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**SUNDANCE MESA SUBDIVISION
SECOND AMENDED AND RESTATED
COMPREHENSIVE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS**

STATE OF NEW MEXICO }
COUNTY OF SANDOVAL } SS
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SUNDANCE MESA SUBDIVISION

SECOND AMENDED AND RESTATED COMPREHENSIVE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS AMENDMENT ("Declaration") is made on the date and year below by KGA DEVELOPMENT CORPORATION, a New Mexico business corporation (hereinafter referred to as the "Declarant"), and Lot Owners identified below, to the Sundance Mesa Subdivision Comprehensive Declaration of Covenants, Conditions and Restrictions ("Original Covenants") of record with the County of Sandoval, filed on November 14, 1994, in Vol. Misc. 321, at Folio 360-406, and to the Sundance Mesa Subdivision First Amendment to Comprehensive Declaration of Covenants, Conditions and Restrictions ("First Amended Covenants") of record with the County of Sandoval, filed on March 4, 1997, in Vol. 400, at Folio 21192-21206, for the real property located in Sandoval County, New Mexico, more specifically described in Exhibit A to this Declaration including the aerial and subsurface rights appurtenant thereto. This Declaration replaces the Original Covenants and the First Amended Covenants in their entirety but does not nullify the fact that the Original Covenants or the First Amended Covenants were effective from the original filing date of each until the filing of this Declaration, at which time this Declaration became the governing covenants, conditions and restrictions applicable to all Improvements not expressly approved prior to the filing of this Declaration by the Architectural Control Committee pursuant to the Original Covenants or the First Amended Covenants.

RECITALS

1. Declarant was the owner of that certain real property described in Section 1.19 hereof (the "Property") as of the date of the filing of the Original Covenants and continues to own Lots within the real property described in Section 1.19 hereof.

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.

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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. "Association" or "Homeowners Association" shall mean and refer to the Sundance Mesa Homeowners Association, Inc., a New Mexico non-profit corporation, which Declarant has caused to be incorporated.

Section 1.4. "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 tanks and lines, swimming pools, tennis courts, private access easements, open space easements, slope 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 1.5. "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 as the Declarant petitions the County of Sandoval to maintain the public roadways and the County accepts, together with such other property as the Association may, at any time or from time to time, acquire by purchase or otherwise, 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 1.6. "Declarant" shall mean and refer to KGA DEVELOPMENT CORPORATION or its assignee of the rights and/or obligations under this Declaration.

Section 1.7. "Declaration" shall mean the covenants, conditions, and restrictions herein set forth in this Declaration, as the same may be from time to time amended.

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Section 1.8. "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 1.9. "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 1.10. "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 1.11. "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 1.12. "Liberman/Grevey Grant of Easement" shall mean and refer to the Grant of Easement dated October 28, 1993 by and between Declarant and Douglas Clifton for Sunwest Bank of Albuquerque, as Trustee for Marguerite Liberman; Joseph Grevey and Simone Grevey, as Trustees; Jack Grevey and Joanne M. Grevey, as Trustees; and Ira L. Liberman and Frances S. Liberman, as Trustees, as modified by the Modification of Grant of Easement, dated September 30, 1996. The Grant of Easement is of record with the County of Sandoval, filed on December 17, 1993, in Vol. Misc. 302, at Folio 770-778, and the Modification is of record with the County of Sandoval, filed on November 14, 1996, in Vol. 400 at Folio 1799-1803.

Section 1.13. "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 1.14. "Member(s)" shall mean and refer to all those Owners who are members of the Association as provided in the Declaration.

Section 1.15. "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 1.16. "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.

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Section 1.17. "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 1.18. "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 1.19. "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 including the aerial and subsurface rights appurtenant thereto.

Section 1.20. "Sand and Gravel Covenant" shall mean and refer to that agreement entitled "Covenant and Easement Grant" entered into on January 13, 1993 between Declarant, M.T. Investment Company, and Mesa Properties Company, filed of record with the County of Sandoval on January 14, 1993, recorded in Vol. Misc. 286, at 94-108.

