

**AMENDED AND RESTATED**  
**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**  
**FOR**  
**HIGH DESERT RESIDENTIAL PROPERTIES**

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**AMENDED AND RESTATED**  
**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**  
**FOR**  
**HIGH DESERT RESIDENTIAL PROPERTIES**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (“Declaration”) is made this 15<sup>th</sup> day of August 2011 by High Desert Residential Owners Association, Inc. (the “Association”).

**BACKGROUND STATEMENT**

High Desert Investment Corporation, a New Mexico corporation (“Declarant”) recorded the Declaration of Covenants, Conditions and Restrictions for High Desert Residential Properties on December 22, 1993, as Document 93145417 in Book 93-36, Pages 1-87, in the Office of the County Clerk of Bernalillo County, New Mexico (the “Original Declaration”). The Original Declaration was amended by the amendments whose recording information is set forth in Exhibit “A”. Furthermore, additional property was made subject to the Original Declaration, as amended, by the recording of Supplemental Declarations, whose recording information is set forth in Exhibit “B”. The legal description for the property subject to the Declaration is set forth in the Original Declaration and the Supplemental Declarations, and is attached as Exhibit “C”. All exhibits are incorporated by reference.

The Declarant assigned all of its rights under the Declaration to the Association pursuant to the Full Assignment of Rights under Residential Declaration, recorded as Document 2011015562, on February 14, 2011, in the Office of the County Clerk of Bernalillo County, New Mexico (the “Assignment”).

This Declaration imposes upon High Desert (as defined in Article I) mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of High Desert, and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of High Desert.

The Association wishes to amend and restate the Original Declaration, as amended, in its entirety, as set forth herein, and hereby reaffirms that all of the property described in Exhibit “C” and any additional property subjected to this Declaration by Supplemental Declaration (as defined in Article I) shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of and which shall run with the real property subjected to this Declaration. This Declaration shall be binding on and shall inure to the benefit of all parties having any right, title, or interest in High Desert or any part thereof, their heirs, successors, successors-in-title, and assigns.

Article I  
**DEFINITIONS**

The terms used in this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1. “AMAFCA”: the Albuquerque Metropolitan Arroyo Flood Control Authority, its successors and assigns.

1.2. “Area of Common Responsibility”: the Common Area, together with those areas, if any, which by the terms of this Declaration, any Supplemental Declaration, or any other applicable covenants or easements relating to High Desert or the Association, or by contract or agreement, become the responsibility of the Association to maintain.

1.3. “Articles of Incorporation” or “Articles”: the Articles of Incorporation of High Desert Residential Owners Association, Inc., as filed with the State Corporation Commission for the State of New Mexico.

1.4. “Association”: High Desert Residential Owners Association, Inc., a New Mexico nonprofit corporation, its successors and assigns.

1.5. “Base Assessment”: assessments levied on all Units subject to assessment under Section 10.7 to fund Common Expenses for the general benefit of all Units, as more particularly described in Sections 10.1 and 10.2.

1.6. “Board of Directors” or “Board”: the body responsible for administration of the Association, selected as provided in the By-Laws and generally serving the same role as the board of directors under New Mexico Corporate Law.

1.7. “Builder”: any Person which purchases one or more Units for the purpose of constructing improvements for later sale to consumers or parcels of land within High Desert for further subdivision, development, and/or resale in the ordinary course of such Person’s business.

1.8. “Business” and “Trade”: shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider’s family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

1.9. “By-Laws”: the By-Laws of High Desert Residential Owners Association, Inc., incorporated by reference, as they may be amended.

1.10. “Common Area”: all real and personal property which the Association now or hereafter owns, leases or otherwise holds possessory or use rights in (including easements) for the common use and enjoyment of the Owners. The term shall include the Exclusive Common Area, as defined below.

1.11. “Common Expenses”: the actual and estimated expenses incurred or anticipated to be incurred by the Association for the general benefit of all Units, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to this Declaration, the By-Laws, and the Articles of Incorporation.

1.12. “Community-Wide Standard”: the standard of conduct, maintenance, or other activity generally prevailing throughout High Desert, including, but not limited to, all standards set forth in the Declaration, Rules, and Guidelines for Sustainability, and as further determined by the Board.

1.13. “Declaration”: This Amended and Restated Declaration of Covenants, Conditions and Restrictions for High Desert Residential Properties, as amended from time to time.

1.14. “Exclusive Common Area”: a portion of the Common Area intended for the exclusive use or primary benefit of one or more, but less than all, Villages, as more particularly described in Article II.

1.15. “Guidelines for Sustainability”: the architectural and design guidelines and procedures adopted by the New Construction Committee and approved by the Board pursuant to Article XI and applicable to all Units within High Desert.

1.16. “High Desert”: the real property described in Exhibit “C,” together with such additional property as is subjected to this Declaration in accordance with Article IX.

1.17. “Master Plan”: the land use plan for the development of the High Desert community dated May 3, 1993, prepared by the Design Workshop, Inc., as it may be amended, which plan includes the property described on Exhibit “C.”

1.18. “Member”: a Person entitled to membership in the Association, as provided in Section 2.1 of By-Laws.

1.19. “Mortgage”: a mortgage, a deed of trust, a deed to secure debt, or any other form of security deed.

1.20. “Mortgagee”: a beneficiary or holder of a Mortgage.

1.21. “Mortgagor”: any Person who gives a Mortgage.

1.22. “Owner”: one or more Persons who hold the record title to any Unit, but excluding any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, then, upon recording of such contract, the purchaser (rather than the fee owner) will be considered the Owner, if the contract specifically so provides.

1.23. “Period of Declarant Control”: the period of time that the Declarant controlled the Association. The Period of Declarant Control has ended.



1.24. “Person”: a natural person, a corporation, a partnership, a trustee, or any other legal entity.

1.25. “Rules”: The rules and policies adopted by the Board pursuant to Section 4.3.

1.26. “Special Assessment”: assessments levied in accordance with Section 10.5.

1.27. “Specific Assessment”: assessments levied in accordance with Section 10.6.

1.28. “Supplemental Declaration”: an amendment or supplement to this Declaration filed pursuant to Article IX which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein.

1.29. “Unit”: a portion of High Desert, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. The term shall include, by way of illustration but not limitation, townhouse units, cluster homes, patio or zero lot line homes, and single-family detached houses on separately platted lots, as well as vacant land intended for development as such, but not include Common Areas or property dedicated to the public. In the case of a structure containing multiple dwellings, each dwelling shall be deemed to be a separate Unit.

In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to contain the number of Units designated for residential use for such parcel on the Master Plan or the site plan approved by Declarant, whichever is more recent, until such time as a subdivision plat is filed of record on all or a portion of the parcel. Thereafter, the portion encompassed by such plat shall constitute a separate Unit or Units as determined above and the number of Units on the remaining land, if any, shall continue to be determined in accordance with this paragraph.

1.30. “Village”: two or more Units which share interests other than those common to all Units, as more particularly described in Section 3.5. By way of illustration and not limitation, a townhome development, cluster home development, or single-family detached housing development might each be designated as separate Villages, or a Village may be comprised of more than one housing type with other features in common. In addition, each parcel of land intended for development as any of the above shall constitute a Village, subject to division into more than one Village upon development.

1.31. “Village Assessments”: assessments levied against the Units in a particular Village or Villages to fund Village Expenses, as described in Sections 10.1 and 10.3.

1.32. “Village Expenses”: the actual and estimated expenses incurred or anticipated to be incurred by the Association for the benefit of the Owners and occupants of Units within a

particular Village or Villages, which may include a reasonable reserve for capital repairs and replacements, as the Board may specifically authorize and as may be authorized herein or in Supplemental Declarations applicable to the Villages.

1.33. “Voting Member”: the representative(s) selected by the Members within each Village as provided in Section 2.3(a) of the By-Laws to be responsible for casting votes attributable to Units in the Village on matters requiring a vote of the membership (except as otherwise specifically provided in this Declaration and in the By-Laws). The term “Voting Member” shall include alternate Voting Members acting in the absence of the Voting Member.

## Article II PROPERTY RIGHTS

2.1. Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) This Declaration, the By-Laws and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The right of the Board to adopt Rules regulating the use and enjoyment of the Common Area, including Rules restricting use of recreational facilities within the Common Area to occupants of Units and their guests and Rules limiting the number of guests who may use the Common Area;
- (d) The right of the Board to suspend the right of an Owner to use recreational facilities within the Common Area (i) for any period during which any charge against such Owner’s Unit remains delinquent, and (ii) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation, of the Declaration, any applicable Supplemental Declaration, the By-Laws, or Rules of the Association after notice and an opportunity to be heard pursuant to the Section 3.21 of the By-Laws;
- (e) The right of the Board to dedicate or transfer all or any part of the Common Area, upon obtaining the approval of Voting Members representing 67% of the total votes in the Association (the granting of easements for public utilities or other similar purposes consistent with the use of the Common Area shall not be deemed a transfer within the meaning of this subsection);
- (f) The right of the Board to impose reasonable membership requirements and charge reasonable membership admission or other fees for the use of any recreational facility situated upon the Common Area;
- (g) The right of the Board to permit use of any recreational facilities situated on the Common Area by persons other than Owners, their families, lessees and guests upon payment of use fees established by the Board;

(h) The right of the Board to mortgage, pledge, or assign any or all of its real or personal property or right to future income as security for money borrowed or debts incurred, subject to the approval requirements for borrowing money, if applicable, set forth in Section 3.19 of the Bylaws;

(i) The rights of certain Owners to the exclusive use of those portions of the Common Area designated "Exclusive Common Areas," as more particularly described in Section 2.2; and

(j) The right of the Board to grant easements over, under, or through portions of the Common Area.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, subject to reasonable Board regulation. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit.

2.2. Exclusive Common Area. Certain portions of the Common Area may be designated as Exclusive Common Area and reserved for the exclusive use or primary benefit of Owners, occupants and invitees of Units within a particular Village or Villages. By way of illustration and not limitation, Exclusive Common Areas may include entry features, recreational facilities, landscaped medians and cul-de-sacs, lakes and other portions of the Common Area within a particular Village or Villages. All costs associated with maintenance, repair, replacement, and insurance of Exclusive Common Areas shall be assessed as a Village Assessment against the Owners of Units in those Villages to which the Exclusive Common Area is assigned.

Initially, the Declarant shall designate any Exclusive Common Area as such and shall assign the exclusive use thereof in the deed conveying the Common Area to the Association, on the plat of survey relating to such Common Area, or in the Supplemental Declaration for the Village.

The Board may, upon approval of a majority of the Owners of Units for the Village(s) to which certain Exclusive Common Areas are assigned, permit Owners of Units in other Villages to use all or a portion of such Exclusive Common Areas upon payment of reasonable user fees, which fees shall be used to offset the Village Expenses attributable to such Exclusive Common Areas.

### Article III

#### ASSOCIATION FUNCTION, MEMBERSHIP AND VOTING RIGHTS

3.1 Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Common Area within High Desert. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable Rules regulating use of High Desert as the Board may adopt. The Association shall also be responsible for administering and enforcing the architectural standards and controls

set forth in this Declaration and in the Guidelines for Sustainability. The Association shall perform its functions in accordance with this Declaration, the By-Laws, the Articles, and New Mexico law.

3.2 Membership. Every Owner shall be a Member of the Association. The terms of such membership are set forth in the By-Laws, and incorporated herein by reference.

3.3 Voting. The voting rights of the Members shall be as set forth in the By-Laws, and such voting rights provisions are specifically incorporated herein by reference.

3.4 Rights of Voting Members. The Voting Members shall have the following rights (as described in further detail in the Section of the Declaration referenced by each right):

- (a) Right to cast votes attributable to the Units in the Village on matters requiring a vote of the membership (except as otherwise specifically provided in the Declaration and Bylaws) pursuant to Section 1.33;
- (b) Right to repeal or modify Rules adopted by the Board, pursuant to Section 4.3;
- (c) Right to approve the Association discontinuing the maintenance of any facilities and equipment within the Area of Common Responsibility, pursuant to Section 5.1;
- (d) Right to approve the Association not repairing or reconstructing damage to or destruction of the Common Area, pursuant to Section 6.3(b);
- (e) Right to approve the Association conveying Common Area in lieu of and under threat of condemnation, pursuant to Article VIII;
- (f) Right to approve the Association not restoring or replacing improvements that were on the condemned land on the remaining land, pursuant to Article VIII;
- (g) Right to approve any annexation of property into the Declaration, pursuant to Section 9.1;
- (h) Right to disapprove the budget, pursuant to Section 10.2;
- (i) Right to approve a Special Assessment for Common Expenses, pursuant to Section 10.5;
- (j) Right to disapprove amendments to the Use Restrictions adopted by the Board, pursuant to Section 12.2;
- (k) Right to adopt, repeal modify, limit and expand the Use Restrictions, pursuant to Section 12.3;
- (l) Right to approve terminating the Association, pursuant to Sections 14.3(a) and 17.1;
- (m) Right to approve amending the Declaration, By-Laws, and Articles, pursuant to Sections 14.3(b) and 17.2; and
- (n) Right to approve commencing judicial or administrative proceedings (other than specific exemptions listed), pursuant to Section 17.5

3.5 Villages. Every Unit shall be located within a Village. In the discretion of the Owner(s) and developer(s) of each Village, the Units within a particular Village may be subject to additional covenants.

