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Picacho Mountain
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**FIRST AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
PICACHO MOUNTAIN**

February 20, 2007

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FIRST AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
PICACHO MOUNTAIN

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PICACHO MOUNTAIN is made this _____ day of _____, 2007, by Picacho Mountain, L.P., a New Mexico Limited Partnership (“Declarant”).

RECITALS

WHEREAS, THE DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR PICACHO MOUNTAIN was recorded on February 13, 2007, at Book 788, Page 270-331, of the Records of Dona Ana County, New Mexico, by Picacho Mountain, L.P., a New Mexico Limited Partnership (“Declarant”);

WHEREAS, pursuant to Article XVI, Section 16.1 of the Declaration, until conveyance of a Lot or Parcel to a Class “A” Member other than a Builder, Declarant may unilaterally amend this Declaration for any purpose;

WHEREAS, no Lots or Parcels have yet been conveyed to a Class “A” Member;

NOW, THEREFORE, Declarant hereby wishes to amend and restate the Declaration in its entirety, as set forth below.

ARTICLE I

CREATION OF THE COMMUNITY

1.1. Purpose and Intent.

Declarant, as owner of the real property described in Exhibit “A,” intends by Recording this Declaration to create a general plan of development for the planned community known as Picacho Mountain. This Declaration provides a flexible and reasonable procedure for the future expansion of the Picacho Mountain Community to include additional real property as Declarant deems appropriate and provides for the overall development, administration, maintenance, and preservation of the real property now and hereafter comprising the Picacho Mountain Community. An integral part of the development plan is the creation of Picacho Mountain Homeowners Association, Inc., an association comprised of all owners of Lots and Parcels in the Picacho Mountain Community, to own, operate, and/or maintain various common areas and community

improvements, and to administer and enforce this Declaration and the other Governing Documents.

1.2. Binding Effect.

All property described in Exhibit "A," and any additional property which is subjected to this Declaration in the future by Recording of one or more Supplemental Declarations, shall be owned, conveyed, and used subject to all of the provisions of this Declaration, which shall run with the title to such property. This Declaration shall be binding upon all Persons having any right, title, or interest in any portion of the Picacho Mountain Community, their heirs, successors, successors-in-title, and assigns.

Unless otherwise provided by New Mexico law, this Declaration shall run with the land and have perpetual duration. This Declaration may be terminated only by a Recorded instrument signed by Owners of at least 80% of the Lots and Parcels and the approval of the Declarant, so long as Declarant has any rights as set forth in this Declaration, and by otherwise complying with all city, county, or state requirements. In the event of termination, provision shall be made for the continued maintenance of the Common Area. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

This Declaration shall be enforceable by Declarant, the Association, any Owner, and their respective legal representatives, heirs, successors, and assigns, by any means available at law or in equity. If any provision of this Declaration is determined by judgment or court order to be invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications.

1.3. Governing Documents.

The Picacho Mountain Community Governing Documents consist of the following as they may be amended:

Declaration (recorded): creates obligations and easements which are binding upon the Association and all present and future owners of Lots;

Supplemental Declaration (recorded): adds property to the Picacho Mountain Community; *may* impose additional obligations or restrictions on such property;

Articles of Incorporation (filed with New Mexico Public Regulation Commission): establishes the Association as a nonprofit corporation under New Mexico law;

Bylaws (the Board of Directors adopts): governs the Association's internal affairs, such as voting rights, elections, meetings, officers, etc.;

Design Guidelines (Declarant adopts): establish architectural standards and guidelines for improvements and modifications to Lots and Parcels, including structures, landscaping, and other items on Lots and Parcels (includes standards and guidelines pertaining to all of Picacho Mountain);

Use Restrictions (initial set attached as Exhibit "C"): govern use of property, activities, and conduct within the Picacho Mountain Community;

Board Resolutions and Rules (Board adopts): establish rules, policies, and procedures for internal governance and Association activities, regulate operation and use of Common Area.