Section 1.21. "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 1.22. "Single-family Residential Unit(s)" shall mean the occupation or use of a dwelling unit 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 1.23. "Structure(s)" shall mean House Structure(s) or Other Structure(s).

Section 1.24. The "Subdivision" or "Sundance Mesa" shall mean all of Sundance Mesa Subdivision as set forth on the Subdivision Plat filed in real property records of the Sandoval County Clerk on July 7, 1994 in Volume 3, Folio 1151A, Document # 45271, as amended or replatted from time to time.

Section 1.25. "Subdivision Map" or "Subdivision Plat" or "Plat Map" or "Plat" or "Final Plat" shall mean the recorded map or plat of the Sundance Mesa Subdivision, as amended or replatted from time to time, covering any or all of the Property referred to in this Declaration.

Section 1.26. "Sundance Mesa Settlement Agreement" shall mean and refer to the February 9, 1994 agreement, addressing traffic and other matters, between Declarant, Tierra Madre Homeowners Association, Carol Parker, Phil Messuri, and the La Mesa

Homeowners Association, filed of record with the County of Sandoval on May 20, 1994, recorded in Vol. Misc. 311, at 725-760.

Section 1.27. "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 the circumstance of extreme elevation difference between lots, this does not mean structures shielded from the side in accordance with this Declaration have to be shielded from above.

Section 1.28. "Water Cooperative" shall mean and refer to the La Mesa Water Cooperative or other cooperative association of which an Owner is a member, hereafter established pursuant to applicable law, for the purpose of providing domestic water service to a Lot.

Section 1.29. "Western Mobile Access Agreement" shall mean and refer to the Access Agreement executed on November 5, 1993 by and between Declarant, M. T. Investment Company, and Western Mobile, Inc. filed of record with the County of Sandoval as Exhibit 2 to the Sundance Mesa Settlement Agreement on May 20, 1994, recorded in Vol. Misc. 311, at 755-57, together with Memorandum of Understanding between Declarant, Western Mobile, New Mexico, Inc., M. T. Investment Company, Lousar Investment Company, La Mesa Homeowners Association, and Tierra Madre Homeowners Association, an unrecorded document executed on February 22, 1995.

Section 1.30. "Westside Entrance Road" shall mean and refer to that portion of Camino Manzano that adjoins the west side of the Subdivision to the 1-25 frontage road.

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 1.19 hereof.

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ARTICLE III

LAND USE

Section 3.1. Single-family Residential Use. The Lot Owner shall not use any of the Property for other than Single-family Residential Use and is restricted to one Single-family Residential Unit per Lot.

Section 3.2. Replatting. 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 196 Lots in the Subdivision, or to revise the lot lines, subject to Section 3.3 herein. 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 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. No Owner (other than Declarant) shall subdivide or separate into smaller Lots or parcel any Lot. No Owner shall seek rezoning of any Lot. No Owner (other than Declarant) shall convey or transfer any portion of any Lot or any easement or any other interest (other than a security interest or a rental or lease) without the written consent of Declarant.

Declarant will not subdivide into a greater number of Lots those Lots in the Subdivision that are east of a line running from the common corner of Lots 72 and 80 on the northern end of the Subdivision and the common corner of Lots 14 and 26 of the southern end of the Subdivision (as set forth on the Subdivision Plat filed in real property records of the Sandoval County Clerk on July 7, 1994 in Volume 3, Folio 1151A, Document # 45271).

Section 3.4. Combining of Lots. An Owner of two (2) or more contiguous Lots may, with prior written approval of the ACC, 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.

Section 3.6. Donation of Lot 196 for use as Fire and/or Police Station. Notwithstanding the foregoing limitations on land use, Declarant has the right in its sole discretion to donate Lot 196 of the Subdivision for use as a fire and/or police station at such time as the appropriate governmental authority is prepared to commence construction. Each Lot Owner agrees to this use of Lot 196 and will not object to applications filed with the appropriate governmental entity for such use.

