

**INTEGRATED SET OF COVENANTS  
FOR THE MONTE SERENO SUBDIVISION**

Integrated to include:

Original Declaration Recorded May 4, 2005, Instrument #1378533

Amendment No. 1 Recorded July 27, 2006, Instrument #1443864

First Supplemental Declaration Recorded July 27, 2006, Instrument #1443865

Amendment No. 2 Recorded October 24, 2006, Instrument #1456211

***REFERENCE DOCUMENT ONLY***  
***NOT RECORDED IN THIS FORM***



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**DECLARATION**  
**OF**  
**COVENANTS, CONDITIONS, RESTRICTIONS,**  
**ASSESSMENTS, CHARGES, LIENS, AND EASEMENTS**  
**FOR**  
**LOTS 64-213 IN PHASES I, II AND III**  
**OF THE MONTE SERENO SUBDIVISION**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, ASSESSMENTS, CHARGES, LIENS, AND EASEMENTS (sometimes hereinafter “Declaration” and sometimes hereinafter “Covenants and Restrictions”) is made on this 4<sup>th</sup> day of April, 2005, by Southwest Lifestyle Concepts, LLC, a Colorado limited liability company, by HMB Partners, Inc., a Colorado corporation, its manager, whose address is 88 Steele Street, Suite 300, Denver, Colorado 80206 (“Declarant”).



The Declaration provides for an extensive degree of control in and by Declarant and its successors and assigns including, but not limited to, (i) control of the Board of Directors of the Property Owners’ Association (as provided for in Section 2 hereof) and of the Architectural Control Committee (as provided for in Section 3 hereof), the type, design, and location of improvements which may be built within the Monte Sereno Subdivision (as defined in Recital A hereof), and the uses and limitation of uses of and upon all areas within the Monte Sereno Subdivision; (ii) the right to amend extensively the Declaration; (iii) substantial flexibility in developing the Monte Sereno Subdivision; and (iv) substantial flexibility in subjecting additional property to the Declaration. Each owner, by accepting title to any portion of the Property (as defined in Recital B hereof), and each other person or entity acquiring any other interest in the Property, after the effective date hereof, acknowledges and agrees to and accepts Declarant’s (and its successors’ and assigns’) control of the Property and of the Monte Sereno Subdivision and the limited liability of Declarant and its successors and assigns as provided herein. Such control is an integral part of the Declaration and of the development and management of the Property and the Monte Sereno Subdivision.





## **RECITALS**

### **A. MONTE SERENO SUBDIVISION.**

Declarant is the owner of a certain parcel of land known as the Monte Sereno Subdivision, in the City of Santa Fe, New Mexico (the "City") which is described in that certain 1993 Annexation and Development Agreement between Tano Santa Fe Partners and the City of Santa Fe executed on May 5, 1993 recorded in Book 947, Pages 799-901, of the real estate records of Santa Fe County (the "Monte Sereno Subdivision" or "Subdivision"). Final Subdivision Plats for Phases I and II of the Monte Sereno Subdivision are recorded in the real estate records of Santa Fe County on May 4, 2005 as Instrument No. 1378.510.

### **B. PROPERTY.**

Declarant desires to develop at this time Lots 64 through 213, inclusive, in Phase I, Phase II and Phase III<sup>1</sup> of the Monte Sereno Subdivision, consisting of the single-family residential lots approved for construction thereon of one (1) detached single-family dwelling and any other allowable accessory structures in said phases (the "Property"), and these Covenants and Restrictions shall apply to the Property, but not to any other part of Monte Sereno Subdivision, unless and until Declarant, in its sole discretion, submits and subjects such other part of the Monte Sereno Subdivision to this Declaration. The Property is being developed in accordance with a revised master plan (which may be amended from time to time) for the Monte Sereno Subdivision.

### **C. SUBJECTION OF PROPERTY.**

Declarant desires and intends to submit and subject the Property, together with all buildings, improvements and fixtures of whatever kind now or hereafter located thereon (all of which constitute a part of the Property), and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto, to the covenants, conditions, restrictions, assessments, charges, liens, and easements hereinafter set forth.

### **D. ANNEXATION.**

Declarant may, but is not required, to annex other property within the Monte Sereno Subdivision to the Property and thereby subject such annexed property to the Declaration, and to bind the subsequent owners of any interests therein to the covenants, conditions, restrictions, assessments, charges, liens, and easements hereinafter set forth.

### **E. COVENANTS AND RESTRICTIONS.**

Declarant desires and intends that the owners, mortgagees, occupants, and all other persons and entities acquiring any interest in the Property shall at all times enjoy

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<sup>1</sup> First Supplemental Declaration (Lots 125-213 of Phase III annexed)



the benefits of, and shall hold their interests subject to, the covenants, conditions, restrictions, assessments, charges, liens, and easements hereinafter set forth, all of which are declared so that the Property may be developed, improved and used for the mutual benefit and enjoyment of all prospective purchasers thereof.

## **DECLARATIONS**

NOW, THEREFORE, Declarant hereby declares that the Property shall hereafter be held, transferred, sold, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used subject to the covenants, conditions, restrictions, assessments, charges, liens, easements, privileges, rights, and obligations hereinafter set forth, all of which shall run with the land and shall be binding upon the Property and on Declarant and on all parties having or acquiring any right, title or interest therein, or in any part thereof, and shall inure to the benefit of the Declarant and every other owner of any interest in or to the Property, their heirs, successors and assigns, and to the Property Owners' Association (as provided for in Section 2 hereof) and each member thereof.

### **1. PURPOSE OF COVENANTS AND RESTRICTIONS**

In recognition of the commanding views, natural beauty and high aesthetic value of the lands within the Property, it is the purpose of these Covenants and Restrictions to protect and preserve these features, to provide for the development, improvement and use of lots within the Property as secluded residential sites in harmony with their natural environment, and to insure, insofar as possible, that each lot shall be developed, improved and used in such fashion as to cause the least disturbance to and detract from the natural environment and the overall appearance of the Property from within and without. The objective is the sensitive, harmonious integration of development with the natural environment by the preservation and maintenance of that environment to the fullest extent practicable. Another purpose of this Declaration is to encourage homes of traditional, historical Santa Fe architectural styles in order to ensure that all homes will be compatible with each other in terms of design and architecture, and these Covenants and Restrictions are to be interpreted to require that each improvement shall fit the land on which it is situated in a physical and organic sense, rather than reshape the land any more than necessary to fit the improvement. In order to minimize disruption of the existing environment, each residence will need to be individually sited on its lot, and what is found acceptable in one situation may not be acceptable in another.

### **2. PROPERTY OWNERS' ASSOCIATION**

2.1. **Association.** Within a reasonable time after the filing of this Declaration, Declarant shall cause to be formed a Property Owners' Association incorporated as a non-profit New Mexico corporation (the "Association") to serve as the governing body for all of





the owners of lots within the Property for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the Property, and, in owning or leasing portions thereof, the assessment of expenses, payment of losses, disposition of casualty insurance proceeds, and other matters provided in the Declaration, the Articles of Incorporation and By-laws, and Association rules and guidelines. Upon the incorporation of the Association, the Declaration shall be binding upon the Association and its members.

**2.2. Members.** All persons or entities, including Declarant, owning lots in the Property shall be and automatically become members of the Association; provided, however, that the membership of any such person or entity shall automatically terminate when such person or entity no longer owns any lot within the Property.

**2.3. Voting.** With respect to all matters to be voted upon by the members of the Association, each member shall be entitled to one (1) vote for each lot owned by such member. Joint owners and tenants in common of lots shall be entitled to one (1) joint or common vote for each lot so owned by them jointly or in common. Voting may be in person or by proxy.

**2.4. Board.** Except as otherwise provided by law, the Articles of Incorporation and Bylaws of the Association and these Covenants and Restrictions, the affairs of the Association shall be conducted, controlled and directed by a Board of Directors (the "Board"). The Board shall be initially appointed by the Declarant as provided in the Articles of Incorporation and Bylaws of the Association. The Board shall be empowered (i) to adopt, amend and repeal such rules, regulations and guidelines as it deems reasonable and appropriate, all of which shall have the same force and effect as if they were set forth in the Declaration; (ii) to appoint various committees (which may consist, in whole or in part, of individuals who are not on the Board); (iii) to hire employees, to engage accountants, attorneys, architects, landscape architects, a security service or services, and other professionals, to appoint a manager or managing agent who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association, and to bond the aforesaid employees and professionals, members of the Board or any committee of the Board, or any other person handling funds of the Association; (iv) to determine compensation to be paid to committee members, to the manager or managing agent and other employees, and to professionals engaged by the Board or any committee of the Board; (v) to purchase with Association funds such public liability, casualty, officers' and directors' liability and indemnity, workers compensation and other insurance (on such terms and conditions as it shall direct) and fidelity bonds as the Board shall deem necessary or appropriate from time to time, and to adjust all claims arising under such insurance policies; (vi) to establish and collect reasonable reserves for contingencies, replacements (within common areas and other areas maintained by the Association, including certain areas on lots, certain public areas and certain areas within public road and street rights-of-ways for which the Association has or accepts maintenance responsibility), and other purposes it deems proper; (vii) to borrow money in such amounts, at such rates, upon such terms and security, and for such periods of time (and to pledge



the right to exercise its assessment powers and rights provided for herein as security) as it deems necessary or appropriate; (viii) to obligate the Association to repair any improvements within rights-of-way and/or easements dedicated to the City, irrespective of the City's obligation to repair same, including, but not limited to, rockwork, headwalls, railings, overlooks and other trail sections, and landscaping but only with the permission of the City to conduct such repairs; (ix) to obligate the Association to repair unusually expensive improvements on cut and fill slopes on certain lots, including, but not limited to rock plating, walls, headwalls and overlooks, for which the lot owner would otherwise be solely responsible; and (x) to do any and all other things provided in the Articles of Incorporation and Bylaws of the Association and in the Declaration, as same may be amended and modified.

**2.5. Articles of Incorporation and Bylaws.** The Articles of Incorporation and Bylaws of the Association, as the same may be amended and modified, are hereby incorporated herein by reference and the same shall be made freely available by the Board to all members thereof, and to all owners of lots and prospective purchasers of lots within the Property.

**2.6. Rules for Use of Common Facilities.** The Board, from time to time, may establish, promulgate, amend, and repeal rules pertaining to use of the common facilities of the Association.

**2.7. Assessments for Operation.** Declarant, as owner of the lots within the Property, covenants and each lot owner, by acceptance of a deed to a lot, covenants with each other lot owner and with the Association to pay all assessments levied by the Board, whether or not such covenant is contained in a deed; provided, however, until the Board first makes assessments for its operation, Declarant shall pay all costs of operating the Association.

**2.8. Annual and Special Assessments.** The Board may, from time to time, impose annual and special assessments upon the lots within the Property for the purpose of paying the necessary costs and expenses incurred by the Association and the Architectural Control Committee (as provided for in Section 3 below) in connection with implementation and enforcement of these Covenants and Restrictions (as same may be modified from time to time, and inclusive of any design guidelines which may be adopted in connection with these Covenants and Restrictions), the costs and expenses incurred in acquiring, building, maintaining, and operating the common facilities of the Property (including reserves therefor, which shall be deemed a contribution to the capital account of the Association by the owners and shall be segregated from any other funds and deposited in a separate bank account to be held for the purposes for which they are collected), which are to be owned, maintained or operated by the Association and for any costs associated with maintenance and replacement of sewer lines, grinder pumps, lift stations and any other components of the wastewater collection system on individual lots and within the subdivision. These common facilities may include, but are not limited to, fences, walls, driveways, utility equipment, sewer lines and appurtenances; private access easements,

open space and recreational easements, drainage easements, trail system easements, landscaping easements, and improvements on any of the aforesaid easements; portions of public streets and roads not accepted for maintenance by the City, drainage structures and associated facilities which serve more than one (1) lot, entry features to the Property and associated structures, monuments and signs identifying the Property, and other similar improvements. The Board may impose special assessments upon the lot or lots of any owner to cover the costs of enforcing the provisions of these Covenants and Restrictions, or the actions taken by the Board against that owner and the cost of remedying any failure of that owner to comply with the same, if the owner fails to comply within ten (10) days after written notice from the Board of said owner's failure to comply with the provisions hereof and/or the action taken by the Board against said owner. Said assessments shall be payable to the Association and shall be a continuing lien against each lot until paid. If any assessment shall remain unpaid for thirty (30) days after the due date thereof, the Board may impose a late charge of ten percent (10%) of the outstanding balance owed, or such other charge as the Board may specify from time to time; and, thereafter, any such delinquent assessment and late charge shall bear interest at the rate of eighteen percent (18%) per annum. The Board may, in its sole discretion, waive the late charge and/or interest in any particular instance. Liens for assessments may be foreclosed by the Association in the manner provided by law for the enforcement of mortgages.