Any Village, by a majority of its Voting Members, may request that the Association provide a higher level of service or special services for the benefit of Units in such Village, and, upon the affirmative vote, written consent, or a combination thereof, of Owners of a majority of Units within the Village, the Association shall provide the requested services. The cost of such services shall be assessed against the Units within such Village as a Village Assessment pursuant to Article X.

Each Supplemental Declaration shall initially assign the property described therein to a specific Village by name, which Village may then exist or be newly created.

#### Article IV RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.1. Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Area and all improvements thereon (including, without limitation, furnishings, equipment, and common landscaped areas), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, consistent with this Declaration and the Community-Wide Standard.

4.2. Personal Property and Real Property for Common Use. The Association may acquire, hold, and dispose of tangible and intangible personal property and real property, subject to the restrictions on transferring Common Area set forth in Sections 2.1(e) and Article VIII.

4.3. Rules. The Board may make and enforce reasonable rules and policies governing the use of High Desert, in addition to further defining or limiting, and, where specifically authorized hereunder, creating exceptions to those covenants and restrictions set forth in this Declaration. Such rules and policies shall be binding upon all Owners, occupants, invitees, and licensees until and unless repealed or modified at a regular or special meeting by the vote of Voting Members representing two-thirds (2/3) of the total votes in the Association.

4.4. Enforcement. The Association may impose sanctions for violations of this Declaration, the By-Laws, or Rules in accordance with procedures set forth in the By-Laws, including reasonable monetary fines and suspension of the right to vote and to use any recreational facilities within the Common Area. Any fines imposed shall be charged as a Specific Assessment in accordance with Section 10.6. In addition, in accordance with Section 3.21 of the By-Laws, the Association may exercise self-help to cure violations, and may suspend any services it provides to the Unit of any Owner who is more than 30 days delinquent in paying any assessment or other charge due to the Association. The Association may seek relief in any court for violations or to abate nuisances.

If permitted by law, the Association, by contract or other agreement, may enforce county and city ordinances, if applicable. The Association shall permit the City of Albuquerque and Bernalillo County to enforce applicable ordinances on High Desert for the benefit of the Association and its Members.

Should the Association fail or refuse to act on its obligations regarding Common Area and open space maintenance and water recapture as set forth in this Declaration, the City of Albuquerque shall have the authority to perform such obligations of the Association as necessary to ensure compliance with the requirements of this Declaration concerning Common Area and open space maintenance and water recapture. Costs incurred by the City of Albuquerque pursuant to this paragraph in performing the obligations of the Association required under this Declaration concerning Common Area and open space maintenance and water recapture may be charged against, and, if so charged, shall be paid by, the Declarant until the termination of the Class "B" Control Period. Thereafter, such costs may be charged against, and, if so charged, shall be paid by, the Association. This provision shall not be deemed to create an obligation to act on the part of the City of Albuquerque. In recognition of the fact that the provisions of this paragraph are for the benefit of the City of Albuquerque, no amendment to this paragraph, and no amendment to the other provisions of this Declaration or the By-Laws in derogation of any of the provisions of this paragraph, may be made without the prior written approval of the City of Albuquerque.

Should the Association fail or refuse to act on its obligations regarding Common Area and open space maintenance and drainage maintenance as set forth in this Declaration and any easement in favor of AMAFCA, AMAFCA shall have the authority to perform such obligations of the Association as necessary to ensure compliance with the requirements of this Declaration and any easement in favor of AMAFCA concerning Common Area and open space maintenance and drainage maintenance. Costs incurred by AMAFCA pursuant to this paragraph in performing the obligations required under this Declaration and any easement in favor of AMAFCA concerning Common Area and open space maintenance and drainage maintenance may be charged against, and, if so charged, shall be paid by, the Declarant until termination of the Class "B" Control Period. Thereafter, such costs may be charged against, and, if so charged, shall be paid by, the Association. This provision shall not be deemed to create an obligation to act on the part of AMAFCA. In recognition of the fact that the provisions of this paragraph are for the benefit of AMAFCA, no amendment to this paragraph, and no amendment to other provisions of this Declaration or the By-Laws in derogation of any of the provisions of this paragraph, may be made without the prior written approval of AMAFCA.

4.5. Implied Rights: Board Authority. The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the By-Laws, Articles, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership or the Voting Members.

4.6. Indemnification. To the greatest extent allowed by law, the Association shall indemnify every officer, director, and committee member against all expenses, including

attorney's fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misconduct or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

4.7. Security. The Association may, but shall not be obligated to, maintain or support certain activities within High Desert designed to make High Desert safer than they otherwise might be. THE ASSOCIATION SHALL IN NO WAY BE CONSIDERED AN INSURER OR GUARANTOR OF SECURITY WITHIN HIGH DESERT, NOR SHALL THE ASSOCIATION BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR OF INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM CAN NOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND COVENANTS TO INFORM ITS TENANTS THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES ARE NOT INSURERS AND THAT EACH PERSON USING HIGH DESERT ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO UNITS AND TO THE CONTENTS OF UNITS RESULTING FROM ACTS OF THIRD PARTIES.

4.8. Rights to Storm Water Runoff and Water Conservation and Reclamation Programs. The Association hereby reserves for itself and its designees all rights to ground water, surface water, and storm water runoff within the Properties and each Owner agrees, by acceptance of a deed to a Unit, that the Association shall retain all such rights. No Person other than the Association and its designees shall claim, capture or collect rainwater, ground water, surface water or storm water runoff within High Desert without prior written permission of the Association or its designee. No Owner or occupant of a Unit shall have any right to be compensated for water claimed or reclaimed from Units. The Board shall also have the right to establish restrictions on or prohibit outside use of potable water within High Desert.

4.9. Public Gardens and Environmental Programs. The Board may establish gardens within the Common Area (or within other property with the approval of the owner of the property) or designate spaces within the Common Area for the establishment of gardens to promote public awareness of and participation in conservation, management and enhancement of native vegetation, soils and geology and may establish programs to promote an understanding of the natural desert landscape and environment.

4.10. Cost Sharing with Nonresidential Properties. Adjacent to or in the vicinity of High Desert, there may be certain nonresidential areas, including, without limitation, multi-family developments (apartments), churches, schools, and retail shopping areas, which are not subject to this Declaration, are not dedicated to the public, and are neither Units nor Common Area as defined in this Declaration (hereinafter “nonresidential properties”). Such nonresidential properties are or will be subject to that certain Declaration of Covenants, Conditions, and Restrictions for High Desert Nonresidential Properties, recorded in the Office of the County Clerk of Bernalillo County, New Mexico (hereinafter “Nonresidential Declaration”). Such nonresidential properties are neither subject to this Declaration nor to the restrictions contained herein, and the owners of such nonresidential properties shall not be Members of the Association and shall not be entitled to vote in the Association, nor shall they be subject to assessment under this Declaration.

However, pursuant to the Nonresidential Declaration, all owners of property subject to the Nonresidential Declaration shall be obligated to share in certain costs incurred by the Association associated with the maintenance, repair, replacement, and insuring of property, if any, which the Association is obligated to maintain, repair, replace, or insure pursuant to this Declaration or the Nonresidential Declaration and which is used by or which benefits jointly the Owners of the nonresidential properties and the Owners within High Desert. Thus, all owners of property subject to the Nonresidential Declaration shall be subject to assessment therefor by the Association in accordance with the provisions of the Nonresidential Declaration. In addition, the Association shall be obligated to perform the duties and functions set forth for it in the Nonresidential Declaration.

## Article V MAINTENANCE

5.1. Association’s Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility, which shall include, but need not be limited to:

(a) all landscaping and other flora, parks, signage, water harvesting devices, structures, and improvements, including, without limitation, any private streets and bike and pedestrian pathways/trails, situated upon the Common Area. Provided, however, except to the extent otherwise specified in a Supplemental Declaration, the obligation to maintain private streets shall not include the landscaping of the area in the private right-of-way between the edge of the property line of each Unit and the curb; the maintenance of such landscaping shall be the responsibility of each Owner owning a Unit abutting a private street, except in the event that the Association disturbs such landscaping in connection with its maintenance of the private streets, in which event the Association shall restore and repair such landscaping;



(b) landscaping, sidewalks, street lights, and signage within public rights-of-way within or abutting High Desert, and landscaping and other flora within any public utility easements and conservation easements within High Desert (subject to the terms of any easement agreement relating thereto), provided, however, that the Association shall not be responsible for maintaining that portion of any public right-of-way between the curbs or edge of paving and the property line of each Unit except to the extent that it chooses to accept such maintenance responsibility. Unless the Association chooses to accept such maintenance responsibility (which it can withdraw at any time), the area shall be the responsibility of the Owner of the Unit to which the public right-of-way abuts;

(c) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, any other applicable covenants or easements relating to High Desert or the Association, or any contract or agreement for maintenance thereof entered into by the Association; and

(d) the structural features and surfaces of those portions of those perimeter walls, fences and other boundary controls within High Desert that face open space, public rights-of-way, Common Area or Area of Common Responsibility. This responsibility shall include the rebuilding of walls, fences and other boundary controls after structural damage and restuccoing or other resurfacing of wall surfaces including the tops of walls, as well as painting of all sides of any view fencing, but shall not include (i) general maintenance or restuccoing or resurfacing of the block surfaces of such perimeter walls, fences or other boundary controls that face Units, which shall be the responsibility of the Owners of such Units or (ii) damage (structural or otherwise) to any portion of a wall caused by the Owner of a Unit, or such Owner's agents, representatives or contractors, which damage and the repair of such damage shall be the sole responsibility of such Owner. The Association shall have an easement over each Owner's Unit to the extent reasonably necessary to perform its maintenance obligations set forth herein.

The Association shall perform the maintenance, operational, and inspection obligations assigned to or assumed by it pursuant to those certain four drainage easement documents involving the Association and AMAFCA recorded in the Office of the County Clerk of Bernalillo County, New Mexico, as follows: Document 93128203 in Book 93-32, Pages 3843-3866; Document 93128204 in Book 93-32, Pages 3867-3893; Document 93128205 in Book 93-32, Pages 3894-3918; and Document 93128206 in Book 93-32, Pages 3919-3942; as such drainage easement documents may be amended from time to time. The Association shall also perform the maintenance, operational, and inspection obligations assigned to or assumed by it pursuant to those certain three drainage easement documents involving the Association and the City of Albuquerque recorded in the Office of the County Clerk of Bernalillo County, New Mexico, as follows: Document 93131458 in Book 93-33, Pages 1979-2000; Document 93131459 in Book 93-33, Pages 2001-2020; and Document 93131460 in Book 93-33, Pages 2021-2039; as such drainage easement documents may be amended from time to time.

The Association shall also have the right and power, but not the obligation, to take such actions as may be necessary to control or exterminate rats, prairie dogs, and other rodents and pests within High Desert.

There are hereby reserved to the Association easements over High Desert as necessary to enable the Association to fulfill its responsibilities under this Section. The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for reasonable periods as necessary to perform required maintenance or repairs, unless Voting Members representing 75% of the votes in the Association agree in writing to discontinue such operation.

The Association may maintain other property which it does not own, including, without limitation, publicly owned property, streets and rights-of-way, conservation easements held by nonprofit entities, and other property dedicated to public use, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

Except as otherwise specifically provided herein, all costs associated with the maintenance, operational, inspection, repair, and replacement responsibilities of the Association set forth in this Section shall be a Common Expense to be allocated among all Units in the manner of and as a part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the owner(s) thereof. All costs associated with maintenance, repair and replacement of Exclusive Common Areas shall be a Village Expense assessed as a Village Assessment solely against the Units within the Village(s) to which the Exclusive Common Areas are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

5.2. Owner's Responsibility. Each Owner shall maintain its Unit in accordance with the Community-Wide Standard, this Section and all applicable covenants, and in accordance with any other Rules or Guidelines for Sustainability, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a Village pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Unit.

