage improvements, including individual ponds within the Subdivision.

## **ARTICLE 7. FUNDS, ASSESSMENTS AND COLLECTIONS**

**7.1. Creation of the Lien and Personal Obligation of Assessments.** The Declarant hereby covenant; and each Owner of any Lot or tract within the Subdivision, by acceptance of a deed, and each real estate contract purchaser by execution of such real estate contract, is deemed to covenant and agree to pay to the Association:

- (a) Annual maintenance assessments or charges, delinquency assessments;
- (b) Special assessments for capital improvements and legal fees, such assessments to be established and collected as hereinafter provided; and
- (c) All other fees or other monies due to the Association from an owner.

The annual, special and delinquency assessments, together with interest, costs and reasonable attorneys fees shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys= fees, shall also be the personal obligation of the person or entitle who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors or assigns in title unless expressly assumed by them.

**7.2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the privacy, safety, and welfare of the residents of the Subdivision and the owners of Lots and tracts within the Subdivision and to maintain private streets, roadways, easements, trails, private and common drainage improvements and common fire protection improvements within the Subdivision.

**7.3. Payment of Annual Assessment.** The annual assessment shall be determined by the Board of Directors of the Association The Board of Directors may elect to have the annual assessment paid in annual, semi-annual, quarterly or monthly installments.

**7.4. Date of Commencement of Annual Assessments; Due Dates.** The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the filing of the Articles of Incorporation of the Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors of the Association shall fix the amount of the annual assessment against each Lot, at least 30 days in advance of the annual assessment. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors of the Association. The Associations shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specific Lot have been paid.

**7.5. Effect of Nonpayment of Assessments; Remedies of the Association.** Any assessment not paid within 30 days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum. The Board of Directors of the Association may do any or all of the following:

- (a) File a lien for any unpaid assessment by recording an affidavit of such fact in the office of the County Clerk of Bernalillo County, New Mexico;

- (b) Bring an action at law against the Owner personally obligated to pay the same; or
- (c) Foreclose the lien against the property.

In the event any of the foregoing actions are taken by the Association, the Owner shall be obligated to pay to the Association reasonable attorneys fees and necessary costs incurred by the Association in enforcing its rights and taking such action. No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his Lot.

**7.6. Subordination of the Lien to Mortgages.** The lien of the assessments provided herein shall be subordinate to the lien of any first mortgage granted by an Owner of a Lot. Sale or transfer of any Lot shall not effect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of a first mortgage, or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which become due prior to such sale of transfer. No such sale or transfer or foreclosure of first mortgage or proceeding in lieu thereof shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

**7.7. Right of Access.** The Association or its agents may enter upon any Lot when necessary and in connection with any maintenance or construction for which the Association is responsible. Such entry shall be made with as little inconvenience to the owners as practicable, and any damage caused thereby shall be repaired by the Association out of the common expense fund.

## **ARTICLE 8**

### **Limitation of Declaration on Declarant**

**8.1 Limitation of Declaration on Declarant.** Nothing in this Declaration shall be understood or construed to prohibit any of the following being done by Declarant or its agents, employees, and contractors, or (as to (b) and (c) below) by the builders of Homes in the Subdivision who have specific authorization from a Declarant:

- (a) Doing on the Real Property whatever is reasonably necessary or advisable in connection with the completion of the infrastructure and other development work; or
- (b) Erecting, constructing and maintaining on any part or parts of the Subdivision, such structures as may be reasonably necessary for the conduct of its business of completing the work and establishing the Subdivision, including, without limitation, sales offices, model units (which shall comply with the Design Guidelines), general business offices for its staff, employees and contractors, and construction-period storage and parking facilities for materials and equipment, and disposing of the Subdivision in parcels by sale, lease or otherwise; or
- (c) Maintaining such sign or signs on the Subdivision as may be necessary for its sale, lease, or disposition, or the sale, lease or disposition of any one or more Homes.

**8.2 Use of Subdivision Name.** The Declarant may use the name of the Subdivision and this Declaration in other subdivisions or projects, whether located adjacent to the Subdivision or not, provided such names have a distinctive number or other designation so that they are not identical with the names of the Subdivision.