Section 3.7. Sand and Gravel Operations. Owners and the Association are bound by the Sand and Gravel Covenant. Among other things, the Sand and Gravel Covenant provides that through and including August 31, 2010, the sand and gravel operation that is adjacent to the Subdivision is a compatible use and does not unduly interfere with residential development in the Subdivision and that Owners cannot object or seek the curtailment, modification, or elimination of the sand and gravel operation until after August 31, 2010. By means of the Original Covenants, the Association and Owners also authorized Declarant to extend the Sand and Gravel Covenant through and including year 2015, and agreed to the extension of the lease for the sand and gravel operations through and including year 2015.

Pursuant to the authority granted to it in the Original Covenants, the Declarant has extended the obligations set forth in the Sand and Gravel Covenant, and therefore Owners and the Association are obligated to agree that the sand and gravel operation adjacent to the Subdivision is a compatible use and does not unduly interfere with residential development in the Subdivision and cannot object or seek the curtailment, modification, or elimination of the sand and gravel operation until after August 31, 2015. The Association and Owners have also agreed to the extension of the lease for the sand and gravel operation through and including year 2015.

ARTICLE IV

EASEMENTS

Section 4.1. Existing Easements. The Subdivision Plat will 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 the joinder 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 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, which such easement shall have 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 Cooperatives 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 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. The utility companies furnishing service shall have the right as necessary to remove trees situated within the utility easements shown on the Subdivision Plat and to trim overhanging trees and shrubs located on portions of the Property abutting such easements.

Section 4.4. Maintenance of Slopes. Each Owner covenants and agrees to the creation of an easement to maintain a cut or fill side slope on a Lot along any publicly dedicated right-of-way to insure the proper maintenance and drainage of roads in the Subdivision, provided that Owner is requested to do so in writing by the ACC prior to approval by the ACC of the Owner's Development Plan.

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 floodplain in any event.

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 the 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.

ARTICLE V

ROADS

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 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 Private Access and Public Utility Easements.

(a) General Maintenance and Repair. The thirty-foot private access and public utility easements ("Private Access Easements") shown on the Plat will not be paved by Declarant. Declarant will improve each Private Access Easement with a gravel driveway prior to the sale of those Lots through which the Private Access Easement runs. Responsibility for the repair and maintenance of the Private Access Easement does not rest with the Association or Declarant. Responsibility for the general repair and maintenance of the full length of the Private Access Easement rests with those Owners, who have Lots through which the Private Access Easement runs, who utilize the Private Access Easement for egress and ingress ("Responsible Lot Owners"). The cost generally of maintaining and repairing the 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 Private Access Easement. Repairs or maintenance shall be determined by the calling of a special meeting by any Responsible Lot Owner. A majority of the Responsible Lot Owners who have commenced construction must be present at such meeting to determine what repairs or maintenance are required.

(b) Utility Service Work and Repairs. With respect to utility service work and repairs, the cost of repairs to the 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 benefitted 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.

(c) 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 the Private Access Easement by all of the Lots Owners for those Lots through which the Private Access Easement runs, unless all of such Lot Owners have consented to the same and it 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 the Private Access Easement if such damage or injury occurs in connection with the use of the Private Access Easement for its intended purposes.

(d) Entrance onto Lot by Other Lot Owners. Each Lot Owner shall allow the Responsible Lot Owners, their agents and employees to temporarily, and with advance notice, enter upon that portion of the 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 driveway. There shall be no disturbance of trees or other ground cover during such entry.

(e) 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 the Private Access Easement, as required by this Declaration, the other 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.

(f) Attorneys' Fees and Costs. Should the Lot Owners ever become involved in litigation over the enforcement of any provision in this Section 5.2, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit.

(g) Indemnity. Each Responsible Lot Owner is bound to indemnify another Responsible Lot Owner, for the same 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 the Private Access Easement or pursuant to this Section 5.2.