Each Owner shall keep all portions of the Unit free of trash and other unsightly material and, except for areas of natural desert or areas where such maintenance is prohibited by law, shall keep all shrubs, trees, grass, plantings and landscaping of every kind located anywhere on his Unit (including setback areas, easements and Common Areas within the boundaries of the Unit), neatly trimmed and properly cultivated, and consistent with the Community-Wide Standard and the Guidelines for Sustainability. Such maintenance shall also include, but not be limited to, promptly removing dead trees, plant material, and weeds, and removing encroachment by trees, shrubs or other plant material located on the Unit onto property that is not part of the Unit, including sidewalks, streets, other Units, or the Common Area.

Additionally, each Owner shall maintain all paved, concrete and otherwise synthetically surfaced areas, including, but not limited to, driveways, roadways and parking areas, in good condition and repair. No building, structure or other improvement on the Unit shall be permitted to fall into disrepair and each such building, structure and improvement shall at all times be kept by the owner in good condition and repair and adequately painted or otherwise finished. In the

event any building, structure or improvement is damaged or destroyed, then, subject to the architectural approval requirements, such building, structure or improvement shall be immediately repaired or rebuilt or shall be demolished and the portion of the Unit upon which it was located shall be cleared and restored to a presentable and safe condition.

In addition, each Owner shall maintain its Unit in compliance with the master drainage plan established for High Desert and approved by the City of Albuquerque (identified as the conceptual Drainage Management Plan for High Desert Development, Technical Report, February, 1992). In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner in accordance with Section 10.6. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

5.3. Village's Responsibility. Upon Board resolution, the Owners of Units within each Village shall be responsible for paying, through Village Assessments, the costs of operating, maintaining and insuring certain portions of the Area of Common Responsibility within or adjacent to such Village. This may include, without limitation, the costs of maintaining any signage, entry features, right-of-way and open space between the Village and adjacent public roads and private streets within the Village, regardless of ownership and regardless of the fact that such maintenance may be performed by the Association; provided, however, all Villages which are similarly situated shall be treated the same.

5.4. Standard of Performance. Maintenance, as used in this Article, shall include, without limitation, repair and replacement as needed, as well as such other duties, which may include irrigation, as the Board may determine necessary or appropriate to satisfy the Community-Wide Standard. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants.

Notwithstanding anything to the contrary contained herein, the Association, and/or an Owner shall not be liable for property damage or personal injury occurring on, or arising out of the condition of, property which it does not own unless and only to the extent that it has been negligent in the performance of its maintenance responsibilities.

5.5. Party Walls and Similar Structures.

(a) General Rules of the Law to Apply. Each wall, fence, driveway or similar structure built as a part of the original construction on the Units which serves and/or separates any two adjoining Units shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. All Owners who make use of the party structure shall share the cost of reasonable repair and maintenance of such structure equally.

(c) Damage and Destruction. If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired

out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners subsequently use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Right to Contribution Runs With Land. The right of an Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

## Article VI INSURANCE AND CASUALTY LOSSES

6.1. Association Insurance. The Board shall have the power and authority to purchase such public liability, casualty, officers' and directors' liability and indemnity, workers' compensation, fidelity, and other insurance as the Board shall deem necessary or appropriate from time to time. Policies shall be on such terms and conditions as the Board shall direct. The Association's public liability policy shall include AMAFCA as an additional insured. All insurance policies of the Association and claims thereunder shall be administered by the Board. If generally available at reasonable cost, the public liability policy shall have at least a \$3,000,000.00 combined single limit as respects bodily injury and property damage and at least a \$5,000,000.00 limit per occurrence and in the aggregate. The Board shall determine the amount of fidelity coverage in its best business judgment but, if reasonably available, shall secure coverage equal to not less than one-sixth (1/6) of the annual Base Assessments on all Units plus reserves on hand.

Premiums for insurance on Exclusive Common Areas may be included in the Village Assessment of the Village(s) benefited unless the Board reasonably determines that other treatment of the premiums is more appropriate. Premiums for insurance on all other Areas of Common Responsibility shall be Common Expenses and shall be included in the Base Assessment.

The policies may contain a reasonable deductible. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Village Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with Section 3.21 of the By-Laws, that the loss is the result of the negligence or willful conduct of one or more Owners or occupants, then the Board may specifically assess the full amount of such deductible against the Unit of such Owner or occupant as a Specific Assessment, pursuant to Section 10.6.

6.2. Owners' Insurance. By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry blanket "all-risk" property insurance on its Unit(s) and structures thereon providing full replacement cost coverage less a reasonable deductible.

Each Owner further covenants and agrees that, in the event of damage to or destruction of structures on or comprising his Unit, he shall proceed promptly repair or reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in

accordance with Article XI. Alternatively, the Owner shall clear the Unit of all debris and ruins and maintain the Unit in a neat and attractive, landscaped condition consistent with the requirements of the Community-Wide Standard, the Declaration and any applicable Rules and Guidelines for Sustainability. The Owner shall pay any costs which are not covered by insurance proceeds.

Additional recorded covenants applicable to any Village may establish more stringent requirements regarding the standards for rebuilding or reconstructing structures on the Units within such Village and the standards for clearing and maintaining the Units in the event the structures are not rebuilt or reconstructed.

### 6.3. Damage and Destruction.

(a) Immediately after damage or destruction to all or any part of High Desert covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

(b) Any damage to or destruction of the Common Area shall be repaired or reconstructed unless the Voting Members representing at least 75% of the total votes in the Association decide within 60 days after the loss not to repair or reconstruct.

Any damage to or destruction of the Exclusive Common Area of any Village shall be repaired or reconstructed unless the Unit Owners representing at least 75% of the total votes in the Village decide within 60 days after the damage or destruction not to repair or reconstruct.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area or Exclusive Common Area of a Village shall be repaired or reconstructed.

(c) If determined in the manner described above that the damage or destruction to the Common Area or to the Exclusive Common Area of a Village shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

(d) The terms of any easement in favor of AMAFCA or the City of Albuquerque shall control such easement and the terms of Section 6.3(b) and (c) shall not apply to any such easement.

6.4. Disbursement of Proceeds. Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

6.5. Repair and Reconstruction. If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board shall, without a vote of the Voting Members, levy Special Assessments against those Unit Owners responsible for the premiums for the applicable insurance coverage under Section 6.1.

#### Article VII NO PARTITION

Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless High Desert or such portion thereof have been removed from the provisions of this Declaration. This Article shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

#### Article VIII CONDEMNATION

If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Voting Members representing at least 67% of the total votes in the Association) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking the Voting Members representing at least 75% of the total votes in the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Sections 6.4 and 6.5 regarding funds for the repair of damage or destruction shall apply.

If the taking does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

#### Article IX ANNEXATION OF PROPERTY

9.1. Annexation with Approval of Membership. The Association may subject any real property to the provisions of this Declaration with the consent of the owner of such property and the affirmative vote of Voting Members representing a majority of the votes that are represented at a meeting duly called for such purpose.

Such annexation shall be accomplished by filing a Supplemental Declaration in the Office of the County Clerk of Bernalillo County, New Mexico, describing the property to be annexed and specifically subjecting it to the terms of this Declaration. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the annexed property. Any such annexation shall be effective upon filing unless otherwise provided therein.

## Article X ASSESSMENTS

10.1. Creation of Assessments. The Association is hereby authorized to levy assessments against each Unit for Association expenses as the Board may specifically authorize from time to time. There shall be four types of assessments for Association expenses: (a) Base Assessments to fund Common Expenses for the general benefit of all Units; (b) Village Assessments for Village Expenses benefiting only Units within a particular Village or Villages; (c) Special Assessments as described in Section 10.5; and (d) Specific Assessments as described in Section 10.6. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of High Desert is deemed to covenant and agree to pay these assessments.

All assessments, together with interest from the due date of such assessment at a rate determined by the Board (not to exceed the highest rate allowed by New Mexico law), late charges, costs, and reasonable attorney's fees, shall be a charge and continuing lien upon each Unit against which the assessment is made until paid, as more particularly provided in Section 10.8. Each such assessment, together with interest, late charges, costs, and reasonable attorney's fees, also shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Unit by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

Assessments shall be paid in such manner and on such dates as the Board may establish. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment and any Village Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

The Association shall, upon request, furnish to any Owner liable for any type of assessment a certificate in writing signed by an officer of the Association setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The

Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

No Owner may exempt himself from liability for assessments, by nonuse of Common Area, abandonment of his Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

10.2. Computation of Base Assessment. At least 90 days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year, including a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 10.4.

The Base Assessment shall be levied equally against all Units and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Units subject to assessment under Section 10.7 on the first day of the fiscal year for which the budget is prepared and the number of Units reasonably anticipated to become subject to assessment during the fiscal year.

The Board shall send a copy of the budget and notice of the amount of the Base Assessment for the following year to each Owner at least 60 days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by Voting Members representing at least 75% of the total votes in the Association and 75% of the total number of Voting Members. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Voting Members as provided for special meetings in Section 2.6 of the By-Laws, which petition must be presented to the Board within 10 days after delivery of the notice of assessments.

If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then, until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

10.3. Computation of Village Assessments. At least 90 days before the beginning of each fiscal year, the Board shall prepare a separate budget covering the estimated Village Expenses for each Village on whose behalf Village Expenses are expected to be incurred during the coming year. The Board shall be entitled to set such budget only to the extent that this Declaration, any Supplemental Declaration, or the By-Laws specifically authorizes the Board to assess certain costs as a Village Assessment. Any Village (by a majority of the Owners of Units in the Village) may request that additional services or a higher level of services be provided by the Association, and, in such case, any additional costs shall be added to such budget. Such budget shall include a capital contribution establishing a reserve fund for repair and replacement of capital items maintained as a Village Expense, if any, within the Village.



Village Expenses shall be allocated equally among all Units within the benefited Village.

The Board shall cause a copy of such budget and notice of the amount of the Village Assessment for the coming year to be delivered to each Owner of a Unit in the Village at least 60 days prior to the beginning of the fiscal year. Such budget and assessment shall become effective unless disapproved by a majority of the Owners of Units in the Village to which the Village Assessment applies. However, there shall be no obligation to call a meeting for the purpose of considering the budget except on petition of Owners of at least 10% of the Units in such Village, which petition must be submitted to the Board within 10 days after delivery of the notice of assessments. This right to disapprove shall only apply to those line items in the Village budget which are attributable to services requested by the Village.

If the proposed budget for any Village is disapproved or if the Board fails for any reason to determine the budget for any year, then, until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

10.4. Reserve Budget and Capital Contribution. The Board shall annually prepare reserve budgets for both general and Village purposes which take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. As part of this obligation, the Board shall also prepare reserve budgets for extraordinary drainage maintenance and repair as necessary and as required pursuant to those drainage easement documents referenced in Section 5.1. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual Base Assessments or Village Assessments, as appropriate, over the budget period.

10.5. Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Such Special Assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses, or against the Units within any Village if such Special Assessment is for Village Expenses. Except as otherwise specifically provided in this Declaration, any such Special Assessment shall require the affirmative vote or written consent of Voting Members (if a Common Expense) or Owners (if a Village Expense) representing at least 51% of the total votes allocated to Units which will be subject to such Special Assessment. Any such Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

10.6. Specific Assessments. The Board shall have the power to levy Specific Assessments against a particular Unit or Units constituting less than all Units within High Desert or within a Village, as follows:

(a) to cover the costs, including overhead and administrative costs, or providing benefits, items, or services to the Unit or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to

Owners (which might include, without limitation, landscape maintenance, handyman service, pool cleaning, pest control, etc.), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner; and

(b) to cover costs incurred in bringing the Unit into compliance with the terms of this Declaration, any applicable Supplemental Declaration, the By-Laws or Rules, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their licensees, invitees, or guests; provided, the Board gives the Unit Owner prior written notice and an opportunity for a hearing before levying Specific Assessment under this subsection (b).

10.7. Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Unit on the first day of the month following the month in which the Unit is made subject to this Declaration. The first annual Base Assessment and Village Assessment, if any, levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

10.8. Lien for Assessments. All assessments authorized in this Article shall constitute a lien against the Unit against which they are levied until paid. The lien shall also secure payment of interest, late charges (subject to the limitations of New Mexico law), and costs of collection (including attorney's fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. The Association may enforce such lien, when delinquent, by suit, judgment, and foreclosure.

The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association. The Association may also sue for a personal judgment for unpaid Common Expenses and costs, and the exercise of one or more of the Association's remedies shall not prevent the Association from exercising any other remedy available to it.