**2.8.1. Annual Budget; Calculation of Annual Assessment.** Not less than fifteen (15) days nor more than thirty (30) days prior to the beginning of each fiscal year of the Association starting with the 2006 fiscal year, the Board shall make available for review by members of the Association, in accordance with provisions of the Bylaws, a pro forma operating statement or budget for the upcoming fiscal year which shall, among other things, estimate the total expenses to be incurred by the Association for the fiscal year (including such additional working capital and reserves as the Board, in its discretion, deems advisable for the financial security of the Association). The Board shall determine at that time the amount of the annual assessment to be paid by each owner, which assessment shall be equal to the total estimated expenses (adjusted or not, in the discretion of the Board, pursuant to Section 2.12 below) multiplied by the fraction the numerator of which is one and the denominator of which is the total number of recorded lots within the Property. Each owner shall thereafter pay said annual assessment at such time or at such regular intervals as may be fixed by the Board. The fiscal year of the Association shall be the calendar year, unless otherwise specified in the Articles of Incorporation or Bylaws.

**2.8.2. Adjustment of Annual Assessment.** The annual assessment may be adjusted during any fiscal year if the Board determines that it is, or will become, inadequate to meet all expenses, including reserves, for whatever reason. In such event, the Board will issue a supplemental estimate of expenses and a statement of the revised amount of the annual assessment to be paid by each lot owner.

**2.9. Lien Assessment Subordination.** The lien of the assessments provided for herein shall be subordinate to the lien of a prior recorded first mortgage on a lot in the



Property, except to the extent it secures the amount of any unpaid assessments (together with any interest, late charges, costs and reasonable attorneys' fees related thereto) which accrue from and after the date on which a first mortgagee comes into possession of or acquires title to the lot, whichever first occurs. At such time as a mortgagee comes into possession of or becomes record owner of a lot, the mortgagee shall be subject to all the terms and conditions of the Declaration. Notwithstanding the foregoing, with respect to assessments which have become due and payable prior to a sale or transfer of such lot pursuant to a decree of foreclosure of such mortgage, or any other transfer or proceeding in lieu of foreclosure, if the owner against whom the original assessments were made is the purchaser or redemptioner, the lien shall continue in effect and may be enforced by the Association. Any unpaid assessments or charges which are extinguished pursuant to this subsection may also be reallocated by the Board among all owners of lots within the Property, but, irrespective of such reallocation, any such unpaid assessment or charge shall continue to exist as a personal obligation of the defaulting owner.

**2.10. Lien Foreclosure.** No action shall be brought to foreclose a lien less than thirty (30) days after (i) the date a notice of claim of lien is deposited in the United States mail, certified or registered, postage prepaid, to (a) the owner of said lot, and (b) any mortgagee who has provided the Association with written notice of a mortgage interest in said lot; and (ii) a copy thereof is recorded by the Association in the Office of the Santa Fe County Clerk. Said notice of claim must recite a good and sufficient legal description of said lot, and the name of the record owner or reputed owner thereof, the amount claimed as of the date of the lien (which shall include late charges and interest imposed, costs incurred, and reasonable attorneys' fees) and the name and address of the Association. Liens may be enforced by the Association in the manner provided by law for the enforcement of mortgages and foreclosed in any manner provided or permitted for the foreclosure of real estate mortgages or deeds of trust in the State of New Mexico. Nothing herein shall be construed as requiring the Board or the Association to take any action hereunder in any particular instance, and any failure or refusal to take such action at any time shall not constitute a waiver or the right to take the same or similar action at a later time or in a different instance.

**2.11. Assessments and Liens as Personal and Individual Debt.** All assessments levied by the Board and all costs incurred, and charges and interest imposed, by the Committee, Board, or Association in connection with enforcement hereof, and maintenance, repairs, or corrections performed pursuant to the provisions of these Covenants and Restrictions, shall be a lien against the lot(s) and shall be the personal and individual debt of the owner(s) thereof (jointly and severally) at the time the assessment is made, the cost is incurred, or the charge or interest is imposed; and, by the acquisition of title to any lot within the Property, and in consideration thereof, each lot owner thereby agrees to the foregoing. Suits to recover a money judgment shall be maintainable without foreclosing or waiving a lien securing same. No owner may escape liability for the assessments provided for herein by non-use of a lot or by abandonment or conveyance of such owner's lot or claim a waiver by the Association of any right to recover an assessment as a result of any inaction of the Association or the Board. Furthermore, an owner who



leases or otherwise grants any person occupancy rights to, or use of, said owner's lot shall be responsible for assuring compliance by said tenant, or grantee, with all of the provisions of the Declaration, the Articles of Incorporation and Bylaws of the Association, the Committee rules and guidelines, and all Association rules and shall be jointly and severally responsible and liable for any violations and for the costs incurred, special assessments and charges imposed, and actions taken by the Declarant, the Committee, or the Board in enforcing this subsection. The cost of any such enforcement shall be levied against the owner and shall become a lien on said lot until paid.

**2.11.1. No Offsets; Failure to Bill.** All assessments and charges shall be payable in the amount specified and no offsets against the specified amount shall be permitted for any reason. Any failure of the Association to send a bill to an owner shall not relieve an owner of his liability for any assessment or charge under the Declaration.

**2.11.2. Homestead Waiver.** To the extent permitted by law, each owner hereby waives the benefit of any homestead or exemption laws of the State of New Mexico now in effect, or in effect from time to time hereafter, to the extent of any liens created pursuant to the Declaration.

**2.12. Funds as Association Property; Use from Year to Year.** All funds of the Association shall be deemed to be the sole property of the Association in its corporate capacity, and not trust funds, and the Association shall not be deemed to hold any such funds as trustee or in any fiduciary capacity. The Association shall not be obligated to spend in any year all the sums received by it in such year, and may carry forward as additional working capital or reserves any balances remaining; nor shall the Association be obligated to reduce the amounts of regular assessments in the succeeding year if a surplus exists from the prior year, and the Association may carry forward from year to year such surplus as the Board, in its discretion, may determine to be desirable for the financial security of the Association and the accomplishment of its purposes.

**2.13. Accounting; Records.** The Association, at all times, shall keep, or cause to be kept, true and correct records of account in accordance with generally accepted accounting principles. Said records may be kept on a cash accounting basis if the Board so elects, subject to the requirements of applicable law. Upon reasonable written request and pursuant to procedures established in the Bylaws, the Association shall make the books, records, and financial statements of the Association available for inspection by each owner and member.

### **3. ARCHITECTURAL CONTROL COMMITTEE**

**3.1. Committee.** Declarant shall appoint an Architectural Control Committee (hereinafter called the "Committee") for the Monte Sereno Subdivision until Declarant no longer owns any single-family residential lots or any cluster sites in the Monte Sereno Subdivision, whether or not a final subdivision plat or a final development plan respecting



all or any of those lots has been recorded or annexed to the Property and thereby subjected to this Declaration, or until such earlier time as Declarant may designate. Thereafter, the Board shall appoint the Committee. The Committee shall consist of not fewer than three (3) nor more than five (5) persons who shall each serve as a member of the Committee from the time of his or her acceptance of such responsibility until he or she either resigns or is removed from the Committee with or without cause by Declarant or, after Declarant no longer has the right to appoint members, by a majority vote of the Board.

Any vacancy created by the resignation or removal of a member of the Committee shall be filled by the appointment of a new member within two (2) weeks of the vacancy. It is anticipated, but not required, that: at least one (1) member of the Committee will be a designer with demonstrated experience in residential building construction; and one (1) member of the Committee will represent some aspect of the construction industry.

**3.2. Powers and Duties.** The Committee shall have the powers and duties hereinafter specified included, but not limited to, the power and/or duty (1) to establish reasonable procedural rules, directions, time limitations for construction, regulations, restrictions, and architectural and landscaping standards and design guidelines (“Design Guidelines”) which the Committee may, from time to time in its sole discretion, amend, repeal or augment (ii) to approve or disapprove the plans, drawings, and specifications for all improvements and changes to a lot; (iii) to assure conformity of completed improvements and changes to plans, drawings, and specifications approved by the Committee; (iv) to implement and enforce these Covenants and Restrictions and the Design Guidelines; and (v) to establish fees and charges in connection with any construction. To the extent of a conflict between these Covenants and Restrictions and the Design Guidelines, the Design Guidelines shall prevail.

**3.2.1. Extensive Discretion.** The Declaration provides for an extensive degree of discretion by the Committee. Such discretion is an integral part of the Declaration and of the development and management of the Property and the Monte Sereno Subdivision. Each owner, by acquiring any interest in any lot, and each other person or entity by acquiring any interest in any part of the Property, including but not limited to mortgagees, acknowledges and agrees that subjective determinations and/or criteria bearing on compatibility of all construction with traditional Santa Fe architectural styles, with other residences, and with the unique terrain within the Property and its appearance from within and without, and on such other matters as the Committee, in good faith but in the exercise of its abundant discretion, may deem important, are relevant to, appropriate for, and necessary in the successful implementation and enforcement of these Covenants and Restrictions and achievement of the Declaration’s objectives and purposes.

**3.2.2. Delegation of Responsibilities.** The Committee may delegate its responsibilities for reviewing drawings and specifications, except for final review and approval, to one or more of its members and/or to architectural, landscaping and other appropriate consultants retained by it.

**3.2.3. Right of Entry.** Any member or authorized consultant of the Committee, or any authorized officer, director, employee, or agent to the Association, may at any reasonable time enter, without being guilty of trespass, upon any lot, except the interior of any occupied dwelling, after reasonable notice to the owner, in order to inspect improvements constructed or being constructed on such lot, or any changes in the grade thereof, to ascertain that such improvements and/or changes are in compliance with the Declaration, the design guidelines of the Committee, and the drawings and specifications approved by the Committee.

**3.2.4. Non-liability for Approval of Drawings and Specifications.** Drawings and specifications shall be reviewed and approved by the Committee as to style, exterior design, appearance and location, and are not approved for engineering design or for compliance with zoning ordinances and building codes, and by approving such drawings and specifications neither the Committee, any member thereof, the Board, the Association, Declarant, nor any agent of said parties assumes or shall have any liability or responsibility therefor, or for any defect in any structure constructed from such drawings and specifications. Neither shall any of the aforementioned parties be liable to any owner or other person or party for any damage, loss or prejudice suffered or claimed on account of the approval or disapproval of any plans, drawings, or specifications.

**3.2.5. Fine.** The Committee may fix a fine against any owner and any lot subject to assessments hereunder for failure to obtain required approval from the Committee or failure to comply with the requirements and conditions of such approval. The right of the Committee to impose such a fine is a non-exclusive remedy and the Committee may, in addition to the imposition of any such fines, or instead of imposing any fines, seek legal and equitable relief including an award of damages and/or injunctive relief.

### **3.3. Non-liability; Indemnification.**

**3.3.1. Non-liability of Officials.** To the fullest extent permitted by law, neither Declarant, the Committee or any other committee of the Association or any member thereof, nor any directors or officers of the Association shall be liable to any owner, member, occupant, the Association or any other person or entity for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval, course of action, act, inaction, omission, error, negligence or the like made in good faith and which such parties believed to be within the scope of their respective duties.

**3.3.2. Indemnification of Officials.** To the fullest extent permitted by law, every director and officer of the Association, every member of the Committee or any other committee of the Association, and Declarant, including its successors and assigns, to the extent a claim may be brought against Declarant (or its successors and assigns) by reason of any appointment, removal or control over members of the Board, the Committee, or any other committee, shall be indemnified by the Association against all expenses and liabilities in connection with any proceeding to which any of the aforesaid parties may be a



party, or in which such aforesaid party may become involved, by reason of having served in such capacity on behalf of the Association (or, in the case of Declarant, by reason of having appointed, removed or controlled or failed to control members of the Board, the Committee, or any other committee of the Association), provided that the Board shall determine, in good faith, that the party to be indemnified hereunder did not act, fail to act, or refuse to act with gross negligence or fraudulent or criminal intent in the performance of his or her duties. At the discretion of the Board, this indemnification may be extended to other persons serving as an employee or direct agent of the Association.