(h) Additional Obligations of Lot Owners for Lots 1 through 6 of the Plat. In addition to the foregoing obligations, Lot Owners of Lots 1 through 6 of the Plat ("Sundance Mesa Subdivision Lots 1 through 6") have specific obligations to Lots 8-A and 8-B ("La Mesa Subdivision Lots 8-A and 8-B"), which lots are shown and designated on the Plat of

Lots 7-A, 7-B, 8-A, and 8-B, Block 2, La Mesa Subdivision in Sections 25 and 26, T13N, R4E, NMPA, filed on December 13, 1991 in Vol. 3, Folio 947-B, in the records of the Sandoval County Clerk, New Mexico. Lot Owners of Sundance Mesa Subdivision Lots 1 through 6 will share the expense on a pro rata basis with the owners of La Mesa Subdivision Lots 8-A and 8-B of repairing and maintaining the Private Access Easement that runs through Sundance Mesa Subdivision Lots 1 through 6 and La Mesa Subdivision Lots 8-A and 8-B.

For the purposes of this Section 5.2, Lot Owners of Sundance Mesa Subdivision Lots 1 through 6 shall have the same responsibilities set forth in this Section to the owners of La Mesa Subdivision Lots 8-A and 8-B as if La Mesa Subdivision Lots 8-A and 8-B were within Sundance Mesa Subdivision. The responsibilities of owners of La Mesa Subdivision Lots 8-A and 8-B regarding the Private Access Easement are set forth in the Supplemental Declaration of Covenants and Restrictions for Private Access and Public Utility Easement dated December 18, 1991 filed of record with the County of Sandoval, filed on December 27, 1991, in Vol. Misc. 268, at Folio 931-36 and the Supplement to Supplemental Declaration of Covenants and Restrictions for Private Access and Public Utility Easement dated February 24, 1992, filed of record with the County of Sandoval on March 9, 1992, in Vol. Misc. 271, at Folio 872-75.

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

Section 5.3. Subsequent Dedications. Declarant 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 as the Declarant petitions the County of Sandoval to maintain the same and the County accepts.

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. County Maintenance. Declarant shall have the right to petition the County to maintain the roadways 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 5.5 Joint Maintenance With Other Subdivisions. The Association shall share on a pro-rata basis a reasonable amount to fund a security patrol to control traffic, improve safety and reduce speeding on Tierra Madre Road, Camino Barranca and Camino

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Manzano. The term pro-rata means and refers to dividing the costs based on the number of constructed single-family dwelling units in each of the Tierra Madre, La Mesa, and Sundance Mesa Subdivisions.

Section 5.6. Westside Entrance Road. The County of Sandoval has assumed the maintenance and repair obligation with respect to the Westside Entrance Road. However, the Association shall enter into an agreement with the La Mesa Homeowners Association to share fifty/fifty (50/50) the obligation under the Western Mobile Access Agreement and the Liberman/Grevey Grant of Easement to maintain fencing and landscaping around the Westside Entrance Road as set forth in the Western Mobile Access Agreement and the Liberman/Grevey Grant of Easement.

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.

(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.

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Section 6.3. Terrain Management. Construction of residences and installation of accessory buildings, sewage disposal systems, and driveways shall be located in areas where the average natural ground slope is less than 15%. 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 floodplain in any event. **The Development Plan shall propose measures to control and mitigate the runoff within the Subdivision caused by any proposed Structure or Improvement.** Based on the Lot, the driveway, the soil, and Improvements or Structures proposed, the ACC and the Lot Owner can agree on the use of 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.

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; provided, however, that the following requirements shall not be the sole basis for consideration by the ACC (see Section 8.15 of this Declaration). Once approved, no Structure or Improvement may vary from the Development Plan without further approval of the ACC.