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Unit due prior to such acquisition of title. However, to the extent the Association is unable to recover any unpaid assessments from the prior Owner (as their personal obligation), such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessments under Section 10.7, including such acquirer, its successors and assigns.

10.9. Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments and Village Assessments on the same basis as the last year for which an assessment was made until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

10.10. Capitalization of Association. Upon acquisition of record title to a Unit by the first Owner thereof other than a Builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to one-sixth (1/6) of the annual Base Assessment per Unit for that year. This amount shall be in addition to, not in lieu of, the annual Base Assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to the terms of this Declaration and the By-Laws.

10.11. Exempt Property. The following property shall be exempt from payment of Base Assessments, Village Assessments, and Special Assessments:

(a) all Common Area; provided, to the extent that any portion of the Common Area consists of an easement over a Unit otherwise subject to assessment under Section 10.7, nothing herein shall exempt the underlying Unit or Owner thereof from assessment;

(b) any property dedicated to and accepted by any governmental authority or public utility; and

(c) any property held by a conservation trust or similar nonprofit entity as a conservation easement, except to the extent that any such easement lies within the boundaries of a Unit which is subject to assessment under Section 10.7 (in which case the Unit shall not be exempted from assessment).

## Article XI ARCHITECTURAL STANDARDS

11.1. General. No structure shall be placed, erected, or installed upon any Unit, and no improvements (including staking, clearing, excavation, grading and other site work, exterior alternation of existing improvements, and planting or removal of landscaping materials) shall take place except in compliance with this Article and the Guidelines for Sustainability and upon approval of the appropriate committee under Section 11.2.

Any Owner may remodel, paint or redecorate the interior of structures on his Unit without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structures on the Unit shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

All dwellings constructed on any portion of High Desert shall be designed by and built in accordance with the plans and specifications of a licensed architect or licensed building designer. Provided, however, the obligation to have the plans and specifications prepared by a licensed architect or licensed building designer, may be waived by the reviewing entity.

This Article shall not apply to improvements to the Common Area by or on behalf of the Association.

11.2. Architectural Review. Responsibility for administration of the Guidelines for Sustainability and review of all applications for construction and modifications under this Article shall be handled by the two committees as described in subsections (a) and (b). The members of the Committees need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board. The Board may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review.

(a) New Construction Committee. The New Construction Committee (“NCC”) shall consist of at least three, but not more than five, persons and shall have exclusive jurisdiction over all original construction on any portion of High Desert, and over requests for architectural approval referred from the MC to the NCC. The Board shall appoint the members of the NCC, who shall serve and may be removed in the Board’s discretion.

(b) Modifications Committee. The Board may establish a Modifications Committee (“MC”) to consist of at least three and no more than five persons, all of whom shall be appointed by and shall serve at the discretion of the Board. The MC, if established, shall have exclusive jurisdiction over modifications, additions, or alterations made on or to existing structures on Units or containing Units and the adjacent open space, unless the MC chooses to refer a request for architectural approval that falls within its jurisdiction to the NCC, at its discretion. If the MC refers a request for architectural approval to the NCC, the NCC shall have exclusive jurisdiction over that request.

(c) Any approval by the NCC or MC of initial construction or modifications shall be deemed to comply with the Guidelines for Sustainability and the Declaration. The NCC and MC shall have sole and full authority to interpret the Guidelines for Sustainability and to determine matters of aesthetic judgment. Their interpretation and determination as to the Guidelines for Sustainability and matters of aesthetic judgment shall be final, conclusive and binding and shall not be subject to judicial review so long as exercised in accordance with the procedures set forth in this Article.

11.3. Guidelines and Procedures. The Guidelines for Sustainability shall apply to all construction activities within High Desert. The Guidelines for Sustainability may contain general provisions applicable to all of High Desert, as well as specific provisions which vary from one portion of High Desert to another depending upon the location, unique characteristics, and intended use.

The NCC shall have the right to amend the Guidelines for Sustainability at any time, but such amendments shall not become effective until they are approved by the Board. Any amendments to the Guidelines for Sustainability shall apply to construction and modifications commenced after the date of such amendment only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced.

The NCC shall make the Guidelines for Sustainability available to Owners and Builders who seek to engage in development or construction within High Desert and all such Persons shall conduct their activities in accordance with such Guidelines for Sustainability.

The MC may promulgate detailed procedures and standards governing its area of responsibility, consistent with those set forth in the Guidelines for Sustainability, and subject to final approval by the Board.

#### 11.4. Submission of Plans and Specifications.

(a) No construction or improvements shall be commenced, erected, placed or maintained on any Unit, nor shall any exterior addition, change or alteration be made thereto, until the plans and specifications (“Plans”) showing site layout, structural design, exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation, utility facilities layout, and screening therefor shall have been submitted to and approved in writing by the NCC or MC, as appropriate. The Guidelines for Sustainability shall set forth the procedure for submission of the Plans.

(b) In reviewing each submission, the NCC or MC, as appropriate, may consider visual and environmental impact, ecological compatibility, natural platforms and finish grade elevation, harmony of external design with surrounding structures and environment, and location in the relation to surrounding structures and plant life. The committees may require relocation of native plants within the construction site as a condition of approval of any submission.

The NCC or the MC, as appropriate, shall within 45 days after receipt of each submission of the Plans, advise the party submitting the same, in writing, at an address specified by such party at the time of submission, of (i) the approval of Plans, or (ii) the segments or features of the Plans which are deemed by such committee to be inconsistent or not in conformity with this Declaration and/or the Guidelines for Sustainability, the reasons for such finding, and suggestions for the curing of such objections. In the event the appropriate committee fails to advise the submitting party by written notice within the time set forth above of either the approval or disapproval of the Plans, approval shall be deemed to have been given. Notice shall be deemed to have been given, if by mail, at the time the envelope containing such notice, properly addressed, and postage prepaid, is deposited with the U.S. Postal Service (via regular mail), if by e-mail, at the time the e-mail is sent, or, if by personal delivery, at the time delivery is made.

(c) If construction does not commence on a project for which Plans have been approved within 12 months of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the Plans to the NCC or the MC, as appropriate, for reconsideration.

11.5. Natural Arroyos. The natural arroyos within High Desert are being preserved as natural amenities. The natural arroyos provide a unique setting of natural land forms and associated natural vegetation consisting of native plant communities predominated by chamisa, apache plume, and desert willow. From an environmental perspective, the preservation of natural arroyos allows for the retention of natural plant communities, the resulting wildlife habitat, open space, and natural land forms.

The primary function of the natural arroyos in High Desert is safely to convey upland storm water flows into receiving facilities that convey the flows through the more urbanized areas of High Desert. Their function is not to receive free discharge of storm water flows from adjacent developed land that could cause damage to the natural systems. Owners of Units adjacent to natural arroyos will be required to manage flows from the developed areas of their Units through water harvesting or other techniques that prevent negative impacts from occurring to these natural systems and which deliver flows to them proximate to those that occurred prior to development. These techniques must be demonstrated as part of the Plans in drainage plans prepared for each Unit by the Owner thereof and approved by the NCC prior to disturbing the Unit.

The natural arroyos are dynamic systems that will continue to evolve over the years and be altered by the same natural forces that created them. This evolution may be a slow process that is imperceptible to casual observers, or it may be dramatic and can be caused by a single large storm event in the basin contributing flow to the arroyo. In any case, this evolution is inevitable and must be monitored and, in extreme cases, managed. The philosophy adopted by the zoning and sector plans for High Desert is to intervene in this evolutionary process only to the degree required to maintain the primary function of the natural arroyo systems. The need for this intervention will be identified only by the Association, AMAFCA, and the City of Albuquerque, as applicable, acting in their discretion pursuant to those drainage easement documents referenced in Section 5.1, being the only entities as of the date of this Declaration having responsibility for the management of natural arroyo systems within High Desert.

From a qualitative viewpoint it is anticipated that the evolution of the arroyo systems from year to year will consist of minor washing in the arroyo beds with sediment being transported downstream and being replaced by sediment transported from the basin above. Minor disruption of the natural plant communities may occur, and their replacement should occur through the natural reseeding process that has occurred over the centuries. Removal of some or all of the disturbed vegetation may be in order but may be done only by or with the approval of, the Association, AMAFCA, or the City of Albuquerque, or any combination thereof, as applicable, as provided in those drainage easement documents referenced in Section 5.1.

During large storm events that will occur from time to time, the entire arroyo bed may be washed and altered, with the majority of the natural vegetation displaced. Removal of the

displaced vegetation will be in order to restore the primary function of the natural arroyo systems. The bed of the arroyo will appear bare when compared to the pre-storm event condition and will continue in this state until the natural plant communities reestablish themselves. These natural processes will be allowed to prevail with little intervention. At the discretion of the Association, AMAFCA, or the City of Albuquerque, as applicable, acting pursuant to those drainage easement documents referenced in Section 5.1, the revegetation process may be augmented with imported specimens of native species. Should an Owner of a Unit adjoining a natural arroyo desire to intervene in the revegetation process, this will be allowed only after the approval of a detailed plan presented by such Owner to the NCC or MC, as appropriate.

In the extreme cases when flows in the natural arroyos approach or exceed those from the design storm, very dramatic changes in the arroyo may occur. Not only will the bottom of the arroyo appear washed and bare, but the arroyo may migrate from side to side within its bed, vertical banks along the arroyo path may appear, and excessive loss of sediment from the arroyo bed may occur. After such events, extreme action may be required to maintain the primary function of the arroyo. These actions may include removal of significant amounts of uprooted vegetation, replacement of sediment in the arroyo bed, grading of vertical side slopes, and, in extreme cases, the installation of structural improvements in the arroyo to prevent future migration of the arroyo outside of its historic bed. The structural improvements may be constructed of rip-rap, soil cement, or possibly structural concrete. The resulting appearance of the arroyo will depart from its previous appearance and will definitely depart from its natural state. Ultimately, after its natural revegetation, its appearance may only approximate that of its previous appearance or of its natural state. The Association, AMAFCA, and the City of Albuquerque, as applicable, acting in their discretion pursuant to those drainage easement documents referenced in Section 5.1, may or may not augment the natural revegetation process to accelerate the return of the arroyos to natural appearance.

During the planning and subsequent development process, the Declarant has defined various characteristics related to certain of the arroyos using standards accepted in the Albuquerque, New Mexico, area at or around the date of this Declaration. These areas are the washed bed or thalweg of the arroyo, the floodplain area within the arroyo resulting from a 100-year frequency storm, and the extent to which erosion in the arroyo bed could occur during a 100-year frequency storm being bounded by what is known in Albuquerque, New Mexico, as the "prudent lines." Development within any of these boundaries is forbidden. However, any area within the "prudent lines" are subject to sudden dynamic changes from storm water flows and may require significant maintenance efforts up to and including the installation of structural improvements. The "prudent lines" define the most extreme limits of the drainage easements platted on property within High Desert.

The Association, AMAFCA, and the City of Albuquerque share responsibilities for arroyo management within High Desert. Management decisions will be made solely by these entities. The decision to intervene in the arroyo system and the approval of minor interventions by Owners of Units adjacent to any arroyo system will be at the discretion of the Association, AMAFCA, or the City of Albuquerque, or any combination thereof, as applicable, as provided in those drainage easement documents referenced in Section 5.1.

11.6. No Waiver of Future Approvals. Each Owner acknowledges that the members of the NCC and the MC will change from time to time and that interpretation, application and enforcement of the Guidelines for Sustainability may vary accordingly. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

11.7. Variance. The NCC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the NCC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, the cost of compliance, or the terms of any financing shall not be considered a hardship warranting a variance.

11.8. Limitation of Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and neither the NCC nor the MC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Association, the Board, any committee, nor member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Unit.

11.9. Enforcement. Any structure or improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board, Owners shall, at their own cost and expense, remove such structure or improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Board or its designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefited Unit and collected as a Specific Assessment.

Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Guidelines for Sustainability may be excluded by the Board from High Desert, subject to the notice and hearing procedures contained in the By-Laws. In such event, neither the Association, its officers, nor directors shall be held liable to any Person for exercising the rights granted by this paragraph.

In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the NCC and MC.

## Article XII



## USE RESTRICTIONS

12.1. Plan of Development; Applicability; Effect. High Desert was created as a master planned community. High Desert is subject to land development, architectural, and design guidelines, as set forth in Article XI. High Desert is also subject to guidelines and restrictions governing land use, individual conduct, and uses of or actions upon High Desert as provided in this Article. This Declaration and resolutions the Board or the Voting Members may adopt establish affirmative and negative covenants, easements, and restrictions (the "Use Restrictions").