#### **4. GENERAL LIMITATIONS, RESTRICTIONS AND REQUIREMENTS**

**4.1. Zoning Regulations.** Each lot within the Property shall be limited in development, improvement and use to such as are permitted by the zoning ordinances and regulations of the City, as the same may apply to the Monte Sereno Subdivision, and by the City Agreement (as defined in Section 10.1 below), as it may be amended and modified from time to time, except as such development, improvement or use is prohibited by these Covenants and Restrictions. The Property is presently zoned PRRC (Planned Resort-Residential Community District Zone), as codified in the City Code.

**4.2. Size of Lots.** Each lot within the Property must be a minimum of one (1) acre in size.

#### **4.3. Combination and Resubdivision of Lots.**

**4.3.1. Combined Lot.** Two or more adjoining lots may be combined into a single lot for development, improvement and use as a single lot by the owner or owners if approved by the City and after obtaining approval of the City and the Committee of a revised building site or revised building sites, as the case may be, for the resulting lot. For the purpose of this subsection, any two or more lots which have been combined shall be deemed to be one (1) lot (the "Combined Lot"). Such Combined Lot may not thereafter be separated or resubdivided unless (i) City and Committee approval is obtained of the respective building site or sites, as the case may be, on each separated or resubdivided lot, and (ii) such a separation or resubdivision would not result in a violation of any provision of these Covenants and Restrictions. In no event shall any resubdivision of the Combined Lot result in the creation of more lots than were originally combined.

**4.3.2. Compound Lots.** The owners of two or more contiguous lots may, with the consent of the City and the Committee, replat such lots as allowed by the City as a compound lot which may include and provide for the construction of common recreational facilities on such lot in accordance with the Declaration and as allowed by the City. An assessment lien as to each replatted lot shall also extend to the interest of the owner in any such common facilities.



**4.3.3. Voting Rights and Assessments for Combined Lots.** Any such combination of lots shall not reduce the voting rights obtained by ownership of each lot prior to any such combination, nor shall it reduce or otherwise alter the amount which would have been assessed against the owner(s) of all lots prior to any such combination, pursuant to the terms hereof, in the absence of combination. The assessments attributable to each of the former separate lots shall be attributable to the entire combination of lots on a pro rata basis, and each of the new, combined lots shall be subject to the assessment lien on a pro rata basis.

**4.3.4. Rental of Entire Lot Only.** No portion of a lot, except the entire lot, together with all improvements thereon, may be rented or otherwise made available for occupancy, and then only subject to the provisions of the Declaration.

#### **4.4. Single Family Use.**

**4.4.1. Detached Single-family Dwelling Unit.** Each lot within the Property shall be limited to use by a single family occupying a detached single-family dwelling unit for typical residential purposes and activities incidental thereto, such as the construction of a guest house, a family swimming pool and an unlighted tennis court (subject to any City ordinances regarding the same); provided, however, that this limitation shall not prohibit occupancy by domestic housekeeping employees of the owner or lessee. Dwelling units and guest houses or studios may not be rented for less than thirty (30) days.

**4.4.2. Minimum Floor Areas; Structures Architecturally Allied.** No structure shall be erected, altered, placed or permitted to remain on any lot within the Property other than one (1) private, detached single-family dwelling unit with a garage of sufficient size to accommodate at least two (2) but not more than four (4) passenger vehicles (unless construction of a garage of greater size may be approved by the Committee in a particular circumstance), a guest house, recreational facilities, and other improvements incidental to residential use of the premises and if permitted by the City. "Detached single-family dwelling unit" shall mean a structure containing no less than twenty-five hundred (2,500) square feet of heated floor area. Any guest house and/or studio, or other structure must be architecturally allied with the main dwelling. "Architecturally allied" means either directly attached to the main dwelling as constructed, attached by design features such as portals or walls, or detached, but with the same architectural materials, design and features as the main dwelling.

**4.4.3. Approved Building Site.** All structures shall be located within a building site on each lot designated on the recorded "Approved Building Site" as designated on the final plat on file with the City of Santa Fe. No structure shall be located on any Prohibited Building Site or Prohibited Building Area designated on the final engineering plans on file with the City, or on any archeological easement or other easement of record, including, but not limited to, those designated on the final development plan applicable to the lot. Additionally, driveways may not exceed a grade of fifteen percent (15%). No construction other than for driveways, for entry gates and

supporting structures, and for walls, if allowed, all as provided for hereinafter, shall be allowed outside of an Approved Building Site at any time. No Approved Building Site may be moved or changed without the prior, written approval of the Committee. Even if approved by the Committee, the lot owner shall be required to seek and obtain City approval.

**4.4.4. Improvement Envelope.** To ensure a minimum disturbance of the natural area of the lot, the Committee may limit alteration of natural terrain and improvements to less than all of an Approved Building Site by approving an “Improvement Envelope” containing the minimum area considered necessary to complete construction of the proposed home and exterior improvements, including landscaping. The Improvement Envelope must be fenced during construction to enclose all building materials, equipment, and activities, and to contain all debris and other construction waste. This fence must be removed upon completion of construction, and the formerly enclosed Improvement Envelope must be relandscaped to match the surrounding area pursuant to Sections 4.14 and 6.2 below. The Improvement Envelope is the only area of the Approved Building Site in which alteration to the existing, natural landscape may occur, all as approved by the Committee.

**4.4.5. Garage and Recreational Facilities.** Each garage and recreational facility must be architecturally allied with the main dwelling. Any detached garage or recreational facility shall be designed, constructed and maintained with special attention to its appearance from all points beyond the lot on which it is located. Such attention shall include, but is not limited to, consideration of the structure’s location, orientation, shape, dimensions, surface textures and colors. The purpose of this special consideration is to ensure that all structures on the Property are constructed and maintained to be in harmony with the natural beauty of the Property.

**4.5. Set-back for Buildings.** No part of any building shall be constructed or maintained within ten (10) feet of the front, side or rear of the Lot Lines, except for the face of a garage which must be set back a minimum of twenty (20) feet from the front lot line. The Approved Building Sites comply with this standard set-back requirement of the City of Santa Fe and all structures must be located within the Approved Building Site.<sup>2</sup>

**4.6. Development Facilities.** The following facilities and structures may be located, constructed, and maintained in connection with the subdivision and development of the Property or of the Monte Sereno Subdivision:

**4.6.1. Entry Features and Monuments.** Signs, monuments, lighting, landscaping, and associated structures located within the City’s road right-of-way, and all public trails, will be dedicated to the Association or to the City. Entry features, monuments and associated landscaping located in the State highway right-of-way will be dedicated to

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<sup>2</sup> Amendment No. 2 (entire paragraph replaced)



the Association. Any signs, monuments, lighting or associated structures located within the City's road right of way require a license from the City.

**4.6.2. Administrative and Sales Office(s) and Declarant's Facilities.** One or more Monte Sereno Subdivision administrative and sales office(s), any facilities for the Declarant's use, including but not limited to facilities to be utilized as the Declarant's lounge, a health club and meeting space, with parking and related improvements.

**4.6.3. Reserved Easements.** Landscaping, monumentation identifying the Property, and other monumentation, signs or facilities described in Section 9.2 (Declarant's Reserved Easements) below.

**4.7. Utilities.**

**4.7.1. Underground.** All utility lines and pipes on each lot within the Property, including, but not limited to, gas, water, electric power, sewer, telephone and cable television and other communication lines, shall be buried and maintained beneath the ground surface in a manner approved by the respective utility organizations, the City, and the Committee. No radio, television, or other antennae of any kind, or any device for the reception or transmission of radio, microwave or similar signals, shall be placed or maintained upon any lot unless permitted by Committee rules or guidelines hereafter adopted.

**4.7.2. Water Service.** For so long as a lot is serviced by public water, supplied either directly by the City or other supplier, or by a private community water system serving the Property, no individual or private domestic well shall be drilled upon that lot or used by the owner of that lot.

**4.7.3. Wastewater Service.** Each lot is or will be served by the City of Santa Fe's wastewater treatment plant and sewer facilities and shall be subject to the related City wastewater assessment district ordinance or an agreement between the City and Declarant in lieu of such an ordinance. Each lot owner shall use that system.

**4.8. Maintenance of Wastewater Lift Stations.**

**4.8.1. Costs of Maintenance.** The Association shall be responsible for all costs of maintaining and repairing the lift stations constructed as part of the wastewater system.

**4.8.2. Failure of Association to Make Payments.** If the Association fails for any reason, to reimburse the City as provided in this Section 4.8, then each lot owner shall become individually liable to the City for that lot's proportionate share of the outstanding obligation. Said proportionate share shall be determined by dividing the outstanding obligation amount by the number of platted lots.



**4.8.3. Utility Charges.** Electricity, gas, telephone and alarm charges for the operation of the lift stations shall be billed directly to the Association and such bills shall be paid promptly and routinely.

**4.8.4. Responsibility for Maintenance Costs.** Upon dedication of the system, the City shall own both lift stations and all sewer mainlines. The sewer service lines shall be the responsibility of each lot owner which it serves. The City Wastewater Management Division will perform maintenance and repairs to the lift stations, the force main system, the low pressure main system and the gravity main system. The City of Santa Fe will absorb the cost of maintenance and repair to said lines from normal revenue received through monthly billing of its customers. The City will be promptly reimbursed for repairs and maintenance to the lift stations by the Association as follows.

(a) In July of each year, the Association shall pay \$10,000 to the City as advance payment for the anticipated annual cost of a vactor truck and operator for the lift stations. As the actual cost of the vactor truck and operator become known, the Wastewater Management Division will submit a time and materials invoice and will instruct the Association, in writing, to increase or to decrease the next annual July payment so that the City will be adequately reimbursed for these costs.

(b) When a lift station pump replacement becomes necessary, in the discretion of the City Wastewater Management Division, the Association shall promptly reimburse the cost to the City.

(c) Upon the City's acceptance of any phase of the wastewater system, which includes a lift station, the Association shall establish and maintain a permanent escrow fund in the amount of \$20,000 for both lift stations, from which the Association shall authorize expenditures to reimburse the City for maintenance and repair to the lift stations in the event that: (i) the \$10,000 annual payment is insufficient to cover any City expenses for repair and maintenance and (ii) the Association has failed to reimburse the City within 30 days of written notification of reimbursement for repair and maintenance costs over and above the \$10,000 annual payment.

**4.8.5. Escrow Fund.** The escrow fund to be established pursuant to 4.8.4(c) shall be used for no other purpose other than for maintenance and repair of the lift stations. If the Association fails, after notice from the City, to reimburse the City for said maintenance and repairs, then the City shall be entitled to use the escrow fund to reimburse itself as provided below:

(a) The escrow fund shall be held at a bank located in, or with a branch in, Santa Fe County, New Mexico.

(b) The City Manager shall have the authority and power to sign checks to draw funds from the escrow fund if the Association does not reimburse the City within 30 days of written notification of the amount of reimbursement required. The City



Manager shall give written notice to the Association no less than three working days prior to exercising this power.

(c) The Association shall replenish the escrow fund to the prescribed amount. Should there be insufficient funds in the escrow fund to fully reimburse the City, or should the Association fail to replace the funds to the prescribed level, the City Manager shall have the power to create a special assessment as provided in Section 2.8 of this Declaration. The City Manager shall also have additional authority and power to enforce the special assessment as provided in this Declaration. The amount of any special assessment may include the cost to fully reimburse the City and to replenish the account to the prescribed level. In addition to the authority noted above, the City shall have the authority to place a lien against individual homeowners in the proportionate amount of the outstanding obligation. Said proportionate share shall be determined by dividing the outstanding obligation amount by the number of platted lots.

**4.8.6. Modification of Section 4.8.** The provisions in this Section 4.8 shall not be modified without permission of the City Manager. If any modification is made to other portions of this Declaration which affect the City Manager's authority and power to collect and to enforce the special assessments, said modifications shall not be effective without the written consent of the City Manager. If at any time, the City Council waives the requirement for an escrow fund and for the Association's maintenance obligations, the Association shall not be required to comply with Section 4.8.

**4.9. Easements.** Each lot within the Property shall be subject to easements as described or referred to in Section 9 below or on any recorded plat or final development plan on file with the City.