(a) No Build/Limited Build Area: 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 floodplain in any event. With respect to the buffer zone which is designated on the Subdivision Plat as a No Build/Limited Build Area, the following limitations apply: the natural terrain/landscape from the outside boundary of the Subdivision (where the No Build/Limited Build Area starts) to 25' within the Subdivision ("no-build area") shall be preserved and nothing from the outside boundary of the Subdivision to 25' within the Subdivision shall be placed in such area other than boundary fences (not walls). In the balance ("limited-build area") of the area of the No-Build/Limited Build Area, no residential or living (permanent or temporary) Structures shall be constructed or placed in such area at anytime, nor swimming pools or other recreational structures, though garages, corrals, barns, landscaping, tool or equipment sheds, walls, and fences shall be permitted within the limited-build area.

(b) Setbacks: The following setbacks shall apply unless approved 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.

(c) Minimum Floor Areas: All Single-family Residential Units shall have a floor area of not less than one thousand eight hundred (1,800) square feet, exclusive of

portals, porches (open and closed), patios, garages, carports, balconies or decks.

(d) Subdivision Design and Architectural Style: All Structures and Improvements shall be constructed in **Southwestern/ New Mexico Pueblo, and New Mexico territorial building styles, utilizing traditional New Mexico materials, including adobe and/or stucco in natural earth-tones (browns) or other colors approved in writing by the ACC.** Flat roofs are required. Hereafter, these elements shall be referred to as the "Subdivision Design and Architectural Style."

(e) Height Limitations: The ACC shall have the right to impose limitations on a Lot by Lot basis on the height of any Structure or improvement 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 will not be possible in all cases and is only a guideline). Two story residences are discouraged by the ACC except in cases where the residence would step down a slope.

(f) Exterior Color Schemes and Materials: The ACC shall have the right to impose limitations on the exterior color and building materials to be used in all Structures consistent with Subdivision Design and Architectural Style. The acceptable exterior colors are earthtones and will be approved on a case by case basis. 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.

(g) 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. The current restrictions are as follows:

TOTAL DESIGN FLOW (gallons per day)	MINIMUM LOT SIZE REQUIRED (acres)
Less than 375	0.75
375	0.75
450	0.90
600	1.20
750	1.50
1125	2.25
1500	3.0
1875	3.75
2000	4.00

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Because of this limitation, the number of occupants per lot will be 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. Owner should review the current New Mexico Environment Department regulations and guidelines for specifics regarding the aforementioned restrictions.

(h) Roofing Materials: The ACC shall have the right to impose limitations on roofing materials to be used in any Structure.

(i) Driveway: 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.

(j) 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 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.

(k) 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.

(l) Exterior Lighting: The ACC shall have the right to approve or disapprove the location, number, size and design of all proposed exterior lighting. No street lamp, security lights or neon arc lamps will be permitted. All exterior lighting must be shielded so that bulbs are not visible. Existing exterior lighting with non-shielded exposed bulbs shall not be allowed with bulb wattages over 40 watts. 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.

Section 6.5. Trees, Shrubs and Landscaping. Landscaping and site-grading plan is a mandatory element of each Development Plan. 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 less 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 principal garage or carport for not more than three vehicles and either a studio or workshop. Any proposed out-buildings must be included in the Development Plan and approved in writing by the ACC. Storage sheds are not allowed, unless concealed by a court yard 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 within the Subdivision or the appearance of any other Improvements located thereon from its natural or improved state existing on the date such Property 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 approved in writing by the ACC.

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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 Declarant. Declarant has the right in its sole discretion, without the consent or approval of Owners of Lots, to give itself or others through its property (or through the property of any of its principals or entities owned by any of its principals) to any Lot, to the 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. Water Conservation/Fire Protection. Instruments to facilitate water conservation and fire protection are strongly encouraged. The ACC reserves the right to require the installation of residential sprinklers, low flow toilets and similar devices in all new construction.

Section 6.16. Domestic Water Use. In order to maintain a viable water system for the Subdivision, each Lot Owner shall become a member of the La Mesa Water Cooperative or its successor and abide by the La Mesa Water Cooperative's by-laws and subsequent amendments thereto. Because of the restrictions on land use in this Declaration, 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, or (4) for fire protection.