All provisions of this Declaration and of any Association Rules shall also apply to all occupants, tenants, guests and invitees of any Unit. Each Owner of a Unit shall be responsible and liable for the acts of his or her occupants, tenants, guests and invitees. Any lease on any Unit shall provide that the lessee and all occupants of the leased Unit shall be bound by the terms of this Declaration, the By-Laws, and the Rules.

The purpose of High Desert's general plan of development is to protect all Owners' quality of life and collective interests, the aesthetics and environment within High Desert, and the vitality of and sense of community within High Desert, all subject to the Board's and the Voting Members' ability to respond to changes in circumstances, conditions, needs, and desires within the master planned community.

Use Restrictions, which contain general provisions applicable to all of High Desert, as well as specific provisions which may vary within High Desert depending upon the location, characteristics, and intended use, are set forth in Exhibit "D".

12.2 Board Power. Subject to the terms of this Article and to its duty of care and undivided loyalty to the Association and its Members, the Board may amend the Use Restrictions (and, through such amendments, may modify, cancel, limit, create exceptions to, or expand the Use Restrictions). Prior to amending the Use Restrictions, the Board shall publish notice of the proposed amendments on its website at least five business days prior to the Board meeting at which such action is to be considered. Voting Members shall have a reasonable opportunity to be heard at a Board meeting prior to action being taken.

The Board shall send a copy of any proposed amendment to the Use Restrictions to each Owner at least 30 days prior to its effective date. The amendment shall become effective unless disapproved at a meeting by Voting Members representing at least two-thirds (2/3) of the total votes in the Association. The Board shall have no obligation to call a meeting of the Voting Members to consider disapproval except upon petition of the Voting Members as required for special meetings in Section 2.6 of the By-Laws.

The Board shall have all powers necessary and proper, subject to its exercise of sound business judgment and reasonableness, to effect the powers contained in this Section.

The Board shall provide, without cost, a copy of the Use Restrictions and rules then in effect to any requesting Member or Mortgagee.

12.3. **Members' Power.** The Voting Members, at a meeting duly called for such purpose as provided in Section 2.6 of the By-Laws, may adopt, repeal, modify, limit, and expand Use Restrictions by a vote of two-thirds (2/3) of the total votes in the Association.

12.4. **Owners' Acknowledgment.** All Owners are subject to the Use Restrictions and are given notice that (a) their ability to use their privately owned property is limited thereby, and (b) the Association and/or the Voting Members may add, delete, modify, create exceptions to, or amend the Use Restrictions in accordance with Sections 12.2, 12.3, and 17.2.

Each Owner by acceptance of a deed acknowledges and agrees that the use and enjoyment and marketability of his or her property can be affected by this provision and that the Use Restrictions may change from time to time.

12.5. **Rights of Owners.** Except as may be specifically set forth in Exhibit D, neither the Association nor the Voting Members may adopt any Use Guideline and Restriction in violation of the following provisions:

(a) **Equal Treatment.** Similarly situated Owners and occupants shall be treated similarly.

(b) **Speech.** The rights of Owners and occupants to display political signs and symbols in or on their Units of the kinds normally displayed in or outside of residences located in single-family residential neighborhoods shall not be abridged, except that the Board may adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage and disturbance to other Owners and occupants.

(c) **Religious and Holiday Displays.** The rights of Owners to display religious and holiday signs, symbols, and decorations in their Units of the kinds normally displayed in or outside of residences located in single-family residential neighborhoods shall not be abridged, except that the Board may adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage and disturbance to other Owners and occupants.

(d) **Household Composition.** No rule shall interfere with the freedom of occupants of Units to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit and its fair share use of the Common Area, including parking.

(e) **Activities Within Unit.** No rule shall interfere with the activities carried on within the confines of Units, except that the Board may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the Unit, that block the views from other Units, or that create an unreasonable source of annoyance.

(f) Pets. Unless the keeping of pets in any Village is prohibited by Supplemental Declaration at the time of the sale of the first Unit in such Village, no rule prohibiting the keeping of ordinary household pets shall be adopted thereafter over the objection of any affected Owner expressed in writing to the Association. The Board may adopt reasonable regulations designed to minimize damage and disturbance to other Owners and occupants, including regulations requiring damage deposits, waste removal, leash controls, noise controls, occupancy limits based on size and facilities of the Unit and fair share use of the Common Area. Nothing in this provision shall prevent the Association from requiring removal of any animal that presents an actual threat to the health or safety of residents or from requiring abatement of any nuisance or unreasonable source of annoyance.

(g) Allocation of Burdens and Benefits. Except as permitted by Section 2.2, the initial allocation of financial burdens and rights to use Common Areas among the various Units shall not be changed to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Areas available, from adopting generally applicable rules for use of Common Areas, or from denying use privileges to those who abuse the Common Area, violate rules or this Declaration, or fail to pay assessments. This provision does not affect the right to increase the amount of assessments as provided in Article X.

(h) Alienation. No rule shall prohibit transfer of any Unit, or require consent of the Association for transfer of any Unit, for any period greater than two months. The Association shall not impose any fee on transfer of any Unit greater than an amount reasonably based on the costs to the Association of the transfer.

(i) Abridging Existing Rights. If any rule would otherwise require Owners to dispose of personal property which they owned at the time they acquired their Units, such rule shall not apply to any such Owners without their written consent.

### Article XIII EASEMENTS

13.1. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of an Owner, occupant, or the Association.

13.2. Easements for Utilities. Etc. There are hereby reserved unto the Association and its designees (which may include, without limitation, Bernalillo County, New Mexico and any

utility) access and maintenance easements upon, across, over, and under all of High Desert to the extent reasonably necessary for the purpose of replacing, repairing, and maintaining cable television systems, master television antenna systems, security and similar systems, roads, walkways, bicycle pathways, trails, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas, and electricity, and for the purpose of installing any of the foregoing on property which it owns or within easements designated for such purposes on recorded plats of High Desert. This easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing dwelling on a Unit, and any damage to a Unit resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

There is hereby granted to the local water supplier, electric company, and natural gas supplier easements across High Desert for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the dwelling on any Unit, nor shall any utilities be installed or relocated on High Desert, except as approved by the Association.

13.3. Easements for Collection of Storm Water Runoff and Flood Water. The Association is hereby granted the nonexclusive right and easement, but not the obligation, to enter upon any arroyo or conservation easement located within the Area of Common Responsibility to (a) install, keep, maintain, and replace pumps in order to provide water for the irrigation of any of the Area of Common Responsibility; (b) construct, maintain, and repair any structure designed to divert, collect or retain water; and (c) remove trash and other debris. The Association and its designees shall have an access easement over and across any of High Desert abutting or containing any portion of any arroyo or conservation easement to the extent reasonably necessary to exercise their rights under this Section.

There is further reserved herein for the benefit of the Association, and its designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area and Units (but not the dwellings thereon) adjacent to or within 50 feet of lake beds, ponds, streams and arroyos within High Desert, in order to (a) temporarily flood and back water upon and maintain water over such portions of High Desert; (b) maintain and landscape the slopes and banks of such ponds, streams, and arroyos; and (c) enter upon and across such portions of High Desert for the purpose of exercising its rights under this Section. All Persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from, the intentional exercise of such easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to heavy rainfall or other natural disasters.

13.4. Easements for Cross-Drainage. Every Unit and the Common Area shall be burdened with easements for drainage of storm water runoff from other portions of High Desert; provided, however, no Person shall alter the drainage on any Unit so as to materially increase the drainage of storm water onto adjacent portions of High Desert without the consent of the Owner

of the affected property. Each Unit and the Common Area shall be burdened with such easements for drainage of storm water runoff as may be shown on plats or reflected on plats relating to such Unit or Common Area, as applicable, recorded in the Office of the County Clerk of Bernalillo County, New Mexico.

13.5. Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance pursuant to Article V hereof, and to inspect for the purpose of ensuring compliance with this Declaration, any Supplemental Declaration, By-Laws, and Rules, which right may be exercised by any member of the Board, the Association, officers, agents, employees, and managers, and all police officers, firefighters, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Association, but shall not authorize entry into any single family detached dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

13.6 Wall or Fence Easement. There is hereby created an easement in favor of the Association, their employees and agents, upon, over and across each Lot affected for reasonable ingress, egress, installation, replacement, maintenance and repair of perimeter walls, fences or other boundary controls.

#### Article XIV MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in High Desert. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

14.1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of High Desert or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Declaration or By-Laws relating to such Unit or the Owner or Occupant which is not cured within 60 days. Notwithstanding this provision, any holder of a first Mortgage is entitled to written notice upon request from the Association of any

default in the performance by an Owner of a Unit of any obligation under the Declaration or By-Laws which is not cured within 60 days;

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

14.2. Other Provisions for First Lien Holders. To the extent possible under New Mexico law:

(a) Any restoration or repair of High Desert after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Declaration and the original plans and specifications unless the approval is obtained of the Eligible Holders of first Mortgages on Units to which at least 51% of the votes of Units subject to Mortgages held by such Eligible Holders are allocated.

(b) Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible Holders of the first Mortgages on Units to which at least 51% of the votes of Units subject to Mortgages held by such Eligible Holders are allocated.

14.3. Amendments to Documents. The following provisions do not apply to amendments to the constituent documents, or termination of the Association made as a result of destruction, damage, or condemnation pursuant to Section 14.2(a) and (b), or to the addition of land in accordance with Article IX.

(a) The consent of Voting Members representing at least 75% of the votes in the Association and the approval of the Eligible Holders of first Mortgages on Units to which at least 67% of the votes of Units subject to a Mortgage appertain, shall be required to terminate the Association.

(b) The consent of Voting Members representing at least 75% of the votes in the Association, and the approval of Eligible Holders of first Mortgages on Units to which at least 51% of the votes of Units subject to a Mortgage appertain, shall be required to materially amend any provisions of the Declaration, By-Laws, or Articles of Incorporation, or to add any material provisions thereto which establish, provide for, govern, or regulate any of the following:

- (i) voting;
- (ii) assessments, assessment liens, or subordination of such liens;
- (iii) reserves for maintenance, repair, and replacement of the Common Area;
- (iv) insurance or fidelity bonds;

- (v) rights to use the Common Area;
- (vi) responsibility for maintenance and repair of High Desert;
- (vii) expansion or contraction of High Desert or the addition, annexation, or withdrawal of Properties to or from the Association;
- (viii) boundaries of any Unit;
- (ix) leasing of units;
- (x) imposition of any right of first refusal of similar restriction of the right of any Owner to sell, transfer, or otherwise convey his or her Unit;
- (xi) establishment of self-management by the Association where professional management has been required by an Eligible Holder; or
- (xii) any provision included in the Declaration, By-Laws, or Articles of Incorporation which are for the express benefit of holders, guarantors, or insurers of first Mortgages on Units.

14.4. No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

14.5. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

14.6. Amendment by the Association. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of its respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Association, without approval of the Owners, may record an amendment to this Article to reflect such changes.

14.7. Applicability of Article XIV. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or New Mexico law for any of the acts set out in this Article.

14.8. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Association to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

Article XV  
ASSOCIATION'S RIGHTS

No Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of High Desert without the Board's review and written consent. Any attempted recordation without each such consent shall result in such instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the President of the Association.

Article XVI  
DISPUTE RESOLUTION

16.1. Voluntary Alternative Dispute Resolution Process. In any dispute between the Association and one or more Owners, or between Owners (collectively, the "Parties"), the Parties may choose to submit the dispute to mediation or binding arbitration, if all of the parties in the dispute agree.

16.2. Mediation. If the Parties agree to submit the dispute to mediation, the following rules apply:

- (a) The Parties shall jointly agree on a mediator to facilitate the mediation.
- (b) The Parties shall equally share in the cost of the mediator.
- (c) If the Parties reach an agreement, the agreement shall be in writing, signed by all of the Parties (the "Agreement").
- (d) If any party to the Agreement fails to abide by the terms of the Agreement, then any other party may file suit to enforce the terms of the Agreement. In such event, the prevailing party in such litigation shall be entitled to recover all costs incurred in enforcing the Agreement, including, without limitation, attorney's fees and costs.
- (e) Participating in mediation shall not toll any applicable statute of limitations, unless the Parties otherwise agree in writing.
- (f) Any party can terminate the mediation proceedings at any time by notifying all of the other parties in writing of such termination of mediation. Thereafter, unless the Parties jointly agree to arbitrate the dispute, any party may pursue any other legal remedies it has available to it at law or in equity.