The Governing Documents may be supplemented by additional covenants, restrictions and easements applicable to particular Neighborhood Areas within the Picacho Mountain Community by the recording of a Supplemental Declaration. In such case, if there is a conflict between any of the Governing Documents and any such additional covenants or restrictions, or the governing documents or policies of such Neighborhood Area, the more restrictive document shall control. The Association may administer and enforce any such covenants, restrictions, or other instruments applicable to a Neighborhood Area.

The Governing Documents apply to all Owners and occupants of Lots, as well as their respective tenants, guests, and invitees. Any lease on a Lot shall provide that the tenant and all occupants of the leased Lot are bound by and obligated to comply with the Governing Documents.

ARTICLE II CONCEPTS AND DEFINITIONS

The terms used in the Governing Documents shall generally be given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms shall be defined as set forth below.

“Area of Common Responsibility”: The Common Area, together with such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration, or other applicable covenants, contracts, or agreements.

“Articles of Incorporation” or “Articles”: The Articles of Incorporation of Picacho Mountain Homeowners Association, Inc., as filed with the New Mexico Public Regulation Commission, as may be amended.

“Association”: Picacho Mountain Homeowners Association, Inc., a New Mexico nonprofit corporation, its successors or assigns.

“Base Assessment”: Assessments levied on all Lots subject to assessment under Article VIII to fund Common Expenses for the general benefit of all Lots.

“Neighborhood Area”: A group of Lots designated as a Neighborhood Area in a Supplemental Declaration. A Neighborhood Area may be comprised of more than one housing type and may include noncontiguous parcels of property.

“Neighborhood Assessment”: Assessments levied against a Neighborhood Area or particular Lots for expenses incurred or to be incurred by the Association for the purposes described in Section 9.2..

“Board of Directors” or “Board”: The body responsible for administration of the Association, selected as provided in the Bylaws and serving the same role as the board of directors under New Mexico corporate law.

“Builder”: Any Person licensed with the State of New Mexico who purchases one or more Lots or Parcels within the Properties for further subdivision, development, or construction of Dwelling Unit(s) in the ordinary course of its business.

“Bylaws”: The Bylaws of Picacho Mountain Homeowners Association, Inc., as they may be amended.

“Class “B” Control Period”: The period during which the Class “B” Member is entitled to appoint a majority of the Board members. The Class “B” Control Period shall terminate upon the first to occur of the following:

(a) Two years after 100% of the Lots and Parcels planned for development under the Master Plans for the Picacho Mountain Community have been sold and are owned by Class “A” Members;

(b) December 31, 2030; provided, in the event that Declarant annexes additional property pursuant to Section 10.1 at any time after December 31, 2025, the above date shall be extended for additional five year periods for each additional 500 acres, or fraction thereof, of property annexed; or

(c) when, in its discretion, the Class “B” Member so determines. The Class “B” Member may choose to terminate some of its rights as a Class “B” Member by relinquishing control of those areas in writing prior to one of the other termination dates specified above. Declarant’s relinquishment of some, but not all, of its rights as a Class “B” Member will not terminate the remainder of Declarant’s rights as a Class “B” Member until one of the above events occurs.

“Common Area”: All real and personal property, including easements, which the Association owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of Owners, including such property as may be designated as Common Area by Declarant from time to time. Portions of the Common Area may be designated in a Supplemental Declaration as being “Limited Common Area” for the benefit of one or more, but less than all, Owners or Neighborhood Areas.

“Common Expenses”: The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of the Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents.

“Declarant”: Picacho Mountain, L.P., a New Mexico Limited Partnership, or any successor, successor-in-title, or assign who takes title to any portion of the property described in Exhibits “A” or “B” for the purpose of development and/or sale and who is designated as Declarant in a Recorded instrument executed by the immediately preceding Declarant.

“Design Guidelines”: The architectural, design, and construction guidelines and review procedures pertaining to the Properties, adopted and administered pursuant to Article IV, as they may be amended.

“Dwelling Unit”: Any building or structure or portion of a building or structure situated upon a Lot and which is intended for use and occupancy as an attached or detached residence for a single family.