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 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 will 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

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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 pinon or juniper tree on any Lot except pursuant to the Development Plan for said Lot approved in writing by the ACC. Each Owner, on his Lot, shall keep all shrubs, trees, grass and planting of every kind 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 therefrom, 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

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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(j). 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 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.

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Section 7.16. Service Yards and Storage Yards. Any service yard, storage yard, wood pile 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 are prohibited 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) regular members and three (3) alternate members. The following persons are the current members :

<u>Position</u>	<u>Name</u>	<u>Type</u>	<u>Address</u>
Office No. 1	Steven M. Gudelj	Regular	1724 Notre Dame Albuquerque, NM 87106
Office No. 2	Thomas J. Ashe	Regular	46 Sandia Lane Placitas, NM 87043
Office No. 3	Wendy A. Gudelj	Regular	1724 Notre Dame Albuquerque, NM 87106

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 provide herein, a vote or written consent of a majority of the regular 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 regular 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 regular member for the duration of such absence or disability. The alternate member so designated shall be entitled to vote in place of the regular member

for whom the alternate member so substitutes. Notwithstanding the foregoing provisions, the ACC is not authorized to act unless at least one (1) regular member is present or, in the event action is taken without a meeting, unless at least one (1) regular 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 regular members and alternate members of the ACC at any time, with or without cause, shall be, and hereby is, vested solely in Declarant. At such time as Declarant owns less than fifteen percent (15%) of the Lots (in number) or at such time that Declarant records a waiver of the right herein retained, whichever event occurs first, then the Association shall appoint all regular and alternate member of the ACC in accordance with the Bylaws of the Association.

Section 8.5. Resignations. Any regular 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 Declarant. A vacancy shall be deemed to exist in cases of death, resignation or removal of any regular 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 a majority of the regular members of the ACC, to the Homeowners 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 an architectural fee in an amount to be determined by the ACC, currently set at \$250.00 for each proposed Development Plan. The ACC may adjust this architectural fee annually at the ACC's sole discretion based on the costs associated with the running of the ACC. Such architectural fee is a filing requirement of the Development Plan and such Plan will not be considered unless and until such costs are paid. The ACC shall also require a building compliance deposit, currently set at \$2,000, to assure compliance of the Improvements with this Declaration. 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 portions 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 architectural fee or building compliance deposit amount for the year, then the fee applicable to the previous year shall apply until changed by the ACC.

(c) Additional Improvements After a Deposit is Returned: Any 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 regular 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) regular 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 material or 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 Committee has approved such materials as submitted; provided no

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House Structure or Other Structure or other Improvement shall be erected which violates this Declaration. If the Committee requests additional or amended materials or an amended Development Plan during the initial thirty (30) day period, or approves on condition that certain additional or amended materials be submitted, such period shall automatically be extended to fifteen (15) days following the date upon which such additional or amended materials are required to be delivered to and received by and receipted for by the Committee. 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 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 rule 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 Improvements on the Lot, (d) the visual impact of the proposed Improvements from the standpoint of style and consistency with other 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

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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. Liability of the Declarant.

(a) Generally. Neither the Declarant nor the ACC or any member thereof nor the Association or any 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; (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 the La Mesa 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 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 or plans or liquid waste disposal systems. Neither does Declarant or the ACC or its members or the Association or its members make any warranty or representation regarding any specific house design 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. The Lot Owner bears any and all risk from not consulting a geotechnical engineer regarding the siting and construction needs for buildings, roads, and installation of septic systems on the Lot.