16.3 Final and Binding Arbitration. If the Parties agree to submit the dispute to binding arbitration, the following rules apply:

- (a) The Parties shall attempt to jointly agree on an arbitrator (the "Arbitrator"). If the Parties cannot jointly agree on an arbitrator, then each party shall pick an arbitrator (the "Party



Appointed Arbitrator”). The Party Appointed Arbitrators shall then pick one or two neutral arbitrators (the “Neutral Arbitrator”) so that the total arbitration panel consists of an odd number of arbitrators. The Neutral Arbitrator shall chair the arbitration.

(b) No person may serve as a Neutral Arbitrator in any arbitration in which that person has any financial or personal interest in the result of the arbitration. Any person designated as a Neutral Arbitrator shall immediately disclose in writing to all Parties any circumstance likely to affect impartiality, including any bias or financial or personal interest in the outcome of the arbitration (“Bias Disclosure”). If any party objects to the service of any Neutral Arbitrator after receipt of that Neutral Arbitrator’s Bias Disclosure, such Neutral Arbitrator shall be replaced in the same manner in which the Neutral Arbitrator was selected.

(c) The Arbitrator, or the Neutral Arbitrator, as the case may be shall fix the date, time, and place for the hearing.

(d) Any party may be represented by an attorney or other authorized representative throughout the arbitration proceedings.

(e) The hearing shall be conducted in whatever manner will, in the judgment of the Arbitrator or Neutral Arbitrator, as applicable, most fairly and expeditiously permit the full presentation of the evidence and arguments of the Parties.

(f) Initially, each party shall bear its own attorney’s fees, and shall share equally in the cost of the Arbitration. However, the Arbitrator(s) may choose to award the prevailing party its share of the arbitration costs, as well as its reasonable attorney’s fees and costs.

(g) If there is more than one arbitrator, all decisions of the arbitration panel and the award shall be by majority vote.

(h) The arbitration award (the “Award”) shall be final and binding, and shall be prepared in a form that can be entered in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of New Mexico.

(i) If any party fails to comply with the Award, then any other party may file suit to enforce such Award. In such event, the prevailing party in such litigation shall be entitled to recover all costs incurred in enforcing the Agreement, including, without limitation, attorney’s fees and costs.

## Article XVII GENERAL PROVISIONS

17.1. Term. This Declaration shall run with and bind High Desert, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representative, heirs, successors, and assigns, for a term of 40 years from the date this Declaration is recorded. After such time, this Declaration shall be automatically extended for successive periods of 10 years each, unless an instrument in writing, signed by (a) a majority of

the then Owners, (b) Voting Members representing 75% of the total votes in the Association, and (c) the President of the Association certifying that the Board has approved termination, has been recorded within the year preceding each extension, agreeing to terminate this Declaration, in which case this Declaration shall be terminated as specified therein.

17.2. Amendment. This Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Members representing 75% of the total votes in the Association. In addition, the approval requirements set forth in Article XIV hereof shall be met if applicable.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(a) Validity and Effective Date of Amendments. Amendments to this Declaration shall become effective upon recordation in the Office of the County Clerk of Bernalillo County, New Mexico, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

If an Owner consents to any amendment to this Declaration, it will be conclusively presumed that such Owner has the authority so to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

17.3. Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

17.4. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

17.5. Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of 75% of the Voting Members. A Voting Member, other than an Owner entitled to cast only the vote for its own Unit(s) pursuant to Section 2.3 (a) of the By-Laws, shall not vote in favor of bringing or prosecuting any such proceeding unless authorized to do so by a vote of Owners holding 75% of the total votes attributable to Units in the Village represented by the Voting Member. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article X; (c) proceedings involving challenges to ad valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the

percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above. This provision shall apply in addition to the provisions of Article XVI, if applicable.

17.6. Cumulative Effect: Conflict. The covenants, restrictions, and provisions of this Declaration shall be cumulative with those of any Village and the Association may, but shall not be required to, enforce the covenants, conditions, and provisions of any Village; provided, however, in the event of conflict between or among such covenants and restrictions, and provisions of any articles of incorporation, by-laws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, those of any Village shall be subject and subordinate to those of the Association. The foregoing priorities shall apply, but not be limited to, the liens for assessments created in favor of the Association.

17.7. Compliance. Every Owner and occupant of any Unit shall comply with this Declaration, the By-Laws, and the Rules of the Association. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, by the Association or, in a proper case, by any aggrieved Unit Owner(s).

17.8. Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Association at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Association may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Association, notwithstanding the transfer of title.

CERTIFICATION

The President of the Association hereby certifies that the Amended and Restated Declaration has been approved by the required percentage of the Voting Members. Furthermore, the President of the Association hereby certifies that the Association, as successor to all of the Declarant rights, has approved the Amended and Restated Declaration in its entirety.

DATED this 15<sup>th</sup> day of August 2011.

High Desert Residential Owners Association, Inc.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: President

Attested to: By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: Secretary

STATE OF NEW MEXICO        )  
  ) ss  
COUNTY OF BERNALILLO    )

On this 15<sup>th</sup> day of August 2011, before me personally appeared \_\_\_\_\_, whose identity was proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this document, and who acknowledged that he/she signed this document.

\_\_\_\_\_  
Notary Public

Notary seal:

STATE OF NEW MEXICO            )  
  ) ss  
COUNTY OF BERNALILLO        )

On this 15<sup>th</sup> day of August 2011, before me personally appeared \_\_\_\_\_, whose identity was proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this document, and who acknowledged that he/she signed this document.

\_\_\_\_\_  
Notary Public

Notary seal:

**EXHIBIT "A"**

**Amendments to the Original Declaration**

1. First Amendment to Declaration of Covenants, Conditions and Restrictions for High Desert Residential Properties, which was recorded on February 24, 1995, as Document 95018895 in Book 95-5, Pages 2271-2274, in the Office of the County Clerk of Bernalillo County, New Mexico;
2. Second Amendment to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties, which was recorded on March 8, 1995, as Document 95023420 in Book 95-6, Pages 2332-2334, in the Office of the County Clerk of Bernalillo County, New Mexico;
3. Third Amendment to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties, which was recorded on December 4, 1995, as Document 95123873 in Book 95-29, Pages 4886-4891 , in the Office of the County Clerk of Bernalillo County, New Mexico;
4. Fourth Amendment to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties, which was recorded on March 26, 1996, as Document 96034023 in Book 96-8. Pages 7743-7745, in the Office of the County Clerk of Bernalillo County, New Mexico;
5. Fifth Amendment to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties, which was recorded on September 12, 1997, as Document 97095103 in Book 97-25, Pages 2445-2463, in the Office of the County Clerk of Bernalillo County, New Mexico (the "Fifth Amendment to Declaration");
6. Sixth Amendment to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties, which was recorded on June 8, 1999, as Document 1999075608 in Book 9908, Page 5423, in the Office of the County Clerk of Bernalillo County, New Mexico;
7. Seventh Amendment to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties, which was recorded on April 24, 2001, as Document 2001045228 in Book A18, Page 3676, in the Office of the County Clerk of Bernalillo County, New Mexico;
8. Eighth Amendment to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties, which was recorded on July 29, 2003, as Document 2003132385 in Book A61, Page 2097 in the Office of the County Clerk of Bernalillo County, New Mexico; and
9. Ninth Amendment to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties, which was recorded on December 16, 2010, as Document 2010129003, in the Office of the County Clerk of Bernalillo County, New Mexico.

## **EXHIBIT “B”**

### **Supplemental Declarations**

1. Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Tract 15A), which was recorded March 14, 1995, as Document 95025598 in Book 95-6, Pages 6854-6858, in the Office of the County Clerk of Bernalillo County, New Mexico;
2. Second Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Tracts 3B and 3C), which was recorded June 19, 1995, as Document 95060324 in Book 95-14, Pages 6088-6092, in the Office of the County Clerk of Bernalillo County, New Mexico;
3. Third Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Tract 3A), which was recorded August 18, 1995, as Document 95082948 in Book 95-19, Pages 8921-8925, in the Office of the County Clerk of Bernalillo County, New Mexico;
4. Fourth Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Unit 2 the Highlands/Tract 15B), which was recorded August 29, 1995, as Document 95087321 in Book 95-20, Pages 8831-8836, in the Office of the County Clerk of Bernalillo County, New Mexico;
5. Fifth Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Tracts 3B and 3C, Trillium Village), which was recorded December 12, 1995, as Document 95126995 in Book 95-30, Pages 1868-1874, in the Office of the County Clerk of Bernalillo County, New Mexico;
6. Sixth Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Tract 2A-1A-1), which was recorded February 1, 1996, as Document 96012264 in Book 96-3, Pages 7513-7519, in the Office of the County Clerk of Bernalillo County, New Mexico;
7. Seventh Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Lots 1 through 36 inclusive, Solterra Subdivision Unit 1 at High Desert), which was recorded May 20, 1996, as Document 96056432 in Book 96-14, Pages 2006-2010, in the Office of the County Clerk of Bernalillo County, New Mexico;
8. Eighth Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Tract 2A-1B-1, Tierra Del Oso Village), which was recorded May 30, 1996, as Document 96060081 in Book 96-15, Pages 673-677, records of Bernalillo County, New Mexico;

9. Ninth Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Tract 4B), which was recorded September 4, 1996, as Document 96098319 in Book 96-24, Pages 2814-2818, records of Bernalillo County, New Mexico;
10. Tenth Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Tract 14B/Unit 2A, the Highlands), which was recorded September 5, 1996, as Document 96099282 in Book 96-24, Pages 4841-4845, records of Bernalillo County, New Mexico;
11. Eleventh Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Tracts 3B and 3C, Trillium Village), which was recorded November 6, 1996, as Document 96121693 in Book 96-29, Pages 9094-9098, records of Bernalillo County, New Mexico;
12. Twelfth Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Lot 44, Desert Sky Village), which was recorded January 9, 1997, as Document 97002124 in Book 97-1, pages 5053-5060, records of Bernalillo County, New Mexico;
13. Thirteenth Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Tract 3A, Desert Sky Village) which was recorded June 11, 1997, as Document 97059451 in Book 97-15, pages 9383-9422, records of Bernalillo County, New Mexico;
14. Fourteenth Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Tract 4B, Chamisa Trail Village), which was recorded January 9, 1997, as Document 97020850 in Book 97-5, pages 9673-9691, records of Bernalillo County, New Mexico;
15. First Amendment to Fourteenth Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Tract 4B, Chamisa Trail Village), which was recorded September 4, 1997, as Document 97091959 records of Bernalillo County, New Mexico;
16. Fifteenth Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Tract 15C/Unit 3, the Highlands), which was recorded May 10, 1997, as Document 97049849 in Book 97-13, pages 4210-4214, records of Bernalillo County, New Mexico;
17. Sixteenth Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Solterra Subdivision Unit 1, Lots 1-36), recorded June 20, 1997 as Document 97062870, records of Bernalillo County, New Mexico;



18. Seventeenth Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Tract 9A) which was recorded June 19, 1997, as Document 97062084, records of Bernalillo County, New Mexico;
19. Eighteenth Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Tract A, Solterra Subdivision/Unit 2) which was recorded June 30, 1997, as Document 97065755, in Book 97-17, pages 5953-5958 records of Bernalillo County, New Mexico;
20. Nineteenth Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Tract 9A, Sunset Ridge Village) which was recorded December 19, 1997, as Document 97133979, in Book 97-37, pages 6637-6646 records of Bernalillo County, New Mexico;
21. First Amendment to Nineteenth Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Tract 9A, Sunset Ridge Village) which was recorded November 9, 1998, as Document 1998144306, in Book 9818, page 2488 records of Bernalillo County, New Mexico;
22. Twentieth Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Tract 9B) which was recorded December 23, 1997, as Document 97134922, in Book 97-35, pages 9642-9647 records of Bernalillo County, New Mexico;
23. Twenty-First Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Tract 8C) which was recorded March 13, 1998, as Document 1998030112, in Book 9806, page 8629 records of Bernalillo County, New Mexico;
24. Twenty-Second Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Tract 2A-1 A-2) which was recorded July 16, 1998, as Document 1998089079, in Book 9812, page 7379 records of Bernalillo County, New Mexico;
25. Twenty-Third Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Tract 15D-1A/Desert Highlands) which was recorded July 20, 1998, as Document 1998090384, in Book 9812, page 8673 records of Bernalillo County, New Mexico;
26. Twenty-Fourth Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Tract 14A/The Overtok at High Desert) which was recorded January 4, 1999, as Document 1999000462, in Book 9901, page 456 records of Bernalillo County, New Mexico;
27. Twenty-Fifth Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Tract 11 A) which was recorded January