**8.3 Declarant Has No Duty to Enforce.** The Declarant shall have no duty or obligation to enforce this Declaration.

**8.4 No Amendment or Repeal.** The provisions of this Article may not be amended or repealed without the consent of Declarant.

## **ARTICLE 9 Miscellaneous Provisions**

### **9.1 Amendment or Repeal; Duration.**

- (a) This Declaration may be amended or repealed by occurrence of both of the following:
  - (1) Except as provided in Section 5.2, the written consent and approval of the Owners of seventy-five percent (75%) of the Lots, and, only so long as either Declarant owns any Lots within the Subdivision, the consent of each such Declarant; and
  - (2) The recordation of a certificate signed and acknowledged by the specified percentage of the Owners (and if necessary by the Declarant[s]) setting forth, in full, the amendment or amendments so approved, including any portion or portions of this Declaration repealed, and certifying that such amendments or repealer have been approved as required hereby.
- (b) Declarant may amend, modify, or terminate this Declaration by a Recorded instrument of amendment or correction:
  - (1) At any time during which Declarant is the owner of at least one (1) Lot in the property within the Subdivision; and
  - (2) Where the only effect or such amendment is to correct manifest errors, omissions or inconsistencies.
- (c) This Declaration shall be effective upon the date of Recording hereof and, as amended from time to time, shall continue in full force and effect until December 31, 2027. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative written consent and approval to terminate this Declaration signed and Recorded by the Owners of two-thirds (2/3) of the Lots within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension.

### **9.2 Enforcement; Non-Waiver; No Forfeiture.**

- (a) Any Owner or Owners, and the Declarant(s), shall have the right to enforce any of the provisions now or hereafter imposed by this Declaration upon other Owners, or upon any property within the Subdivision.
- (b) Every material violation of all or part of any restriction, condition, or covenant of this Declaration is hereby declared to be and to constitute a nuisance and may be enjoined or abated, whether the relief sought is for negative or affirmation action, by an Owner or Owners, as provided in this Section.
- (c) Each remedy provided for in this Declaration or by applicable law is cumulative and not exclusive.

(d) The failure to enforce the provisions of any limitation, restriction, covenant, condition, obligation, lien or charge of this Declaration shall not constitute a waiver of any right to enforce subsequently any such provision or any other provision of this Declaration.

(e) No breach of any of the provisions of this Declaration shall cause any forfeiture of title or reversion or bestow any rights of re-entry whatsoever.

(f) Reasonable attorneys' fees and costs may be awarded in any action brought to enforce the provisions of this Declaration.

### **9.3 Construction, Compliance with Laws, Etc.**

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

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

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

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

(e) All titles used in this Declaration, including those of Articles and Sections, are intended solely for convenience of reference and the same shall not affect the content of such provisions.

### **9.4 Lot Splitting; Consolidation.**

(a) No Lot within the Subdivision shall be split, nor shall two or more lots within the Subdivision be consolidated into one Lot.

(b) Nothing contained in this Section shall apply to the splitting or consolidation of any Lots by Declarant, or to the replatting of adjoining Lots to adjust boundary lines.

**9.5 Obligations of Owners; Avoidance; Termination.** No owner, through the abandonment of the Owner's Lot or otherwise, may avoid the burdens or obligations imposed on such Owner by this Declaration.

**9.6 No Partition or Severance of Interests.** There shall be no partition or severance of any Lot from or within the Subdivision, and the Declarant, and Owners shall not seek to partition or sever any part of a Lot in the Subdivision, nor shall they have any right to maintain an action for judicial partition in connection with the Subdivision unless such right is expressly given by this Declaration. This provision shall not prevent the partition of any Lot or Lots held in joint ownership as long as no physical partition takes place and there is no severance from any incident of this Declaration.

**9.7 Notices; Documents; Delivery.** Any notice or other document permitted or required by this Declaration to be delivered may be delivered either personally or by mail. If delivery is made by mail, it

shall be deemed to have been delivered three (3) business days after a copy of the same has been deposited in the United States mail, postage prepaid, addressed as follows:

**If to an Owner;** at the address of any Home within the Subdivision owned by the Owner or at such other address given by such Owner to the other Owners, in writing.