**4.10. Roofs and Height of Structures and Façades.**

**4.10.1. Special Attention to Roof.** In recognition that roofs are often the most visible element of any structure, each roof shall be designed, constructed and maintained with special attention to its appearance from all points beyond the lot on which it is located. Such attention shall include, but is not limited to, consideration of the roof's location, orientation, shape, dimensions, surface textures, non-reflective qualities, and colors. The purpose of this special consideration is to ensure that all structures are designed, constructed and maintained to be compatible with each other. Ranch style, mansard, or folded plate roofs are prohibited and only flat roofs shall be permitted in the ridgetop subdistrict (as described in Section 10.8 below) except shed roofs are allowed for portals.

**4.10.2. Roof Color and Equipment.** All roof surface materials, including, but not limited to gravel, polyurethane foam, welded rubber or other horizontal roofing types, shall be of integral color in earth tone compatible with the predominant color of the building; or the roof color shall be as per the "Approved List of Colors for Pitched Roofs" or as approved by the Committee. All roof-mounted equipment, devices, attachments, vents,

flashings, gutters, stove pipes, chimneys, and metal roofing materials which attach to the structure, or extend through the roof of the structure, shall have a non-reflective, non-glossy finish in a muted, neutral earth tone which is approximately the same color as the exterior of the main structure. All roof-mounted equipment such as solar panels, or air-conditioning units, if approved, shall be screened with a parapet or roof screen walls. Where possible, all proposed accessory equipment is to be mounted and screened on the ground.

**4.10.3. Regional Architecture.** The type of construction and architecture shall be based upon Pueblo or Territorial style architecture. Moderate modifications of the foregoing styles in reasonable, innovative, and creative ways are permitted and encouraged. Pitched-roof structures, typical of Northern New Mexico, will be limited to lots located at lower elevations (as opposed to ridgetop lots). To the extent possible, the pitched roof of any structure shall not be visible against the skyline when viewed from below the lot on which it is located or adversely affect the view from any street or road, other lot, or common area. Two-story pitched roof structures are prohibited. The minimum pitch for any gable roof (except incidental roofs and portals) shall be “6 on 12,” and the maximum pitch shall be “8 on 12.” Roof materials and color shall conform to the approved list or as approved by the Committee. The approval or disapproval of plans of architectural design on any lot will in no way bind or obligate the Committee with respect to its consideration of, or decision respecting, any subsequent application for approval of plans for the construction of any such pitched-roof or regional contemporary structure on any other lot.

**4.10.4. Roofing Materials.** The details regarding acceptable roofing materials are contained in the Design Guidelines.

**4.10.5. Height Limitations for Structures.** All restrictions and requirements regarding height limitations for structures are contained in the Design Guidelines. Pursuant to the City Agreement (as defined in Section 10.1 below) the highest point of any structure constructed within that portion of an Approved Building Site lying within the ridgetop subdistrict on certain Escarpment District Lots (as defined in the City Agreement), and being Lots #78 – 84, shall be governed by former Section 14-90A.7 of the Santa Fe City Code, attached as Exhibit G to the City Agreement. This section of the Code provides (i) that the highest point of any structure in the ridgetop subdistrict shall not exceed a maximum height of fourteen (14) feet above each and every point of measurement along the structure perimeter; (ii) that this measurement shall be from the undisturbed natural grade of the land at the perimeter, or from the finished grade at the perimeter, whichever is more restrictive in height; (iii) that the highest point on the structure includes the tops of parapets and clerestories; and (iv) that adding fill dirt to the natural grade in order to increase the height is prohibited. All applicants are required to have a licensed land surveyor certify compliance with the maximum height requirements during the framing phase of construction and prior to completing the final exterior finish to the house at the expense of the lot owner.

**4.10.6. Height and Length of Façades.** All restrictions and requirements regarding height and length of façades are contained in the Design Guidelines. The height of each dwelling is to be certified by a surveyor at the expense of the lot owner. For lots within the ridgetop subdistrict, Section 4.10.5, above, is applicable.

**4.11. Concealment of Roof-mounted and Ground-mounted Equipment and Devices.** Whenever possible, heating and/or air conditioning equipment, solar collectors, and other similar equipment and devices shall be ground-mounted rather than roof-mounted. Any such equipment and devices, and the proposed method of screening and/or shielding same, must be clearly shown on plans and specifications required by these Covenants and Restrictions, and approval of said plans and specifications with respect to any such equipment and devices is at the sole discretion of the Committee, which will consider same in terms of any possible adverse effect on views from streets and roads, other lots, and common areas.

**4.11.1. Ground-mounted Equipment.** Ground-mounted equipment and devices shall not exceed three (3) feet in height above the adjacent natural grade, or finished grade, whichever is lower. Such equipment and devices shall be adequately screened and shielded from view by walls, or other approved architectural elements, and/or piñon or juniper trees of a height and number considered sufficient by the Committee, and these trees shall be continuously maintained. Any such approved ground-mounted equipment or device and any architectural element approved for screening and/or shielding same shall be painted in a non-reflective, non-glossy application in a muted, neutral earth tone which is approximately the same color as the exterior of the main structure. Satellite dishes must be ground-mounted.

**4.11.2. Roof-mounted Equipment.** In the cases where it must be roof-mounted, any such roof-mounted equipment or device shall be screened and shielded from view or concealed by a parapet or other architectural element approved by the Committee. Any such roof-mounted equipment or device, including skylight frames and flashings or other metal trim, and the architectural element approved for screening or concealing same shall be painted in a non-reflective, non-glossy application in a muted, neutral earth tone which is approximately the same color as the roof. Skylight frames may be bronze and flashings or other metal trim may be copper. Because some equipment, such as vent stacks from gas-fired boilers, is difficult to screen and still meet code requirements, it is strongly recommended that high-efficiency boilers be utilized to avoid large diameter, tall stacks. A chimney may not exceed a height of three (3) feet above the immediately adjacent roof unless it is within ten (10) feet of a parapet, in which case the chimney may not exceed the height of the parapet by more than three (3) feet. Boiler stacks may not exceed a height of three (3) feet above the immediately adjacent roof under any conditions.

#### 4.12. **Driveways.**

4.12.1. **Driveway Access Points.** Access points for driveways to each lot shall be as shown on final development plans on file with the City or as otherwise approved by the City and the Committee, in the Committee's sole and absolute discretion.

4.12.2. **Driveway Construction.** Any house served by a private driveway with a length of one hundred and fifty (150) feet or greater and a grade of ten percent (10%) or more must include a residential fire suppression system. The Declarant recommends consultation directly with the Santa Fe Fire Department regarding this requirement and the specific building project. All restrictions and requirements regarding driveway construction are contained in the Design Guidelines.<sup>3</sup>

4.12.3. **Private Driveways.** Certain lots within the Subdivision are designated to share a private driveway which will be maintained pursuant to a private driveway agreement applicable to each set of lots sharing a private driveway. The lots sharing a private driveway are designated on the plat for the Subdivision.<sup>4</sup>

#### 4.13. **Off Street Parking.**

4.13.1. **Parking in Garage.** Before any lot within the Property shall be occupied for residential purposes and thereafter, there shall be constructed and maintained thereon a garage of sufficient size to accommodate at least two (2) passenger vehicles. Said garage shall be used for the purpose of parking the vehicles of the persons occupying the lot, and no other use of this space shall interfere with this purpose. No conversion of any garage space to any other use shall be permitted without the approval of the Committee.

4.13.2. **Other Parking Areas.** It is the intention of this Declaration that there shall be constructed and maintained on each lot adequate off-street parking areas for at least four (4) passenger vehicles in addition to the parking provided in the required garage; that driveways of sufficient width to simultaneously permit vehicle passage and parallel parking may be used to satisfy the foregoing requirement with respect to the off-street parking for two (2) vehicles; and that the two (2) remaining outdoor spaces will be designated on the plans submitted to the Committee pursuant to these Covenants and Restrictions as "guest Parking Spaces." Notwithstanding the foregoing, however, the Committee, in its discretion, in certain circumstances, after reviewing plans and specifications in relation to the size of the proposed dwelling, to the size of the proposed garage, and to the size, topographic features, and any physical constraints of the Approved Building Site, may reduce the off-street parking requirement from four (4) outdoor spaces to not fewer than two (2) outdoor spaces. Unnecessary parking area excavations, cuts and fills shall not be permitted by the Committee.

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<sup>3</sup> Amendment No. 1 (entire paragraph replaced)

<sup>4</sup> Amendment No. 2 (entire paragraph replaced)



**4.14. Trees and Landscaping.** It is the intent of the Design Guidelines and these Covenants and Restrictions to preserve the natural landscape. This is to be demonstrated by the applicant on the submitted site plan and/or the landscape plan. The landscape plan is to indicate the existing trees to be saved, and is to identify those trees to be removed and to be transplanted. Only native plant material is permitted in areas greater than twenty-five (25) feet from the perimeter of the house. Native and drought tolerant plants are encouraged in all areas, and the use of water harvesting techniques are required on all properties. No trees are to be planted that will exceed thirty-five (35) feet in height at maturity. All disturbed areas are to be revegetated with a native seed mix, and native trees and shrubs, all planted to match the same density of vegetation as the surrounding untouched land.

**4.14.1. No Removal of Native Vegetation.** The native vegetation, including but not limited to cacti, piñon and juniper trees, shall not be destroyed or removed except as may be approved by the Committee. Other City requirements may require stricter design criteria to the extent those requirements are applicable pursuant to the terms of the City Agreement. Native trees which are to be removed or relocated for construction of driveways, utilities, dwellings, and other structures shall be indicated on the landscape plans to be submitted to the Committee for its approval. As a condition of its approval, the Committee may require trees which are removed pursuant to any such plans to be replaced. All disturbed, graded, or trenched areas shall be regraded to approximate the original terrain conditions and shall be replanted with vegetation of a type and at a density similar to and commensurate with that of the adjacent existing natural landscape.

**4.14.2. Developed or Improved Landscape Areas.** Developed or improved landscape areas, including green areas and gardens, and outdoor pool areas should be limited to the areas immediately surrounding structures or contained within garden walls. Lawns (if allowed by City ordinance) will be restricted to the lesser of one thousand (1,000) square feet or as allowed by City ordinance, and views of lawns from surrounding lots, streets and roads, or common areas shall be avoided. The use of drought resistant plantings should be considered, and water usage outside of the structures should be held to a minimum.

**4.14.3. Minimal Impact on Natural Environment.** Only those trees shall be permitted which minimize the impact on the natural environment and on the views from any other lot, street or road, or common area and which, to the extent possible, are not visible when viewed against the skyline from below the lot on which they are located. Trees shall be limited to such varieties as shall be approved by the Committee, and trees which at maturity will exceed the height limitations for structures set forth in Section 4.9 above shall be limited in the sole and absolute discretion of the Committee, and subject to whatever height maintenance conditions as the Committee deems appropriate; provided, however, that this provision does not apply to any existing, naturally occurring native tree. Deciduous trees may or may not be allowed by the Committee in its sole and absolute discretion. If allowed, they shall be located only within a walled area adjacent to the main dwelling, and shall be subject to such conditions as to height and scale at the time of

planting and subsequently as the Committee may impose. Offending trees shall be removed or trimmed by the owner as necessary to comply with this Section 4. Each owner shall keep all shrubs, trees, grass and plantings properly irrigated, cultivated, pruned and free of dead trees, trash and other unsightly material; and no owner shall permit any thing or condition to exist upon said owner's lot which shall induce, breed or harbor infectious plant disease or noxious insects.

**4.14.4. Landscaping Requirements.** Where any wall or building façade exceeds six (6) feet in height, the owner shall plant a piñon or juniper tree at least six (6) feet in height, leaving exposed to view not more than fifty percent (50%) of the surface area of the wall or façade from the top(s) of said tree(s) to the highest point on the structure. There shall be one (1) existing or planted piñon or juniper tree for every twenty (20) linear feet of horizontal wall or façade and said tree(s) shall be located within twenty (20) feet of any such structure. In the event such wall or façade is less than twenty (20) feet wide, only one (1) such tree shall be required. Notwithstanding the foregoing, pursuant to the City Agreement (as defined in Section 10.1 below), within the ridgetop subdistrict (as described in Section 10.8 below), there shall be one (1) existing or planted piñon or juniper tree for every fifteen (15) linear feet of horizontal wall or façade and said tree(s) shall be located within fifteen (15) feet of any such structure, and where any wall or façade is greater than sixteen (16) feet in height, said piñon or juniper tree(s) shall be at least eight (8) feet in height, leaving exposed to view not more than fifty percent (50%) of the surface area of the wall or façade from the top(s) of said tree(s) to the highest point on the structure. All or any portions of the Approved Building Sites for Lots #78 – 84 are within the ridgetop subdistrict. All trees are subject to the requirements of Section 4.14 above.