- 15, 1999, as Document 1999006283, in Book 9901, page 6257 records of Bernalillo County, New Mexico;
28. Twenty-Sixth Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (The Canyons at High Desert Phase I) which was recorded February 16, 1999, as Document 1999020725, in Book 9903, page 668 records of Bernalillo County, New Mexico;
  29. Twenty-Seventh Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (The Canyons at High Desert, Phase I) which was recorded February 16, 1999, as Document 1999020727, in Book 9903, page 670 records of Bernalillo County, New Mexico;
  30. Twenty-Eighth Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Chaco Ridge Village) which was recorded April 16, 1999, as Document 1999051867, in Book 9906, page 1754 records of Bernalillo County, New Mexico;
  31. Twenty-Ninth Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Tract 5A-1A-1) which was recorded May 24, 1999, as Document 1999068181, in Book 9907, page 8025 records of Bernalillo County, New Mexico;
  32. Thirtieth Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Tract 2A-1C-2A-1 ) which was recorded June 4, 1999, as Document 1999074085, in Book 9908. page 3907 records of Bernalillo County, New Mexico;
  33. Thirty-First Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Chaco Compound Village) which was recorded September 7, 1999, as Document 1999115959, in Book 9912, page 5595 records of Bernalillo County, New Mexico;
  34. Thirty-Second Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Enclave Village) which was recorded November 3, 1999, as Document 1999138715, in Book 9914, page 8289 records of Bernalillo County, New Mexico;
  35. Thirty-Third Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Tract 15D-1B-2/Unit 2 Desert Highlands) which was recorded December 6, 1999, as Document 1999149924, in Book 9915, page 9466 records of Bernalillo County, New Mexico;
  36. Thirty-Fourth Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Desert Mountain at High Desert, Tract

- 11A) which was recorded July 11, 2000, as Document 2000067159, in Book A7, page 6894 records of Bernalillo County, New Mexico;
37. Thirty-Fifth Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Pinon Point Village) which was recorded April 14, 2000, as Document 2000036364, in Book A4, page 6210 records of Bernalillo County, New Mexico;
  38. First Amendment to Thirty-Fifth Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Pinon Point Village) which was recorded October 13, 2000, as Document 2000102222, in Book 11, page 1820 records of Bernalillo County, New Mexico;
  39. Thirty-Sixth Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Tract 11B, High Desert) which was recorded May 11, 2000, as Document 2000046065, in Book A5, page 5885 records of Bernalillo County, New Mexico;
  40. Thirty-Seventh Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (The Canyons at High Desert) which was recorded October 13, 2000, as Document 2000101492, in Book A11, page 1094, records of Bernalillo County, New Mexico;
  41. Thirty-Eighth Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Desert Mountain at High Desert) which was recorded November 28, 2000, as Document 2000117817, in Book A12, page 7373, records of Bernalillo County, New Mexico;
  42. Thirty-Ninth Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Tract 15D-1B-1A/West Highlands at High Desert) to be recorded in the records of Bernalillo County, New Mexico;
  43. Fortieth Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Tract 15D-1B-1B/Unit 1 Mountain Highlands at High Desert) which was recorded February 14, 2001, as Document 2001015665, in Book A15, page 4196, records of Bernalillo County, New Mexico;
  44. Forty-First Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Lots 67, 68 and 69, Sunset Ridge at High Desert) which was recorded April 8, 2002, as Document 2002045612, in Book A34, page 5498, records of Bernalillo County, New Mexico;
  45. Forty-Second Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Tracts 13-A and 13-B) which was recorded December 20, 2002, as Document 2002171063, in Book A47, page 619, records of Bernalillo County, New Mexico, as amended;

46. First Amendment to Forty-Second Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Tracts 13-A, and 13-B) which was recorded May 20, 2003, as Document 2003085022, in Book A58, page 4841, records of Bernalillo County, New Mexico, as amended;
47. Forty-Third Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Tracts 15D-1B-1C/Unit 2 Mountain Highlands) which was recorded October 8, 2003, as Document 2003185484, in Book A66, page 5100, records of Bernalillo County, New Mexico;
48. Forty-Fourth Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Wilderness Village) which was recorded December 15, 2004, as Document 2004175360, in Book A88, page 4879, records of Bernalillo County, New Mexico;
49. Forty-Fifth Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Wilderness Compound) which was recorded December 15, 2004, as Document 2004175359, in Book A88, page 4878, records of Bernalillo County, New Mexico;
50. Forty-Sixth Supplemental Declaration to Declaration of Covenants; Conditions, and Restrictions for High Desert Residential Properties (Tract 8A) which was recorded May 31, 2005, as Document 2005076546, in Book A97, page 6316, records of Bernalillo County, New Mexico;
51. Forty-Seventh Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Tracts OS-2-A, OS-3-A and OS-4-A) which was recorded June 28, 2005, as Document 2005092007, in Book A99, page 1724, records of Bernalillo County, New Mexico;
52. Forty-Eighth Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (The Legends at High Desert) which was recorded November 1, 2006, as Document 2006167268, in Book A126, page 6814, records of Bernalillo County, New Mexico; and
53. Forty-Ninth Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions for High Desert Residential Properties (Tract A Wilderness) which was recorded December 16, 2010, as Document 2010129008, records of Bernalillo County, New Mexico.

## **EXHIBIT “C”**

### **Legal Description**

1. Tract 1 as shown on the Plat of High Desert filed in the Office of the County Clerk of Bernalillo County, New Mexico, on November, 23, 1993 in Volume 93C, Folio 325; which land is part of “Trailhead Village.”
2. Tracts 15A at High Desert as the same is shown and designated on the Plat of Tracts 15A, 15B, 15C & 15D at High Desert filed in the office of the County Clerk of Bernalillo County, New Mexico on February 9, 1995 in Map Book 95C, Folio 46.
3. Tracts 3B and 3C of HIGH DESERT, Albuquerque, New Mexico as the same is shown and designated on the Plat of Tracts 3A, 3B, 3C and 3D, HIGH DESERT, filed in the office of the County Clerk of Bernalillo County, New Mexico, on February 9, 1995, in Vol. 95C, Folio 47.
4. Tracts 3A of HIGH DESERT, Albuquerque, New Mexico as the same is shown and designated on the Plat of Tracts 3A, 3B, 3C and 3D, High DESERT, filed in the office of the County Clerk of Bernalillo County, New Mexico, on February 9, 1995, in Vol. 95C, Folio 47.
5. UNIT 2 OF THE HIGHLANDS AT HIGH DESERT, Albuquerque, New Mexico as the same is shown and designated on the Plat of Unit 2 of the Highlands at High Desert, filed in the office of the County Clerk of Bernalillo County, New Mexico, on August 23, 1995, in Vol. 95C, Folio 319.
6. Tracts numbered Three-B (3B) and Three-C (3C) of HIGH DESERT, Albuquerque, New Mexico, as the same is shown and designated on the plat thereof, filed in the office of the County Clerk of Bernalillo County, New Mexico, on February 9, 1995 in Map Book 95C, folio 47.
7. Tract 2A-1A-1 of HIGH DESERT, Albuquerque, New Mexico as the same is shown and designated on the Corrected Plat of Tracts 2A-1A-1, 2A-1A-2, 2A-1B-1, 2A-1C-1, 2A-1C-2 and 5A-1 HIGH DESERT, filed in the office of the County Clerk of Bernalillo County, New Mexico, on December 22, 1995, in Vol. 95C, Folio 460.
8. Lots 1 – 36 inclusive, Solterra Subdivision Unit 1 at High Desert, Albuquerque, New Mexico as the same is shown and designated on the Plat of Solterra Subdivision Unit 1 at High Desert, filed in the office of the County Clerk of Bernalillo County, New Mexico, on May 15, 1996, in Vol. 96C, Folio 199.
9. Tract 2A-1B-1 as shown on the plat of Tracts 2A- 1A-1, 2A-1A-2, 2A-1B-1, 2A-1C-1, 2A-1C-2 and 5A-1 High Desert, Albuquerque, New Mexico, filed in the office of the County Clerk of Bernalillo County, New Mexico, on December 22, 1995 in Map Book 95C, folio 460; now comprising Lots 1 through 45 inclusive as shown on the Plat of the Tierra del Oso

Subdivision at High Desert. Albuquerque, New Mexico filed in the office of the County Clerk of Bernalillo County, New Mexico, on May 23, 1996 in Map Book 96C, folio 215.

10. Tract 4B of HIGH DESERT, Albuquerque, New Mexico as shown on the Plat filed in Vol. 96C, Folio 363, Office of the County Clerk of Bernalillo County, New Mexico on August 19, 1996.
11. Tract 14B of HIGH DESERT, Albuquerque, New Mexico as shown on the Plat filed in Vol. 96C, Folio 364, Office of the County Clerk of Bernalillo County, New Mexico on August 21, 1996.
12. Tracts numbered Three-B (3B) and Three-C (3C) of HIGH DESERT, Albuquerque, New Mexico, as the same is shown and designated on the plat thereof, filed in the office of the County Clerk of Bernalillo County, New Mexico, on February 9, 1995 in Map Book 95 C, folio 47.
13. Lot 44 of Unit 1 of Desert Sky at High Desert, Albuquerque, New Mexico, as the same is shown and designated on the plat thereof, filed in the office of the County Clerk of Bernalillo County, New Mexico, on September 22, 1995, in Map Book 95C, folio 353.
14. Unit 1 of Desert Sky at High Desert, Albuquerque, New Mexico, as the same is shown and designated on the plat thereof, filed in the office of the County Clerk of Bernalillo County, New Mexico, on September 22, 1995, in Map Book 95C, folio 353.
15. Chamisa Trail at High Desert, Albuquerque, New Mexico, as the same is shown and designated on the plat thereof, filed in the office of the County Clerk of Bernalillo County, New Mexico, on October 4, 1996, in Map Book 96C, folio 417.
16. Unit 3 of the Highlands at High Desert, Albuquerque, New Mexico as shown on the Plat filed in Vol. 97C, Folio 155, Office of the County Clerk of Bernalillo County, New Mexico on May 15, 1997.
17. Lots 1 - 36 inclusive, Solterra Subdivision Unit 1 at High Desert, Albuquerque, New Mexico as the same is shown and designated on the Plat of Solterra Subdivision Unit 1 at High Desert, filed in the office of the County Clerk of Bernalillo County, New Mexico, on May 15, 1996, in Vol. 96C, Folio 199.
18. Tract 9A of HIGH DESERT, Albuquerque, New Mexico as shown on the Plat filed in Vol. 97C, Folio 182, Office of the County Clerk of Bernalillo County, New Mexico on June 11, 1997.
19. Lots 1 - 36 inclusive, Solterra Subdivision Unit 1 at High Desert, Albuquerque, New Mexico as the same is shown and designated on the Plat of Solterra Subdivision Unit 1 at High Desert, filed in the office of the County Clerk of Bernalillo County, New Mexico, on May 15, 1996, in Vol. 96C, Folio 199.

20. Sunset Ridge at High Desert as shown and designated on the plat thereof filed in the Office of the County Clerk of Bernalillo County, New Mexico, on September 25, 1997 in Map Book 97C, Folio 295.
21. Tract 9B of HIGH DESERT, Albuquerque, New Mexico as shown on the Plat filed in Vol. 97C, Folio 182, Office of the County Clerk of Bernalillo County, New Mexico on June 11, 1997.
22. Tract 8C, High Desert as shown on the plat filed June 30, 1994 in Map Book 94C, Folio 223, records of Bernalillo County, New Mexico.
23. Tract 2A-1A-2 of HIGH DESERT, Albuquerque, New Mexico as the same is shown and designated on the Corrected Plat of Tracts 2A-1A-1, 2A-1A-2, 2A-1B-1, 2A-1C-1, 2A-1C-2 and 5A-1 HIGH DESERT, filed in the office of the County Clerk of Bernalillo County, New Mexico, on December 22, 1995, in Vol. 95C, Folio 460.
24. Desert Highlands at High Desert, Albuquerque, New Mexico as shown on the Plat filed as document number 1998089434 in Book 98C, Folio 208, Office of the County Clerk of Bernalillo County, New Mexico on July 16, 1998.
25. The Overlook at High Desert, Albuquerque, New Mexico as shown on the Plat filed as document number 1998145956 in Book 98C, Folio 321, Office of the County Clerk of Bernalillo County, New Mexico on November 12, 1998.
26. Tract 11A High Desert, Albuquerque, New Mexico as shown on the Plat of Tracts 11A, 11B & 11C High Desert filed as document number 1998164649 in Book 98C, Folio 360, Office of the County Clerk of Bernalillo County, New Mexico of December 22, 1998.
27. Lots 1-38, inclusive, and Tract B, The Canyons at High Desert, Albuquerque, New as shown on the Plat of The Canyons at High Desert filed as document number 1998134990 in Book 98C, Folio 310, Office of the County Clerk of Bernalillo County, New Mexico on October 22, 1998.
28. Lots 1 - 38, inclusive, and Tract B, The Canyons at High Desert, Albuquerque, New Mexico as shown on the Plat of The Canyons at High Desert filed as document number 1998134990 in Book 98C, Folio 310, Office of the County Clerk of Bernalillo County, New Mexico on October 22, 1998.
29. Lots 1 - 69, Chaco Ridge, HIGH DESERT, Albuquerque, New Mexico a replat of Tract 9B, High Desert as shown on the Plat filed in Book 98C, Page 190, Document 1998086200, Office of the County Clerk of Bernalillo County, New Mexico on July 9, 1998.
30. Tract 5A-1A-1, High Desert, Bernalillo County, New Mexico as the same is shown and designated on the Plat of Tracts 2A-1C-2A-1, 5A-1A-1 and 5A-1A-2 High Desert, Albuquerque, New Mexico, filed in the office of the County Clerk of Bernalillo County, New Mexico on June 24, 1998, Volume 98C, folio 169, as document no. 1998078765.