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 any requirement of Subsections 6.4(b), (c), (d), (f), (k), (l), and 6.5 through 6.11 of this Declaration or any requirement of the ACC rules applicable to any Improvement or

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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. Certificate of Compliance of a Structure or an Improvement. Upon completion of a House Structure or Other Structure or other Improvement approved by the ACC and upon written request by the Owner of the Lot, the ACC shall issue a Certificate of Compliance in a form suitable for recordation. The Certificate shall identify the Lot and the Structure or Improvement, the use or uses to be conducted thereon and the plans and specifications on file with the ACC pursuant to which the Structure was erected or Improvement was made and shall specify that the Structure or Improvement complies with the approved plans and specifications. The Certificate shall not be construed to certify the acceptability, sufficiency or approval by the ACC of the actual construction of the Structure or Improvement or of the workmanship or materials thereof. The Owner is hereby notified and shall again be so notified upon issuance of the Certificate, that the Certificate in no way warrants, except as set forth above, the sufficiency, acceptability or approval by the ACC of the construction, workmanship, materials or equipment of the Structure or Improvement. Preparation and recordation of such a Certificate shall be at the expense of the Owner of the improved Lot.

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. The ACC may (1) impose sanctions by means of a fine for violation of this Declaration or the approved Development Plan, and the ACC may impose a 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, after notice and a hearing in accordance with the procedures set forth in Section 10.10, and/or may take any other enforcement action set forth in Section 10.10. 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.

ARTICLE IX

SUNDANCE MESA HOMEOWNERS ASSOCIATION

Section 9.1. The Association. Declarant has caused 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.

Section 9.3. Voting. Subject to the provisions of Section 9.5, all 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

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appoint, in accordance with 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 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 regular 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.

Section 9.8. Merger with La Mesa Homeowners Association. The Association may in its sole discretion agree to merge with the La Mesa Homeowners Association as one non-profit corporation, which will assume the rights and obligations of the Association and of the La Mesa Homeowners Association. The Association's resolution to merge with La Mesa Homeowners Association must be approved by not less than 51% of the Lot Owners in the Subdivision.

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 and related Improvements;
- (3) the obligation to maintain fencing and landscaping around the Westside Entrance Road as set forth in the Western Mobile Access Agreement and the Liberman/Grevey Grant of Easement;

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(4) the installation, construction, erection, and relocation of Improvements related to the enhancement and beautification of the Common Properties and Facilities in the Subdivision, including facilities in La Mesa Subdivision if said facilities are made available to Members of the Sundance Mesa Homeowners Association, on an equal basis, following a merger of the two homeowners associations;

(5) the 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, 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 rateable 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.

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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, and 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, 1995, 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 maintenance charge or assessment on an unimproved Lot.

Section 10.4. Repayment for Declarant's Operation of Common Facilities. In the event Declarant shall operate any Common Facility in the Subdivision, or such Common Facility shall be operated by others on behalf of Declarant under agreement authorized hereby, and the actual proceeds realized by Declarant from such operation shall be less than the actual costs incurred by Declarant in connection with operating and maintaining any such Common Facility, Declarant shall be entitled to be reimbursed from the Maintenance Fund for all costs actually incurred by Declarant in maintaining and operating such Common Facility in excess of the actual proceeds realized by Declarant from such operation, 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 on which title to such Common Properties and Facilities is conveyed to the Association by Declarant, which have been actually paid by Declarant.

Section 10.5. Repayment for Westside Entrance Road. The Association shall pay Declarant for all amounts Declarant has expended in constructing any portion of the Westside Entrance Road, including fencing. The Westside Entrance Road, including fencing, was built at a total cost of \$385,712.86. The County of Sandoval expended \$160,000.00 in constructing the Westside Entrance Road, and Declarant contributed \$225,712.86 to its construction. At the time the Association receives the annual maintenance charge and assessment from a Lot Owner, due and payable on the first day of January of each year, the Association shall immediately remit to Declarant One Hundred Dollars (\$100.00) of the annual assessment set forth above in Section 10.2, and Seventy-Five Dollars and No/100 (\$75.00) of the annual assessment set forth above in Section 10.3 until Declarant receives the total amount of \$225,712.86 that Declarant spent on the Westside Entrance Road. Accounting will be made annually by the Declarant at the annual Homeowners' Association meeting until Declarant receives the total amount.