**4.14.5. Cut and Fill Slopes.** Cut and fill slopes shall be replanted with vegetation of a type and at a density similar to and commensurate with that of the adjacent existing natural landscape. All cut and fill slopes greater than four (4) feet in height with a grade of 3:1 or less shall have screening vegetation planted at the base of the slope and the surface of said slope shall be treated with an approved erosion control material such as native rock plating, or erosion control mat or mesh, and then reseeded. Other City requirements may require stricter design criteria to the extent those requirements are applicable pursuant to the terms of the City Agreement.

**4.15. Water Harvesting.** The installation of all new plant material is to include the construction of planting berms on the downhill side of each plant. These berms are to be installed in such a manner as to maximize the collection of natural run-off on all slope conditions. All water from building rooftops is to be directed from the canales to nearby vegetation, and is to be collected by the installation of earth berms, swales and tree wells. The grading of driveways, parking areas and sidewalks is also to be completed by directing water to planting areas. Detention ponds are to be revegetated using native grasses, and are to be planted in a naturalistic design utilizing indigenous trees and shrubs. The City of Santa Fe Landscape Irrigation Systems standards shall be used as a

guide as to the minimum specifications for irrigation systems. (See Section 14-8.4(E)(4) of the Santa Fe City Code.)

**4.16. Exterior Lights.** Exterior lights are to be used for safety and security, and not primarily for illumination of structures or landscaping, and are not to be directed toward surrounding lots, properties, common areas, or streets and roads. Bright, glaring lights on rooftops and patio walls or elsewhere are prohibited. All exterior lights must be shown on plans submitted to the Committee and installed only as approved by the Committee. All or any portions of Lots #78 – 84 lie within a ridgetop subdistrict as described in Section 10.8 below. With respect to these lots, exterior lighting shall not directly illuminate the surfaces of structures (excluding entries, garages and portals), and the light source of any exterior lighting shall be less than three (3) feet in height. All exterior lighting must have a shielded light source, and be directed “downward” in the landscape. No tennis courts may be lighted except as may be permitted by the Committee in its sole and absolute discretion.

**4.17. Styles, Materials, Colors.**

**4.17.1. Architectural Compatibility.** Consistent with the purpose of these Covenants and Restrictions set forth in Section 1 above, no residence or other improvement shall stand apart so far in its design or construction as to detract from the overall environment of the Property. While Pueblo and Territorial architecture are encouraged, creativity, innovative use of materials and design, and unique methods of construction are also encouraged, so long as the final result is consistent with these Covenants and Restrictions and with this overall philosophy that all structures are to be constructed and maintained to be compatible with one another. It is expected that the design of each residence and other related structures will be tailored to the unique features of each individual lot and Approved Building Site, in an effort to achieve a synthesis of nature and residence and to minimize alteration of the existing environment, including views, significant existing vegetation, and drainage.

**4.17.2. Exterior Surfaces.** Exterior surfaces must be generally of materials that will harmonize with the natural landscape. Stabilized adobe brick and stucco are two such materials, and their use is strongly encouraged. Specifically prohibited are: wood or metal siding, mirrored glass, reflective materials, vinyl and plastics, and other materials the appearance of which, in the sole and absolute discretion of the Committee, does not convey strength, permanence, durability and compatibility with historical Santa Fe architectural styles. The use of wood is allowed as detailing and fenestration.

**4.17.3. Materials and Colors of Exterior Walls and Structures.** The following materials are acceptable for courtyard, garden and retaining walls: (a) masonry with stucco to match the color of the house or the natural earth upon which the wall is built, (b) natural stone that blends with the natural earth color, or (c) “coyote fencing” that includes stucco covered pilasters spaced not greater than twenty (20) feet apart. Wire, metal mesh and plastic fencing is prohibited. No wall may be constructed until its description and location are first submitted to and approved by the Committee. Entry gates



must be set back fifteen (15) feet or more from the lot entrance. All or any portions of Lots #78 – 84 lie within a ridgetop subdistrict (as described in Section 10.8 below). With respect to these lots, colors of all structures on Approved Building Sites within a ridgetop subdistrict (as defined in 10.8 below) shall be the tans and browns of local earth tones within fifty (50) feet of the area adjacent to the proposed structures. All colors shall be subject to the approval of the Committee.

**4.18. Storage in Garage; Concealment Approved by Committee.** All above-ground tanks, mechanical and other equipment, storage piles, boats, trucks (other than pickup trucks), campers, horse trailers, boat trailers, trailer homes, motor coaches, recreational vehicles and similar vehicles shall be kept in a garage (but such use of garage space shall not interfere with passenger vehicle parking in the garage as required by Section 4.13 above) or concealed at all times in such manner as shall be approved by the Committee, in its sole and absolute discretion, so that they may not be seen from any point beyond the lot on which they are located. No boat or vehicle shall be repaired, serviced, or rebuilt in any lot within the Property.

**4.19. Temporary, Portable and Uncompleted Structures.**

**4.19.1. Use Only During Construction.** No temporary, wheeled, or portable structure shall be placed, erected or maintained on any lot within the Property, except during a construction period and in connection with such construction if approved by the Committee; provided, however, that this provision shall not prohibit Declarant, or its successors and assigns, from constructing, maintaining and using a sales office (temporary or portable) structure on the Property.

**4.19.2. No Use as a Dwelling.** No temporary, wheeled, portable, modular, mobile home or uncompleted structure shall be used or occupied as a dwelling.

**4.20. Signs, Mailboxes and Newspaper Boxes.** With the exception of street and road signs, monumentation identifying the Property, and such other signs as may be utilized by Declarant for the development and marketing of the Property and of the Monte Sereno Subdivision, all as provided for in Section 9.2 (Declarant's Reserved Easements) below, lot owner identification, "For Rent" or "For Sale" signs approved by the Committee, or other signs approved by the Committee, no sign shall be erected, placed or maintained on any part of the Property that may be visible from any point outside of the lot on which the same is located. One standardized signboard of color, material and style approved by the Committee, not more than six (6) square feet in area, may be erected on a lot in connection with a sale of that lot, or the rental or sale of a house constructed on that lot, but it and any other permitted signs must comply with all sign design criteria and guidelines adopted by the Committee. Individual mailboxes and newspaper boxes are prohibited unless erected pursuant to design criteria and guidelines adopted by the Committee.

**4.21. Access Outside Subdivision.** No lot owner shall grant an easement, license or other right across or through such owner's lot, or allow an easement or other right to be established across such owner's lot that provides ingress, egress or utility placement from or to any property outside of the Property. No lot owner shall allow any such access through or over their lot whether established pursuant to a written document or not.<sup>5</sup>

**4.22. Animals.** Subject to the applicable zoning ordinances and regulations of the City of Santa Fe, no animals, excepting only a reasonable number of ordinary and commonly accepted household pets, shall be kept or maintained on any lot within the Property.

**4.23. Prohibited Uses and Activities.**

**4.23.1. No Business, Commercial, Professional or Trade Purpose.** No lot within the Property shall be developed, improved or used for any business, commercial, professional or trade purpose, whether or not for profit, nor for any purpose except for single-family residential use or rental or resale for such use; notwithstanding such prohibition against a business, commercial, professional or trade purpose, (i) home occupations and offices of the owner of a lot are permissible if conducted in the home, guest house, or studio and in compliance with any requirements pertaining to home occupations and offices now or hereafter adopted by the City or the Committee, (ii) there may be constructed, operated and maintained model homes, with adequate parking incidental to the visiting of such model homes, by builders (including Declarant and its successors and assigns) offering homes for sale within the Property, their sales offices, and other facilities permitted by this Declaration, and (iii) there may be constructed, operated and maintained, such office(s) and facilities as are described in Section 4.6.2.

**4.23.2. No Removal of Natural Substances or Materials.** No portion of the Property shall be used in any manner to explore for or remove any hydrocarbons, minerals or natural substances or materials of any kind, except as such may be necessary in connection with the development, improvement or use of the Property and any lot within the Property for single-family residential purposes.

**4.23.3. No Improvement in Disrepair.** No building, structure, or other improvement on a lot shall be permitted to fall into disrepair and each such improvement shall at all times be kept by the owner in good condition and repair and adequately painted, stuccoed, or otherwise finished.

**4.23.4. No Improvement as a Nuisance or Hazard.** No structure or alteration to the natural topography of the land shall be permitted to be constructed or maintained on any lot within the Property which is or may become a source of nuisance or hazard to the owners of other lots or improvements thereon.

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<sup>5</sup> Amendment No. 1 (entire paragraph replaced)

**4.23.5. No Activity as a Nuisance or Hazard.** No activity shall be conducted or performed by anyone on any lot in the Property which is or may become a source of nuisance or hazard to the owners of other lots or improvements thereon. Other than barbecues in properly constructed pits or grills and fire pits in compliance with Committee rules and guidelines, no open fires shall be permitted on the Property; and no incinerators shall be kept or maintained on the Property.

**4.23.6. No Machinery or Equipment.** No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any lot except such machinery or equipment as is usual and customary in connection with the construction (during the period of construction), use, or maintenance of a building, appurtenant structures, or other improvements.

**4.23.7. No Garbage or Trash.** No garbage or trash shall be kept or contained on any lot so as to be visible from any point outside of said lot, except temporarily, in containers approved by Association rules, for pick up. No lot within the Property shall be used for the storage or dumping of rubbish or debris of any kind, or for the storage of any property or thing that will cause such lot to appear in an unclean or untidy condition, or that will be visually offensive or obnoxious, and no substance, thing or material may be kept upon any lot that will emit foul or obnoxious odors, or that will cause any noise that will disturb the peace, quiet, comfort, or serenity of any owners or occupants of lots within the Property.

**4.23.8. No Unlicensed Motorized Vehicles.** No unlicensed motorized vehicles are permitted within the Property and on any lot.

**4.23.9. No Outdoor Laundry Hanging.** No portion of the Property shall be used as a drying or hanging area for laundry of any kind, and all drying and laundry lines are prohibited; all facilities for such shall be provided within the building to be constructed on each lot.

**4.24. Fire Suppression Systems.** Any house served by a road that is in excess of a ten percent (10%) grade must be equipped with a residential fire suppression system. The Declarant recommends consultation directly with the Santa Fe Fire Department regarding this requirement. In addition, any house served by a private driveway with a length of one hundred and fifty (150) feet or greater and a grade of ten percent (10%) or more must include a residential fire suppression system as provided in Section 4.12.2.<sup>6</sup>

## **5. IMPROVEMENTS AND CHANGES**

No improvements may be commenced, and no grading or other change in the natural topography or vegetation of any lot within the Property, may occur or may be

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<sup>6</sup> Amendment No. 2 (entire paragraph added)

permitted to be constructed, installed, or performed (including, but not limited to, any structure; any athletic, recreational, and storage facility; any walls, walks, driveways and parking facilities; any outdoor lighting system; any excavation, fill or landscaping project; and any water storage tank) unless and until the owner of said lot has satisfied the requirements of Section 6 (Design and Filing Requirements) below and received final approval thereof pursuant to Section 7 (Committee Proceedings) below. Other City requirements may require stricter design criteria to the extent those requirements are applicable pursuant to the terms of the City Agreement. Notwithstanding the foregoing, in the event of an emergency or sudden occurrence of conditions which threaten the health, safety or physical well-being of persons or property within the Property, the Board, the Committee, and Declarant shall have the authority (without the prior approvals provided for herein) to take whatever remedial action may be deemed necessary anywhere on the Property to protect persons and property until such time as applicable approval procedures provided for herein can reasonably be utilized.

## 6. **DESIGN AND FILING REQUIREMENTS**

6.1. **Pre-Submittal Conference.** Every owner of any lot within the Property who proposes to improve or change such lot shall schedule a pre-submittal conference with the Committee or with a representative of the Committee. The purpose of a pre-submittal conference is to exchange information pertaining to the proposed improvement or change, and pertaining to the design, filing requirements, and procedures of the Committee.

