



HIGH DESERT
New Construction Committee
10555 Montgomery NE
Building 1 Suite 100
Albuquerque, NM 87111
(505) 314-5862

AMAFCA ENCROACHMENT AGREEMENT

Date

Lot ___ Village _____ Street Address _____

Homeowner information:

Name: _____

Mailing Address: _____

Telephone Numbers: _____

Email Address: _____

Builder:

Company Name: _____

Address: _____

Contact Person: _____

Telephone Numbers: _____

Email Address: _____

ENCROACHMENT AGREEMENT AGREEMENT

HIGH DESERT RESIDENTIAL OWNER'S ASSOCIATION, a New Mexico nonprofit corporation, (the Association") and

_____ ("Owner agree:

1. Recitals. Owner owns real property (the "Property") described on the attached Exhibit A. The Association is the grantee of and owns the easement over the Property described on the attached Exhibit B (the "Easement "). The Easement also benefits [here insert either the City of Albuquerque or the Albuquerque Metropolitan Arroyo Flood Control Authority] (the ¹¹ Other Grantee. Owner wants to encroach upon the Easement by either constructing an improvement on the Easement or by maintaining an improvement already encroached upon the Easement (the " Encroachment ¹¹) as follows: {Here describe encroachment onto Easement or attach a depiction as Exhibit C]. The Association will agree to the encroachment of the Encroachment if Owner complies with the terms of this Agreement.

2 . Permission; No Representation. Owners may construct and maintain, at the expense of Owner, the Encroachment. The Association makes no representation or warranty regarding permission for the Encroachment by or from the Other Grantee or if such permission is required. The permission

of the Association is subject to the obtaining of permission from the Other Grantee by Owners, if such permission is required, and if such permission is required, the permission of the Association is subject to the terms of the permission of the Other Grantee.

3 . Responsibility. Owner will be responsible for the construction and maintenance of the Encroachment. The Encroachment will conform to all laws and ordinances and administrative regulations applicable to the Encroachment. The Encroachment will not constitute a hazard to the health or safety of the general public and will not interfere with the Easement.

4 . Indemnification and Hold Harmless. Owner Will defend, indemnify, and hold harmless, the Association and Its officers, employees, directors, and successors and assigns, from and against any and all claims, actions, suits or proceedings of any kind brought for or on account of any matter arising from the encroachment of the Encroachment by Owner or the failure of Owner to maintain, modify, or remove the Encroachment as provided in this Agreement. The Association may designate a lawyer of its choice to represent the Association. Owner will reimburse the Association for all legal expenses, if any, which may be incurred for the enforcement of this Agreement.

5 . Removal. As and when deemed necessary by the Association, Owner will remove, modify, maintain, or cause the removal, modification or maintenance of the Encroachment to be

done and cause the Easement to be returned to the original condition promptly after receipt of written notice from the Association. Notice will be considered to have been received within six days after the notice is mailed if no actual evidence of receipt exists. If Owner fails to comply with the notice after the receipt of the notice, the Association may complete the work, at the expense of Owner, and enter upon the Property as may be necessary to do so. The Association will assess the charge for the work and any other expenses and damages arising from the work to Owner and may file a lien for the work against the Property.

6. Liability. The Association will not be liable for any damages to the Property or the Encroachment that may result from the maintenance, removal or any modification of the Encroachment. The Association will not be obligated in any manner for any of the costs of the removal or the repair of the Encroachment if the Encroachment is damaged or destroyed.

7. Notice. The written notice as provided in this Agreement will be accomplished by mailing same to the latest address of Owner on the books of the Association.

8. Covenant Running with the Property; Governing Law. The obligation of Owner as provided in this Agreement will be binding upon Owner and the heirs, devisees, personal representative, successors, and assigns, and the Property of

Owner and will run with the Property until released by the Association. This Agreement will be governed by the laws of New Mexico and may not be amended except by a writing signed by all parties.

Dated: _____ 20

THE ASSOCIATION:

HIGH DESERT RESIDENTIAL OWNERS ASSOCIATION, INC., a New Mexico nonprofit corporation

By _____
Name _____
Title _____

OWNER:

[NAME]

OR:

[ENTITY NAME]

By _____
Name _____
Title _____

STATE OF NEW MEXICO

) SS.

COUNTY OF BERNALILLO

This instrument was acknowledged before me on _____, 20 by _____ of High

Desert Residential Owners Association, a New Mexico nonprofit corporation.

Notary Public

My Commission Expires:

STATE OF NEW MEXICO

) ss.

COUNTY OF BERNALILLO

This instrument was acknowledged before me on

_____, _____, _____, _____

_____, a _____.

Notary Public

My Commission Expires:

STATE OF NEW MEXICO

) SS.

COUNTY OF BERNALILLO

This instrument was acknowledged before me on

_____, _____ 20____ by _____

Notary Public

My Commission Expires:

H : HIGHDES\RESOWN\HMM\LEGALDOC\encroachment agreement form. w-pd

EXHIBIT A

[legal description of property where encroachment exists]

EXHIBIT

B

[legal description of easement that is encroached upon]

EXHIBIT

C

[insert depiction of encroachment, if available]