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Amounts, if any, Declarant spends on maintenance of the Westside Entrance Road or landscaping surrounding the road or fencing or maintenance of the fencing in connection with the Westside Entrance Road will be reimbursed to Declarant by the Homeowner Association as an expenditure in connection with operation of a Common Facility. This does not provide the Homeowners Association of any Lot Owner any claim or action against Declarant with respect to any failure to provide maintenance regarding the Westside Entrance, or fencing, or landscaping. Instead, the County of Sandoval has accepted maintenance responsibility, and the Homeowner Association is responsible for fencing and landscaping in connection with the road in accordance with the Western Mobile Access Agreement and the Liberman/Grevey Grant of Easement.

As security for the payment of the amounts due Declarant under this Section, the Association assigns, pledges, and grants to Declarant all of the Association's right, title and interest in and to the assessments hereafter payable to the Association by the Owners of Lots within the Subdivision, together with the issues, profits and proceeds thereof. If there is a default by the Association in the payment owed to Declarant, Declarant shall have the right to collect assessments when and as they become due and to enforce payment thereof in accordance with the powers of the Association as more fully set forth in its Article of Incorporation, Bylaws and the Declarations and Covenants of the Subdivision, and to exercise all of the rights and powers of the Association thereunder. In the event of a default, Declarant may invoke its rights under this paragraph by making written demand upon the Association and giving ten (10) days written notice of Declarant's intention to exercise Declarant's rights pursuant to this paragraph.

Section 10.6. 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 an Owner 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 10.7. 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 10.8. Liens to Secure Assessment. The regular maintenance charges or 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 and any assessment by the ACC 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 10.9. Effect of Non-Payment of Assessment. If any charge or assessment 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

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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 10.10. 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.

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(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 following the lease 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 land 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, executed and acknowledged by Declarant and the Owners of not less than 66% of the Lots, except that neither Declarant or any Owner shall ever be allowed to (1) subdivide into a greater number of Lots those Lots in the Subdivision that are east of a line running from the common corner of Lots 72 and 80 on the northern end of the Subdivision and the common corner of Lots 14 and 26 of the southern end of the Subdivision (as set forth on the Subdivision Plat filed in real property records of the Sandoval County Clerk on July 7, 1994 in Volume 3, Folio 1151A, Document # 45271), or

(2) develop on the aforementioned Lots townhouses or any other multi-family structures that result in more than one Single-family Residential Unit per Lot.

Section 11.6. Modification or Repeal During Extension Terms. Any of the provisions of this Declaration may be amended or repealed during any extension term (ten [10] years) by a recorded written instrument executed and acknowledged by Declarant and the Owners of not less than 51% of the Lots, except that neither Declarant or any Owner shall ever be allowed to (1) subdivide into a greater number of Lots those Lots in the Subdivision that are east of a line running from the common corner of Lots 72 and 80 on the northern end of the Subdivision and the common corner of Lots 14 and 26 of the southern end of the Subdivision (as set forth on the Subdivision Plat filed in real property records of the Sandoval County Clerk on July 7, 1994 in Volume 3, Folio 1151A, Document # 45271), or (2) develop on the aforementioned Lots townhouses or any other multi-family structures that result in more than one Single-family Residential Unit per Lot.

Section 11.7. 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 11.8. 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 11.9. 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 11.10. 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 11.11. 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.

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Section 11.12. 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 11.13. 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, being Declarant and the Owners of not less than 66% of the Lots agree, have set their hand and seal as set forth below.

We, the undersigned, hereby agree to SECOND AMENDED AND RESTATED COMPREHENSIVE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS.

KGA DEVELOPMENT CORPORATION

By: [Signature]
Steven M. Gudelj, President

KGA LLC

By: [Signature]
Steven M. Gudelj, Manager

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

The foregoing instrument was acknowledged before me this 6th day of December 2001, by Steven M. Gudelj, President of KGA Development Corporation on behalf of said corporation, and by Steven M. Gudelj, Manager of KGA, LLC on behalf of said limited liability company.

[Signature]
Notary Public

My Commission Expires:
2-13-05

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