6.2. **Exterior Plans for Enclosed Structures; Landscape Plans.** The exterior plans, profiles, three-dimensional renderings or sketches and other pertinent descriptive information of all proposed dwellings and other enclosed structures to be located on a lot within the Property, showing and describing the proposed location and orientation and the proposed exterior design, shape, openings, dimensions, roof plans, materials and colors of the same when completed, and all associated excavations, cuts and fills, shall be submitted to and approved by the Committee before the same are constructed, installed or performed. Said materials shall be prepared and signed by an architect or professional architectural designer and shall be signed by the owner of said lot. Keeping in mind that all future improvements, including expansion of the initially approved Improvement Envelope within an Approved Building Site, must be approved by the Committee, consideration should be given to any future expansions or building needs, and any such future considerations should appear on all design submittals. Contemporaneously, landscape plans prepared by a landscape architect or professional landscape designer must be submitted to the Committee for its consideration.

6.3. **Other Improvements and Changes.** The plans, profiles, three-dimensional renderings or sketches and other pertinent descriptive information, as the same may be needed by and helpful to the Committee, of all other proposed improvements upon and changes in any lot within the Property, showing and describing the proposed location and orientation and the proposed design, shape, dimensions, materials, color and appearance of said improvements or changes when completed, and all associated excavations, cuts

and fills, shall also be submitted to and approved by the Committee before the same are constructed, installed or performed.

**6.4. Costs; Filing Fee.** In connection with any submission and filing described in Sections 6.2 and 6.3 above, or any other provisions of these Covenants and Restrictions, the Committee may require the lot owner to pay a filing fee in an amount sufficient to cover the anticipated costs and expenses of the Committee's examination of the plans and specifications so submitted and filed. To the extent that said fee is insufficient to defray all reasonable costs incident to the Committee's examination, the Committee may require additional post-filing fees. Such fees will be established by the Committee. The Committee may also require a performance bond or other financial guarantee to guarantee performance requirements of a lot owner during construction.

**6.5. Payment of Assessments.** All annual and special assessments applicable to a lot must be paid before the Committee will consider any submission for that lot.<sup>7</sup>

## **7. COMMITTEE PROCEEDINGS**

### **7.1. Committee Approval or Disapproval; Appeals.**

**7.1.1. Action Within Thirty Days.** Upon receipt of any submission and filing pursuant to Section 6 (Design and Filing Requirements) above and any other provisions of these Covenants and Restrictions, the Committee shall proceed to examine and consider the same and to act thereon by approving or disapproving the same, in whole or in part, within thirty (30) days after receipt, unless the applicant applies for and receives an extension of time for Committee action. If the Committee fails to so approve or disapprove within the time specified, the improvement or change shown by the materials so submitted and filed shall be deemed to be disapproved.

**7.1.2. Services of Experts.** In considering proposed improvements and changes and examining materials submitted to it, the Committee may obtain the services of an architect and such engineers, surveyors and other experts as the Committee may reasonably deem advisable, and pay for the same with funds received by it pursuant to Section 6.4 (Costs; Filing Fee) above.

**7.1.3. Standards and Requirements.** In examining, considering and approving or disapproving a proposed improvement or change, the Committee shall be guided by and determine whether the same complies with the following standards and requirements, as well as with the other requirements of this Declaration, particularly those in Sections 1 (Purpose of Covenants and Restrictions) and 4 (General Limitations, Restrictions and Requirements):

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<sup>7</sup> Amendment No. 2 (entire paragraph added)





(a) That the location, orientation, mass, shape, dimensions, exterior surface materials, textures and colors and all other visible features of the improvement(s) or change(s), and any associated excavations, cuts and fills, removal of vegetation and alterations of natural drainage patterns, shall cause the least disturbance to the lot and least detract from the reasonable use and enjoyment of all other lots, streets and roads, and common areas within the Property, including views from such other lots, streets and roads, and common areas, all consistent with the reasonable use and enjoyment of the lot on which such improvement(s) or change(s) is (are) to be located.

(b) That the improvement(s) or change(s) shall, insofar as reasonably possible, be compatible with the other structures within the Monte Sereno subdivision and existing improvements, if any, on the lot.

(c) That, in all reasonable probability, the construction, installation or performance of the improvement(s) or change(s) may be completed in compliance with all provisions and requirements of these Covenants and Restrictions.

**7.1.4. Approval by Written Report.** Should the proposed improvement(s) or change(s) comply with the requirements stated in Section 7.1.3 above in the opinion of a majority of its members, the Committee shall finally approve the same by a written report within the time specified in Section 7.1.1 above. A copy of the report shall be furnished to the lot owner and/or the applicant.

**7.1.5. Disapproval by Written Report.** Should the proposed improvement(s) or change(s) violate or be in conflict with any requirement stated in Section 7.1.3 above in the opinion of a majority of its members, the Committee shall disapprove the same by a written report specifying all reasons for such disapproval. A copy of the report shall be furnished to the lot owner. Such disapproval may be appealed by the lot owner to the Board.

**7.2. Exceptions and Variances.** If the owner of a lot believes that the lot is affected by naturally or artificially occurring circumstances or constraints not generally applicable to other lots, the owner may apply to the Committee for an exception or variance from the provisions of the Declaration or rules and guidelines of the Committee and Association. The Committee, upon a showing of good cause and necessity therefor without significant possibility of detriment to or adverse effect on other lot owners, may allow, in its sole discretion, reasonable exceptions or variances with respect to any provision of these Covenants and Restrictions on such terms and conditions as the Committee shall specify. The lot owner requesting the variance shall seek approval of the variance from all adjacent lot owners and present any such written approvals to the Committee. The Committee may also require that the lot owner seek the approval, depending on the nature and extent of the variance, of additional lot owners. Economic hardship alone is not a basis for an exception or variance. Any decision to grant or not to grant an exception or variance shall be in writing and a copy of same shall be furnished to the owner. Any such written decision may be appealed to the Board only by (i) the



applicant for the exception or variance, (ii) any contiguous lot owner or (iii) the owners of any three (3) lots within the Property. Variances may not be granted for any matter which is prohibited by City ordinances or the City Agreement and the Committee may not grant final approval for variances over which the City has the authority to grant.

7.3. **Appeal.** An appeal of any decision of the Committee must be filed with the Board within thirty (30) days after the written decision is delivered to the applicant. The Board may reverse or modify a decision of the Committee by a majority vote. The decision of the Board is final and binding on all concerned.

7.4. **Conditions Precedent to Construction.** No improvement or change described in Section 5 (Improvements and Changes) above, or elsewhere in these Covenants and Restrictions, shall be constructed, installed, performed or maintained unless and until the following conditions precedent have been met: (i) final approval of the same is first obtained in the manner provided in this Section 7; (ii) for any improvement or change which requires a City of Santa Fe building permit, the lot owner has provided the Committee with a copy of said building permit, together with a copy of the building plans bearing the City of Santa Fe's approval stamp; and (iii) the lot owner has paid the construction deposit fee required by Section 8.5 (Minimum Impact on Natural Environment) below.

7.5. **Committee Records and Certifications.** The Committee shall keep and maintain all materials submitted to and filed with it pursuant to Section 6 (Design and Filing Requirements) above, its written reports made pursuant to this Section 7 and summary written reports of all other Committee proceedings and actions for at least five (5) years after the same are received or made by it.

7.6. **Limitation of Liability.** The members of the Committee and of the Board, jointly and severally, shall not be liable in damages to any person by reason of any act, failure to act, approval, failure to approve, disapproval, failure to disapprove or other exercise of or failure to exercise their powers conferred by these Covenants and Restrictions, and by the acquisition of title to any lot in the Property, and in consideration thereof, each lot owner thereby agrees, for such owner and for all other persons claiming by, through or under such owner, not to file suit against the Committee or Board, or any member thereof, to recover damages in connection with any of the foregoing events.

## 8. **CONSTRUCTION**

8.1. **Commencement of Construction.** Construction of any improvement or change shall begin not later than twelve (12) months after the Committee gives its final approval for the same pursuant to Section 7 (Committee Proceedings) above. If commencement of construction has not been met for any reason whatsoever, within the

twelve (12) month period, said Committee approval shall be deemed to have expired and shall be of no further force or effect whatsoever; and, thereafter, the Committee, in exercising its discretion, shall consider any subsequent application for the subject improvement(s) as a new application entirely and, even if the drawings, plans or specifications submitted shall be the same as originally approved, shall not be bound in any way by reason of having previously approved same.

**8.2. Completion of Exterior Construction.** Exterior construction of any improvement or change, including the final color coat or paint, shall be completed in substantial compliance with the descriptive information submitted to and approved by the Committee within twelve (12) months after commencement of construction.

**8.3. Completion of Other Construction.** All other construction of any improvement or change shall be completed in substantial compliance with the descriptive information submitted to and approved by the Committee within eighteen (18) months after commencement of construction.

**8.4. Construction of Single-family Dwelling.** The construction of an accessory structure shall not be commenced prior to the commencement of the single-family dwelling structure on each lot within the Property; provided, however, that landscaping improvements which have been finally approved by the Committee pursuant to Section 7 (Committee Proceedings) above may be commenced prior to the commencement of construction of the single-family dwelling.

**8.5. Minimum Impact on Natural Environment and Subdivision Improvements.** The owner of any lot within the Property upon which construction activities occur shall have the obligation to assure that such activities cause a minimum impact on the natural environment and that the construction activity does not damage the Subdivision infrastructure. Specifically, the owner of any such lot, or such owner's contractors, shall maintain a construction site which is clean and tidy, shall not cause or allow trash and/or construction debris to accumulate on the lot and shall not destroy or damage curbs, roads, sidewalks, trails, utilities or any other Subdivision infrastructure. Supplies of building materials shall be piled only in such areas as may be approved by the Committee, which may require that such approved areas be reasonably screened from view from surrounding lots and adjoining roads and streets. In the event that any owner, or such owner's contractors, shall allow trash and/or construction debris to accumulate on such lot, or on any other portion of the Property (e.g., along streets and roads, near culverts, in open spaces, etc.), such owner shall be responsible for the removal of such trash and/or construction debris. If the owner fails to remove trash and/or debris within ten (10) days after any request for such removal is given to the owner by the Committee, then the Association may cause the trash and/or construction debris to be removed, and the cost for such removal shall be levied against the owner of the lot and shall become a lien on said lot until paid. In the event any owner, or such owner's contractors, shall damage or destroy any Subdivision improvements and fails to correct the same within ten (10) days after any request for such correction is given to the owner by the Committee, then the

Association may make the repair and the cost shall become a lien on said lot until paid. As further security for the performance of the lot owner's obligations under this subsection, the Committee shall impose a construction deposit fee, in an amount to be determined by the Committee, which shall be used to cover any costs and expenses incurred in monitoring the lot owner's compliance with this subsection or in correcting any non-compliance. Any unused portion of the construction deposit fee shall be refunded to the lot owner following the completion of the construction activity.

**8.6. Construction Traffic Prohibited.** Construction traffic on County Road 87 (San Juan Ranch Road) is prohibited. Lot owners must ensure that their contractors and builders do not use County Road 87 for access to their lot during any construction on the lot.

## **9. EASEMENTS**

**9.1. Subdivision Plat Easements.** In addition to the easements created by Sections 9.2 through 9.6 below, Declarant has established and reserved the following easements as such easements are shown on recorded subdivision plats or on final development plans on file with the City: (i) For the benefit of the City, the Declarant, the Association and utility companies or purveyors of utility services, easements for various utility lines including, without limitation, easements for sewer lines, water lines, telephone lines, electric lines, gas lines, cable television and other communication lines and other facilities required for, or pertaining to, such lines (details of which are shown on final development plans on file with the City); and (ii) for the benefit of the Declarant, the Association, and the City, easements on certain lots for slopes, walls, drainage structures and the like to support and maintain public streets and roads (details of which are shown on final development plans on file with the City); and (iii) for the benefit of Declarant, the City, and the Association, easements for drainage, surface water flow and structures containing and regulating such drainage and surface flows according to a common plan for drainage of the Property (details of which are shown on final engineering plans on file with the City). Use of these easements may be subject to criteria established from time to time by the Declarant or by the Association. No owner shall interfere with any such easement across the owner's lot, but, otherwise, owners may landscape the easement area within the approved Improvement Envelope, subject to the provisions of these Covenants and Restrictions governing landscaping. Each owner shall maintain walls and/or shall cut or fill slopes on the owner's lot along any public street or road to insure the proper support, maintenance and drainage of streets and roads. The location and extent of such walls, cuts and fills are shown in the roadway plan and profile sheets of the final engineering plans on file with the City. Each owner covenants not to disturb or displace any trees or other vegetation within any easement for slopes, walls, drainage structures or within the drainage easements and not to construct improvements or structures, temporary or permanent, in any such easements, except as approved in writing by the Association and, if any drainage easement benefits lands other than the owner's lot, as approved by the City. Drainage easements and drainage structures in public streets and roads and in tracts of the Property which are acquired by the City shall be maintained by the City.