31. Tract 2A-1C-2A-1 of High Desert, Albuquerque, New Mexico as shown on the Plat filed in Vol. 98C, Folio 169, Office of the County Clerk of Bernalillo County, New Mexico on June 24, 1998.
32. Lots 70 - 91, Chaco Ridge, HIGH DESERT, Albuquerque, New Mexico a replat of Tract 9B, High Desert as shown on the Plat filed in Book 98C, Page 190, Document 1998086200, Office of the County Clerk of Bernalillo County, New Mexico on July 9, 1998.
33. The Enclave at High Desert indicated on the plat of THE ENCLAVE AT HIGH DESERT filed April 22, 1999 in Map Book 99C, Folio 97, document number 1999054135, records of Bernalillo County, New Mexico.
34. Unit 2 Desert Highlands at High Desert, Albuquerque, New Mexico as shown on the Plat of Unit 2 Desert Highlands at High Desert filed as document number 1999148179 in Book 99C, Folio 322, Office of the County Clerk of Bernalillo County, New Mexico on December 1, 1999.
35. Desert Mountain at High Desert, Unit One, Albuquerque, New Mexico as shown on the Plat of Desert Mountain at High Desert, Unit One High Desert filed as document number 1999059157 in Book 99C, Folio 106, Office of the County Clerk of Bernalillo County, New Mexico on May 4, 1999.
36. Piñon Point, High Desert as shown and indicated on the plat of PIÑON POINT AT HIGH DESERT filed March 3, 2000 in Map Book 2000C, Folio 69, document number 2000021553, records of Bernalillo County, New Mexico;
37. Tract 11B High Desert, Albuquerque, New Mexico as shown on the Plat of Tracts 11A, 11B & 11C High Desert filed as document number 1998164649 in Book 98C, Folio 360, Office of the County Clerk of Bernalillo County, New Mexico on December 22, 1998.
38. Lots 1 - 38, inclusive, and Tract B, The Canyons at High Desert, Albuquerque, New Mexico as shown on the Plat of The Canyons at High Desert filed as document number 1998134990 in Book 98C, Folio 310, Office of the County Clerk of Bernalillo County, New Mexico on October 22, 1998; Lots 39 - 65, inclusive, and Tract A, The Canyons at High Desert, Albuquerque, New Mexico as shown on the Plat of Unit 2 The Canyons at High Desert filed as document number 2000056007 in Book 2000C, Folio 154, Office of the County Clerk of Bernalillo County, New Mexico on June 8, 2000.
39. Desert Mountain at High Desert, Unit One, Albuquerque, New Mexico as shown on the Plat for Desert Mountain at High Desert, Unit One filed as document number 1999059157 in Book 99C, page 106, office of the County Clerk at Bernalillo County, New Mexico on May 4, 1999. Desert Mountain at High Desert, Unit Two, Albuquerque, New Mexico as shown on the Plat of Desert Mountain at High Desert, Unit Two, filed as document number 2000076141 in Book 2000C, Folio 203, Office of the County Clerk of Bernalillo County, New Mexico on August 3, 2000.



40. West Highlands at High Desert, Albuquerque, New Mexico as shown on the Plat of West Highlands at High Desert filed as document number 2000110114 in Book 2000C, Folio 287, Office of the County Clerk of Bernalillo County, New Mexico on November 3, 2000.
41. Unit 1 Mountain Highlands at High Desert, Albuquerque, New Mexico as shown on the Plat of Unit 1 Mountain Highlands at High Desert filed as document number 2000117795 in Book 2000C, Folio 298, Office of the County Clerk of Bernalillo County, New Mexico on November 28, 2000.
42. LOT 67: Lot 67 of Sunset Ridge at High Desert as the same is shown and designated on the plat of Sunset Ridge at High Desert, Albuquerque, New Mexico, filed in the office of the County Clerk of Bernalillo County, New Mexico on September 25, 1997, in Volume 97C , folio 295 , as document no. 97100226;  
  
LOT 68: Lot 68 of Sunset Ridge at High Desert as the same is shown and designated on the plat of Sunset Ridge at High Desert, Albuquerque, New Mexico, filed in the office of the County Clerk of Bernalillo County, New Mexico on September 25, 1997, in Volume 97C, folio 295, as document no. 97100226;  
  
LOT 69: Lot 69 of Sunset Ridge at High Desert as the same is shown and designated on the plat of Sunset Ridge at High Desert, Albuquerque, New Mexico, filed in the office of the County Clerk of Bernalillo County, New Mexico on September 25 , 1997, in Volume 97C, folio 295, as document no. 97100226.
43. Tract 13-A: Tract 13-A HIGH DESERT, Albuquerque, New Mexico as shown on the Bulk Plat of Tracts 13-A, 13-B, 13-C, OS-2-A & OS-3-A, High Desert filed in the office of the County Clerk of Bernalillo County, New Mexico on December 12, 2002 in Book 2002C, Folio 397. Tract 13-B: Tract 13-B HIGH DESERT, Albuquerque, New Mexico as shown on the Bulk Plat of Tracts 13-A, 13-B, 13-C, OS-2-A & OS-3-A, High Desert filed in the office of the County Clerk of Bernalillo County, New Mexico on December 12, 2002 in Book 2002C, Folio 397.
44. Unit 2 Mountain Highlands at High Desert, Albuquerque, New Mexico as shown on the Plat of Unit 2 Mountain Highlands at High Desert filed as document number 2003182214 in Book 2003C, Folio 298, Office of the County Clerk of Bernalillo County, New Mexico on October 2, 2003.
45. Unit 2 – Wilderness Subdivision (also referred to as “Wilderness Village”) as the same is shown on the Plat of Unit 2 – Wilderness Subdivision and Unit 3 – Wilderness Subdivision at High Desert recorded in the Bernalillo County, New Mexico real estate records on December 11, 2003 in Book 2003C, page 373, as document 2003220908.
46. Unit 3 – Wilderness Subdivision (also referred to as “Wilderness Compound”) as the same is shown on the Plat of Unit 2 – Wilderness Subdivision and Unit 3 – Wilderness Subdivision at

High Desert recorded in the Bernalillo County, New Mexico real estate records on December 11, 2003 in Book 2003C, page 373, as document 2003220908.

47. Tract 8A, High Desert as shown on the plat of Tracts 8A, 8B and 8C, High Desert filed June 30, 1994 in Map Book 94C, Folio 223, as Document No. 94083641, records of Bernalillo County, New Mexico.
48. Tracts OS-2-A of Bulk Plat of Tracts 13-A, 13-B, 13-C, OS-2-A & OS-3-A High Desert (A replat of Tracts 13, OS-2 and 0-3, High Desert), as the same is shown and designated on the Plat filed in the office of the County Clerk of Bernalillo County, New Mexico on December 12, 2002, recorded in Bk 2002C, Page 397 (Document No. 2002165908) of the records of Bernalillo County, New Mexico. Tract OS-3-A of Bulk Plat of Tracts 13-A, 13-B, 13-C, OS-2-A & OS-3-A High Desert (A replat of Tracts 13, OS-2 and 0-3, High Desert), as the same is shown and designated on the Plat filed in the office of the County Clerk of Bernalillo County, New Mexico on December 12, 2002, recorded in Bk 2002C, Page 397 (Document No. 2002165908) of the records of Bernalillo County, New Mexico, as ratified by the Ratification of Plat Tract OS-3-A, High Desert filed in the office of the County Clerk of Bernalillo County, New Mexico on January 8, 20023, recorded in Bk A48, Page 4497 (Document No. 2003004505) of the records of Bernalillo County, New Mexico. Tract OS-4-A HIGH DESERT, Albuquerque, New Mexico as shown on the Plat of Tracts OS-4-A & 13-C-1, High Desert (A replat of Tracts OS-4 & 13-C, High Desert) filed in the office of the County Clerk of Bernalillo County, New Mexico on April 21, 2003 in Book 2003C, Page 108 as document number 2003064030.
49. The Legends at High Desert as the same is shown and designated in the Plat of The Legends at High Desert Subdivision files in the records of Bernalillo County, New Mexico on May 11, 2006 in Book 2006C, page 149, as document 2006068620.
50. Tract A as the same is shown on the Plat of Unit 2 - Wilderness Subdivision and Unit 3 - Wilderness Subdivision at High Desert recorded in the Bernalillo County, New Mexico real estate records on December 11, 2003 in Book 2003C, page 373, as document 2003220908.

## EXHIBIT "D"

### Use Restrictions

(a) General. High Desert shall be used only for single family residential, recreational, and related purposes (which may include, without limitation, offices for any property manager retained by the Association or business offices for the Association consistent with this Declaration and any Supplemental Declaration). Any Supplemental Declaration or additional covenants imposed on the property within any Village may impose stricter standards than those contained in this Article and the Association shall have standing and the power to enforce such standards.

(b) Restricted Activities. The following activities are prohibited within High Desert unless expressly authorized by, and then subject to such conditions as may be imposed by, the Association:

(i) Parking of commercial vehicles, recreational vehicles, mobile homes, boats or other watercraft, or other oversized vehicles, stored vehicles or inoperable vehicles in places other than enclosed garages;

(ii) Capturing, trapping or killing of wildlife within High Desert, except in circumstances posing an imminent threat to the safety of Persons using High Desert and in other circumstances which the Board in its reasonable business judgment determines to be necessary;

(iii) Raising, breeding or keeping of animals, livestock, or poultry of any kind, except that a reasonable number of dogs, cats, or other usual and common household pets (as determined by the Board) may be permitted in a Unit. However, those pets which are permitted to roam free, or, in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may take action to have the pet removed;

(iv) Activities which materially disturb or destroy the vegetation, wildlife or air quality within High Desert or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution;

(v) Obstruction, rechanneling, or modification of drainage flows after location and installation of drainage swales, drainage ponds, storm sewers, or storm drains, or modification of such drainage swales, drainage ponds, storm sewers, or storm drains, except that the Association shall have such right;

(vi) Subdivision of a Unit into two or more Units after a subdivision plat including such Unit has been approved and filed with the appropriate governmental authority, or changing the boundary lines of any Unit;

(vii) Operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years;

(viii) Conversion of any carport, garage, attic or other unfinished space, other than a basement, to finished space for use as an apartment or other integral part of the living area on any Unit;

(ix) Use of any arroyo trails maintained by the Association for purposes other than walking and non-motorized bicycling;

(x) Any Business, Trade, garage sale, moving sale, rummage sale, or similar activity, except that an Owner or occupant residing in a Unit may conduct Business activities within the Unit so long as: (a) the existence or operation of the activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (b) the activity conforms to all zoning requirements for the Properties; (c) the activity does not involve regular visitation of the Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Properties; and (d) the activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board; and

(xi) Any construction, erection, or placement of ornamentation or other objects or equipment, including any antenna or other device for the transmission or reception of television or radio signals or any non-visible form of electromagnetic radiation, permanently or temporarily, on the outside portions of the Unit, whether such portion is improved or unimproved, except as specifically permitted by Section 12.5(c) and except as to antennas or other devices that are of the types and sizes allowed by standards set forth in the Guidelines for Sustainability, as modified from time to time.

(xii) Construction of wood burning fireplaces or stoves in Units except in compliance with (i) the Guidelines for Sustainability or Rules adopted by the Association, which Guidelines may include limitations on the number of wood burning stoves or fireplaces allowed per Village, and (ii) the High Desert Sector Plan adopted May 3, 1993 by the City Council of the City of Albuquerque, as it may be amended from time to time.