**If to Declarant:** Monterey Land Group, LLC  
Attention: Tim McNaney  
5100 San Mateo N.E., Suite A-1  
Albuquerque, New Mexico 87109

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

**9.9 Change of Circumstances.** Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

## **ARTICLE 10**

### **Annexation of Additional Property**

**10.1 Annexation of Additional Property by Declarant.** Declarant, its successors and assigns, shall have the right to annex real property and subject said property to the general plan and scheme of this Declaration without the approval of the Owners of Lots other than the Declarant, provided that the improvements to be constructed thereon are substantially completed prior to annexation. Any improvements on property annexed to this Declaration shall be consistent in terms of quality of construction and appearance with the initial improvements.

**10.2 Annexation of Additional Property other than by Declarant.** Additional real property may be annexed to the Project and included upon approval of (a) all owners of such additional real property, and (b) the Owners of at least sixty-seven percent (67%) of the Lots subject to this Declaration.

**10.3 Rights and Obligations of Owners of Additional Property.** Upon the recordation of an "Annexation Amendment," all provisions included within this Declaration shall be applicable to the Real Property described in said Annexation Amendment in the same manner as if it were originally covered by this Declaration. Thereafter, the rights, powers, and responsibilities of the parties to this Declaration with respect to the additional property shall be the same as with respect to the property described herein, shall be the same as if the additional property were originally covered by this Declaration.

**10.4 De-annexation of Additional Property.** Declarant may de-annex all or a portion of the additional property annexed to the Project by recordation of an "Amended Annexation Amendment" provided that (i) Declarant is the Owner of all the Lots included within the Amended Annexation Amendment; (ii) the Amended Annexation Amendment is Recorded in the same manner as the original Annexation Amendment; and (iii) the Recorded Amended Annexation Amendment is submitted to and approved by the VA/FHA as applicable.

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

DECLARANT:

MONTEREY LAND GROUP, LLC  
a New Mexico limited liability company

By: Tim McNaney  
Name: Tim McNaney  
Title: Managing Member

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

This instrument was acknowledged before me on this 11<sup>th</sup> day of March, 2008 by Tim McNaney, Managing Member of Monterey Land Group, LLC, a New Mexico limited liability company.

Karl A. Smith  
Notary Public

My Commission Expires:

October 29, 2011





## **VISTA DE LA LUZ HOMEOWNERS' ASSOCIATION DELINQUENCY POLICY**

The following policy is in place to present the possible late fee penalties and legal actions that may arise for the late and nonpayment of Vista De La Luz Homeowners' Association annual assessments, special assessments, and penalty assessments in accordance with Article VII of the Covenants, Conditions, & Restrictions.

**At any time you may contact Associa Canyon Gate at (505) 342-2797 to set up a payment plan. If you do so and make timely payments in accordance with your plan, you will avoid additional late fee penalties and legal actions.**

- 1 Sixty (60) days delinquent** An **Intent to Lien Letter** is issued to the delinquent owner, the cost of which is \$50.00 and is charged back to the delinquent owner's account. One copy of this notice to be mailed standard postage and a second to be mailed certified.

The purpose of this letter is to notify the owner of their responsibility for payment of the debt without further penalization of lien filing.

- 2 Ninety (90) days delinquent** If the payment is not received within 90 days of the due date, the Association will file a **Notice of Lien** with the Bernalillo County Records. A copy of the Notice of Lien will be mailed to the delinquent owner. The Notice of Lien processing fee of \$175.00 will be charged to the delinquent owner's account. The Notice of Lien will not be released until the account is paid in full, including all Late Fee Penalties and Notice of Lien processing fee.
- 3 One hundred-twenty (120) days delinquent** If the account is not paid in full, the Association will issue a Final Demand Letter for payment, the cost of which is \$50.00 and is charged back to the delinquent owner's account.
- 4 One hundred-fifty (150) days delinquent** This final attempt to obtain the debt will allow the owner 30 days to contact Associa Canyon Gate and/or make payment in full, prior to turning the account over to a lawyer/attorney at one hundred-fifty (150) days delinquent.

The delinquent owner shall be obligated to pay the Association, including the assessment due, any late fee penalties, filing fees, and collection costs. No owner may waive or otherwise avoid the liability for assessments by abandonment of their property.