Drainage easements and structures on lots which service one (1) or more other lots shall be maintained by the Association as a common facility. Drainage easements and structures which service only one (1) lot shall be maintained by the owner of that lot. Declarant, the Committee and the Association shall have the right, at any reasonable time, to enter upon any lot to enforce the provisions of this subsection, and the cost of any such enforcement shall be levied against the owner of the lot and shall become a lien on said lot until paid. With adequate engineering support, the applicant may request approval from the Committee for the relocation of minor drainage easements. The applicant will also be required to seek and receive City approval for the relocation of any such drainage easements.<sup>8</sup>

## **9.2. Declarant's Reserved Easements.**

**9.2.1. Landscaping Easements.** Declarant has established and reserved, and may hereafter convey to the Association, as common facilities, or to any other person or entity, a permanent easement in all areas designated in any recorded subdivision plat for landscaping, irrigation facilities, walls, fences, entry features to the project and associated structures, monuments which identify the Property, any other monuments and structures, and related facilities and amenities, to beautify the street scene in those areas. Declarant reserves the right, without the necessity of the joinder of any owner or the Association or other person, to make changes in and additions to the scope of uses within the above easements.

**9.2.2. Right to Grant Other Easements; and Trail System Easement.** In addition to easements shown on final subdivision plats, which generally have a maximum width of seven and one-half (7-1/2) feet in lots on each side of a public road, for public utilities (including, without limitation, gas, sewer, water, electricity, cable communication, and telephone), for drainage, and the easements shown on the Trail Plan approved by the City, Declarant reserves the right to grant, dedicate, reserve or otherwise create, at any time, or from time to time, other easements required to provide underground utility service and for drainage within the Property over, across and under lots, provided that such easement does not interfere unreasonably with an owner's use of the Approved Building Site(s) on such owner's lot. In addition, there is hereby created a blanket easement upon, across, over and under all portions of each lot which are outside of a structure for ingress and egress in connection with installing and maintaining lines for such utilities and appurtenances thereto; provided, however, other than in the seven and one-half (7-1/2) feet adjacent to public streets and roads and in sewer line easements shown on a final subdivision plat, no utility line or appurtenances thereto may be located or relocated on any lot until approved by Declarant or the Association. The surface of the aforesaid blanket easement areas for servicing underground utilities may be used by the owner of the affected lot for recreation, courtyards, driveways, parking, landscaping walls and like uses incidental to a single-family residence and neither the Declarant nor the Association shall be liable to any party for any damage done by any supplier of any utility service or

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<sup>8</sup> Amendment No. 2 (added last sentence only)



any such supplier's contractors or respective agents, employees, representatives or assigns as a result of any entry or activity pursuant to this blanket easement.

**9.2.3. Recordation of Easements.** Declarant and its successors and assigns may record an instrument to fix the location of any easement reserved by Declarant herein and not previously depicted with certainty on a plat, map or other instrument recorded in the real estate records of Santa Fe County by the filing of an amended subdivision plat, if required.

**9.2.4. Obligation to Grant Utility Easements.** Lot owners shall grant utility easements on their lots as required or necessary for the provision of utility service, maintenance and installation within the Subdivision and shall execute all necessary documents for the granting of such easements. Such easements will not interfere unreasonably with an Owner's use of the Approved Building Site(s) on such Owner's lot.<sup>9</sup>

**9.3. Easements for Access by Declarant or Association.**

**9.3.1. Right of Entry for Inspection, Maintenance, Repair, and Correction of Violations.** Declarant and the Association shall have the right and permanent easement to enter upon any and all lots for the purposes of maintenance and repair of all facilities for which an easement is given or granted to Declarant or the Association, to assure an owner's maintenance of drainage and slope easements, for removal of drainage obstructions, for the inspection of all improvements, to assure compliance with these Covenants and Restrictions and for the purpose of correcting any violation of any covenant, condition or restriction contained in these Covenants and Restrictions. The cost of any such maintenance, repair or correction shall be levied against the owner of the lot and shall become a lien on said lot until paid.

**9.3.2. Easement for Planting and Seeding.** Declarant and the Association shall have the right and permanent easement to enter upon any and all lots for the purposes of planting or seeding, and to provide temporary maintenance for, including irrigation of, indigenous vegetation or grasses of Declarant's or the Association's choice, on any areas of lots in order to (i) replant areas that were cleared, or partially cleared, of vegetation in the past for some reason, or (ii) maintain the aesthetic integrity of the Property, all at the expense of the party causing the revegetation to be performed or at the expense of the owner, if the area was cleared by the owner or occupant of such owner's lot, or the invitee, guest, contractor, or other authorized visitor of either.

**9.4. Sewer Lines.** Declarant has designated, or will designate, on final subdivision plats, for the benefit of the City, easements for sewer lines on all lots for utilization, repair, maintenance and replacement of said sewer lines, individual grinder pumps, and related equipment and facilities for such lines, including, but not limited to the sewer lines and pumps. Each lot owner shall maintain such sewer lines, and related

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<sup>9</sup> Amendment No. 1 (entire paragraph added)



equipment and facilities for such lines, until such lines, and related equipment and facilities for such lines, are accepted by the City.

**9.5. Trail System Easement.** Pursuant to Section 5.7 (Parks and Open Space) of the City Agreement (defined below in Section 10), Declarant shall develop the approved trail system and dedicate said trail system to the City. Until accepted by the City, said trail system shall be maintained by the Declarant, or upon Declarant's transfer thereof to the Association, by the Association. Said system initially is for the benefit only of the Declarant and the Association, but, when such system is completed and accepted for ownership and maintenance by the City, is also for the benefit of the general public. This trail system was approved by the City and is depicted on the Master Trails Plan for the subdivision. No lot owner shall interfere with any such easement on or across an owner's lot.

**9.6. Common Access Easements.** Declarant has designated, or may designate on the final subdivision plats and final engineering plans on file with the City, certain areas defined as common access driveways, which create an area for common ingress and egress to two (2) or more lots for pedestrian and vehicular ingress and egress. The owners of lots with common access driveways shall construct and maintain the facilities on such areas, and shall enter into a maintenance agreement approved by the Association for this purpose, as to which the Association shall be a third party beneficiary with the independent right to require enforcement thereof.

## **10. CITY OF SANTA FE REQUIREMENTS**

**10.1. City Agreement.** Certain provisions of the City Agreement (as hereinafter defined) may affect the ownership and use, development and operation of lots, including provisions regarding certain design and landscaping requirements within the escarpment overlay district of the City of Santa Fe, certain common facilities of the Association, the payment of fees to the City, the agreement for maintenance of the wastewater lift stations, development and maintenance of a trail system and other matters as listed in this Section 10. The "City Agreement" is the 1993 Annexation and Development Agreement between Tano Santa Fe Partners and the City of Santa Fe, effective May 5, 1993, and recorded in Book 947, Pages 799-901, records of Santa Fe County and Amendment No. 1 thereto dated July 27, 1994, Amendment No. 2 thereto dated October 11, 1995, Amendment No. 3 thereto dated August 25, 2004, letters of assurance and estoppel dated February 26, 1993, August 10, 1993, January 25, 1996, May 15, 1996, August 28, 1996, May 23, 1997 (the May 23<sup>rd</sup> letter regarding the sanitary sewer line), June 13, 1997 (the June 13<sup>th</sup> letter regarding plat revisions), January 27, 1999 and current City code as may be amended from time to time but only to the extent that such current and amended City code provisions would be applicable by the terms of the City Agreement. In the event of a conflict between this Declaration, as it may be amended from time to time, and the City Agreement, as it may be amended from time to time, the more restrictive shall control.



## **10.2. Improvements Dedicated to City; Conveyance of Tracts B, F, G and H.**

**10.2.1. Public Streets and Roads.** All streets and roads within the Property, including the road formerly designated as County Road 87 (San Juan Ranch Road) shall be public streets and roads. They shall be constructed with paved driving surfaces and dedicated by the Declarant to the City.

**10.2.2. City Tracts.** The Declarant has conveyed, or will convey, Tracts B, F, G, and H (net of that portion of Tract H conveyed to the New Mexico State Highway and Transportation Department), all as shown on the recorded final subdivision plats for the Monte Sereno Subdivision, to the City, subject to certain reserved easements. Tract B shall be used only for open space, for landscaping, irrigation, drainage, streets and roads, trailhead and parking area, hiking trails and utilities. Tract F shall be used only as open space, for a fire station to serve the Monte Sereno Subdivision and other areas should the City construct one, and for drainage, landscaping, irrigation, and utilities. Declarant has a one hundred foot (100') easement for landscaping, signs, walls, monuments and other facilities customarily erected at the entrance to a major subdivision, said easement being parallel to the interior subdivision road abutting Tract F so long as Tract F is used as open space. Such easement is to be reduced to twenty-five feet (25') should the City utilize Tract F for a permissible purpose other than open space. Tracts G and H shall be used only for open space, landscaping, irrigation, drainage and utilities. Tracts A, C, D and E, as shown on the final subdivision plats for the Monte Sereno Subdivision, are owned by the Declarant, but are not subject to this Declaration. Pursuant to Section 3.3 (Timing of Submittals) of the City Agreement, said Tracts A, C, D and E may be developed later by the Declarant or the Declarant's successors and assigns. All of these Tracts A through H are subject to certain provisions of the City Agreement.



### **10.3. Wastewater Collection System.**

**10.3.1. On-site Collection System.** Declarant has designed and the City has accepted the design of a low and high pressure wastewater collection system to connect to the City's gravity flow sewer system. Upon completion, inspection and approval by the City, the City will accept permanent dedication of the sewer system. The sewer system to be accepted by the City includes the two permanent lift stations with all appurtenances, the force main system, the low pressure main and the gravity main system, but excludes the sewer service lines and the grinder pumps. The property owner is responsible for repairs and maintenance of their entire sewer service line from the public mainline to the dwelling. A permanent maintenance fund in the amount of \$20,000.00 must be maintained for the purpose of paying all costs associated with operating and maintaining the lift stations. The Declarant will establish and make the contribution to the City for this \$20,000.00 permanent maintenance fund. The Homeowners Association is responsible for all operating and maintenance expenses for the lift stations. Such expenses will be assessed to each homeowner. Until such time that the wastewater collection system is accepted by the City, it shall be operated by Declarant, or, at Declarant's option, by the Association, and such assessment as is required for interim operation of the system will be imposed on each lot.

**10.3.2. City Gravity Flow System.** The wastewater will be pumped into the City's gravity flow sewer system. The City will accept dedication of and maintain and operate the wastewater collection system. The City will collect the wastewater fees from each homeowner by regular City billing.

**10.3.3. Sewer Assessment.** Until and after the City accepts dedication of the wastewater collection system, each lot owner will be assessed for: (i) the on-site operational costs of the wastewater collection system; (ii) special costs for maintenance of the system; and (iii) repair and replacement of pumps and other equipment. Such assessment shall be collected pursuant to the provisions of Section 2 (Property Owners' Association) above.

**10.3.4. Power Costs.** Each individual lot owner shall be responsible for the power costs required for operation of the grinder pump for that lot.

**10.4. Trail System.** Pursuant to the City Agreement, Declarant will provide a trail system, which is described in Section 9.5 (Trail System Easement) above and 10.2.2 above.

**10.5. Affordable Housing Development Fee.** Pursuant to Section 6.1 (Affordable Housing Fees) of the City Agreement, the City has imposed an affordable housing development fee equal to two percent (2%) of the gross purchase price for each lot initially sold by Declarant, or its successors or assigns, to a lot purchaser. This fee is a one-time fee based on the initial purchase price of a lot from Declarant, or its successors or assigns, and shall not apply to any resales. This affordable housing development fee shall be paid



by the owner of each lot and is in addition to the price charged by the Declarant for the lot, whether the initial purchaser or a subsequent owner, at the time of issuance of the initial building permit for the improvement of such lot.

**10.6. Business/Crafts Incubator Fee.** Pursuant to Section 6.2 (Business/Crafts Incubator Fee) of the City Agreement, an additional fee equal to one percent (1%) of the gross sale price of each lot within the Property shall be paid by the Declarant, or any assignee or successor of Declarant, at the time of the closing of each initial lot sale.

**10.7. Impact Fees.** The City's Impact Fee Ordinance which became effective April 1, 1991, and future ordinances establishing comparable fees, shall apply to all lots, but only as provided in Section 4.2 (Impact Fee Ordinance) of the City Agreement.

**10.8. Escarpment Overlay District.** All or a portion of the Approved Building Sites shown on the final engineering plans on file with the City for Lots #78 – 84 lie within a ridgetop subdistrict of the escarpment overlay district established by City ordinance; and, with respect to these lots, development and construction may take place on any portion of all Approved Building Sites (or portions thereof), lying within the escarpment overlay subdistrict subject to the architectural design and landscaping standards of the Escarpment Overlay District of the Santa Fe City Code as established by former Section 14-90A.7 (Architectural and Site Standards) and 14-90A.8 (Landscaping) as those provisions read on May 5, 1993. Construction on these lots within those portions of the Approved Building Sites lying outside of the ridgetop subdistrict is not subject to any provisions of the aforementioned Sections, or to any other provisions of the City Code governing the escarpment overlay district. Likewise, construction within the Approved Building Sites on Lots 85 and 124 and Lots 180-188 and 210-212<sup>10</sup>, none of which Approved Building Sites lie within the escarpment overlay district, is not subject to any provisions of the aforementioned Sections, or to any other provisions of the City Code governing the escarpment overlay district.

## **11. ENFORCEMENT**

**11.1. General Remedies.** In the event of any default by any owner under the provisions of the Declaration, the Articles, Bylaws, any association rules or Design Guidelines, the Association, or its successors and assigns, or its agents, and Declarant shall have each and all of the rights and remedies which may be provided for in the Declaration, the Articles, Bylaws, association rules or Design Guidelines, or which may be available at law or equity, and may prosecute any action or other proceedings against the defaulting owner, for an injunction, whether affirmative or negative, or for enforcement or foreclosure of any lien herein provided, in the manner provided under the laws of the State of New Mexico, and the appointment of a receiver for the Lot, or for damages or specific performance, or for judgment for payment of money and collection thereof, and interest

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<sup>10</sup> Amendment No. 1 (addition of Lots 180-188 and 210-212)



accrued thereon, or for any combination of remedies or for any other relief, including the collection of any imposed fines or the filing of a lien for the same. The prevailing party in any court action shall be entitled to recover the costs of the suit and reasonable attorney's fees and expert witness fees.

**11.2. Injunctive Relief.** By acquisition of any lot in the Property, and in consideration thereof, each owner thereby agrees that the breach or violation of this Declaration, the Articles, Bylaws, any association rules or Design Guidelines is likely to result in irreparable harm to the Declarant, the Committee, the Association, and the other owners, and agrees that any of them shall be entitled, in addition to any other available remedy, to injunctive relief, temporary or permanent, in order to prohibit or remedy any such breach or violation. No bond or other security shall be required of Declarant the Association or the Committee in connection with any such injunctive relief.

**11.3. Right of Entry.** Declarant, the Committee and the Association or their agents shall have the right, at any reasonable time, to enter upon any lot to enforce the provisions of this Declaration or the Design Guidelines and such entry shall not be a trespass. If deemed necessary, a correction of any violation of the Declaration or the Design Guidelines may be made by the Declarant, the Committee, the Association or its agents and the expense of the correction charged to the owner, which if not paid, may become a lien on the owner's lot.

## **12. TERMINATION; ANNEXATION; AMENDMENTS**

**12.1. Term.** The Declaration shall be effective upon the recording hereof and, as amended from time to time, shall continue in full force and effect until January 1, 2030, after which time the Declaration shall be automatically extended for successive periods of ten (10) years each unless there is an affirmative vote, not more than 360 days prior to the date scheduled for commencement of the next extension of the Declaration, to terminate the Declaration by a vote as provided in Paragraph 12.4 below. In the event of such a termination, the City's approval must be obtained. The Declaration may be amended at any time as provided for in Paragraphs 12.3 and 12.4 below.

**12.2. Annexation of Additional Property.** Without the consent of the Association or any owner or any other person or entity, Declarant shall have the right, but not the duty, to be exercised at its sole and absolute discretion, to annex to the Property additional property now or hereafter within the Monte Sereno Subdivision and thereby subject such annexed property to this Declaration. As additional property is annexed and thereby subjected to this Declaration, Declarant shall record supplemental declarations which may supplement or modify this Declaration with such additional or different covenants, conditions, restrictions, assessments, fees, charges, liens and easements as may be appropriate for such additional property, and may declare that any portions of this Declaration are not applicable to all or any part of such additional property.



**12.3. Declarant's Right to Amend.** Without the consent of the Association, the Board or any owner or any other person or entity, Declarant reserves the absolute and unconditional right to amend this Declaration at any time (i) for the purpose of conforming same to the requirements of the Federal Home Loan Mortgage Company, of the Veterans Administration, of any other institution involved in the purchase and sale of home loan mortgages, of any institutional mortgage lender, of any title insurance company, of the City of Santa Fe, County of Santa Fe, State of New Mexico or the United States of America, or of any other governmental agency, instrumentality or political subdivision, (ii) for the purpose of perfecting, clarifying or making internally consistent the provisions of this Declaration, and (iii), so long as the voting power of existing members of the Association is not diluted thereby and no existing owner's rights to use that owner's lot are materially altered, for any other similar or dissimilar purpose whatsoever.

**12.4. Amendment, Change, Modification and Cancellation.** These Covenants and Restrictions may be amended by the Declarant at any time without the approval of the Association, the Board or any owner until seventy percent (70%) of all residential lots (including any cluster units and any lots converted on the hotel site to residential lots or cluster units) in the entire Monte Sereno Subdivision are sold, provided, however, that no such amendment shall have the effect of changing the boundaries of any owner's lot without the consent of the owner. Thereafter, any provision of these Covenants and Restrictions may be amended, changed, modified, or cancelled at any time only with Declarant's written consent so long as Declarant owns any property (or any interest therein) subject to the Monte Sereno Master Plan and by a favorable majority vote of all votes entitled to be cast at a meeting of the members of the Association at which a quorum of at least fifty percent (50%) of the members is present in person or by proxy. Written notice of such meeting, stating the purpose thereof, shall be mailed or delivered thirty (30) days prior to such meeting.

**12.5. Validity and Enforceability.** Should any provision of these Covenants and Restrictions be declared invalid or unenforceable by any court of competent jurisdiction, said action shall not affect the validity or enforceability of any other provision.

### **13. SUBDIVISION PLATS; DEVELOPMENT PLANS; MASTER PLAN**

**13.1. Declarant's Disclaimer.** Notwithstanding anything to the contrary in this Declaration or elsewhere, Declarant makes no promises, agreements, warranties or representations that the plans envisioned for the development of the Property or of any additional, nearby properties now owned or hereafter acquired by the Declarant can or will be carried out, or that any land now owned or hereafter acquired by the Declarant is or will be annexed to the Property, or that any such land (whether or not it has been annexed to the Property) is or will be committed to or designated for a particular (or any) use, or that, if such land is now or hereafter committed or designated for a particular purpose, such use will actually occur or, if it occurs, that such use will continue in effect.



**13.2. No Other Property.** Nothing in this Declaration creates any express or implied covenants upon any property other than the Property.

**13.3. Subdivision Plats; Development Plans; Master Plan.** The Property is subject to the Revised Master Plan approved by the City, the final subdivision plats for Phases I and II as approved by the City and recorded in the real estate records of Santa Fe County, on May 4, 2005 as Instrument #1378.510, as filed with the City, and easements now or hereafter created by the Declarant, all as amended from time to time. This Revised Master Plan and these final subdivision plats and final engineering plans on file with the City may show or describe real property other than the Property without annexing such other property to the Property or subjecting such other property in any way to this Declaration or to any of the provisions of this Declaration.

**13.4. Declarant's Right to Amend.** The Declarant reserves the right, without the approval of the Board or the other members of the Association, to amend any master development plan, preliminary or final subdivision plat, preliminary or final engineering plan, easement, the City Agreement, rezone the hotel site, convert cluster units to residential lots, amend any utility service agreement, and any other document, agreement, plat, map or decision upon complying only with any applicable requirements of the City and any other governmental body having jurisdiction over the matter. Each owner, by accepting title to a lot within the Property, and each other person or entity, by acquiring any interest in the Property, acknowledges that the Monte Sereno Subdivision is an extensive, multi-use project, the development of which is likely to extend over many years, and agrees, so long as the Declarant or any successor or related entity is an owner, or holds any other interest in the Property, not to protest or otherwise object to zoning, use, or density changes, or changes in any conceptual or master plan, with respect to any portion(s) of the Monte Sereno Subdivision that are not subject to the Declaration, and further acknowledges that nothing in the Declaration shall limit or restrict, or be deemed to limit or restrict, the use of any real property not annexed to the Property and subjected hereto.

#### 14. **LIMITATION ON DECLARANT'S LIABILITY**

Notwithstanding anything to the contrary in this Declaration, in any preliminary or final subdivision plat, master plan, preliminary or final engineering plan, other map, plan or agreement to which the Declarant is a party or by which it is bound, or in any law, rule, regulation or other legal requirement, each owner by acquiring any interest in any lot, and each other person or entity by acquiring any interest in any part of the Property, including but not limited to mortgagees, and each person or entity claiming by, through or under any such owner or other person or entity, acknowledges and agrees that neither Declarant (including but not limited to any assignee or successor of Declarant) nor any partner in Declarant, nor any partner, trustee, officer, director, principal or other person holding an interest in or position in Declarant or in any partner in Declarant or its successors and assigns, nor any of their respective employees, agents, or attorneys, shall have any personal liability to the Association, or any owner, or mortgagee or any other person or entity, arising under, in connection with, or resulting from any act or omission, statement or misstatement, agreement, covenant, restriction, law, rule, regulation or other legal requirement, except to the extent of any insurance coverage that may be in effect; and in the event of a judgment, no execution or other action shall be sought, or brought thereon, against any assets, nor be a lien upon such assets, of the judgment debtor.

#### 15. **INCORPORATION BY REFERENCE; COPIES**

15.1. **Incorporation by Reference.** In each instrument of conveyance of title or in the policy of title insurance for any lot within the Property by and from Declarant these Covenants and Restrictions, as the same may be amended or modified from time to time, shall be expressly incorporated by reference, and the grantee of such conveyance shall be furnished with a copy of the same.

15.2. **Availability of Copies.** The Committee shall make copies of these Covenants and Restrictions, as the same may be amended and modified from time to time, freely available upon demand by all members of the Association and all prospective purchasers of lots within the Property.

#### 16. **ASSIGNMENT; BINDING EFFECT**

Declarant may convey, from time to time, its interest in Monte Sereno Subdivision, or in any part of it, and in connection with that conveyance may also assign its interest, in whole or in part, in this Declaration, as it pertains to the part conveyed, to the purchaser of that part. Upon the acceptance and assumption of any such conveyance and assignment, Declarant will be relieved of any further obligations under this Declaration with respect to the interest conveyed. This Declaration binds and benefits the Declarant and its successors and assigns. Whenever, in the Declaration, the term "Declarant" is used, it refers also to Declarant's successors and assigns.



17. RULE AGAINST PERPETUITIES

If any of the options, privileges, covenants or rights created by the Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue until twenty-one (21) years after the death of the survivor of the now living descendants of Don Beauregard and New Mexico Senators Pete Domenici and Jeff Bingaman.

IN WITNESS WHEREOF, Declarant has executed these Covenants and Restrictions this 4<sup>th</sup> day of April, 2005.

**SOUTHWEST LIFESTYLE CONCEPTS, LLC,**  
a Colorado limited liability company  
By: HMB Partners, Inc.,  
a Colorado corporation, its manager

By: /s/ Donald E. Beauregard  
Donald E. Beauregard  
President

STATE OF NEW MEXICO)  
  ) SS  
COUNTY OF SANTA FE )

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of April, 2005 by Donald E. Beauregard, President of HMB Partners, Inc., a Colorado corporation, manager of Southwest Lifestyle Concepts, LLC, a Colorado limited liability company.

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/s/ Naomi C. Demolli

Notary Public  
My Commission Expires: 11/15/2008