“Governing Documents”: A collective term referring to the various documents described in Section 1.3, as each may be amended from time to time.

“Lifestyle Enrichment Committee” or “LEC”: The committee established to review plans and specifications for the construction or modification of improvements and to supervise compliance with, and otherwise administer and assist with enforcement of, the Design Guidelines and procedures described in Article IV. The LEC also may be assigned responsibility for enforcement of Use Restrictions and rules.

“Lot”: A portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and on which a Dwelling Unit is intended for development, use, and occupancy. The term shall refer to the land, if any, which is part of the Lot as well as any improvements, including any Dwelling Unit, thereon. The boundaries of each Lot shall be delineated on a Plat.

Prior to Recordation of a subdivision Plat, a parcel of vacant land on which improvements are under construction shall be deemed to contain the number of Lots designated for residential use for such parcel on the applicable preliminary plat, or Declarant’s site plan, whichever is more current. Until a preliminary plat or site plan has been approved, such parcel shall contain the number of Lots set by Declarant in conformance with the Master Plans.

“Master Plans”: The master land use plans for the development of the Picacho Mountain residential community as of the date of Recording this Declaration and as they may be amended, updated, or supplemented from time to time. The Master Plans include all of the property described in Exhibit “A” and all or any portion of the property described in Exhibit “B.” The Master Plans may include Plats and plans approved by Dona Ana County, New Mexico, or other applicable governmental authorities. Inclusion of property on the Master Plans shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the omission of property described in Exhibit “B” from the Master Plans as of the date of Recording this Declaration bar its later submission to this Declaration as provided in Article X.

“Member”: A Person who is a member of the Association pursuant to Section 7.2.

“Mortgage”: A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Lot or Parcel. A “Mortgagee” shall refer to a beneficiary or holder of a Mortgage.

“Owner”: One or more Persons who hold the record title to any Lot or Parcel, but excluding any Person holding an interest merely as security for the performance of an obligation. If a Lot or Parcel is sold under a Recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

“Parcel”: An area of real property within the Picacho Mountain Community that is designated by a Supplemental Declaration to be a Parcel. A Parcel shall not include a Lot, any Common Area, or any Exempt Property.

“Person”: A human being, a corporation, a partnership, a trustee, or any other legal entity.

“Plat”: A Recorded survey for all or any portion of the Properties, as amended and supplemented.

“Properties” or “Picacho Mountain Community”: The real property described in Exhibit “A,” together with such additional property as is made subject to this Declaration in accordance with Article X.

“Record,” “Recording,” or “Recorded”: To file, the filing, or filed of record in the Office of the County Recorder of Dona Ana County, New Mexico, or such other place which is designated as the official location for recording deeds, plats, and similar documents affecting title to real estate.

“Supplemental Declaration” A Recorded instrument which subjects additional property to this Declaration pursuant to Article X.

“Use Restrictions”: The initial use restrictions, rules, and regulations set forth in Exhibit “C,” as they may be supplemented, modified, and repealed pursuant to Article III.

“Visible From Neighboring Property”: With respect to any given object, such object is or would be visible to a person six (6) feet tall standing on any part of neighboring property. Neighboring Property shall include a Lot, Parcel, Common Area, or street, located in any direction from the Lot or Parcel in question, that is either immediately adjacent to the Lot or Parcel or is located in the general vicinity of the Lot or Parcel (such that an item located on the Lot or Parcel could be visible from the nearby Lot, Parcel, Common Area, or street).

ARTICLE III

USE AND CONDUCT

3.1. Framework for Regulation.

The Governing Documents establish, as part of the general plan of development for the Properties, a framework of affirmative and negative covenants, easements, and restrictions governing the Properties. Within that framework, the Board and the Members must have the ability to respond to unforeseen problems and changes in circumstances, conditions, needs, desires, trends, and technology. Therefore, this Article establishes procedures for modifying and expanding the initial Use Restrictions set forth in Exhibit “C.” This Article is not intended to apply to or govern Board promulgated rules and regulations relating to the use and operation of the Common Area which the Board may adopt by resolution pursuant to its general powers and authority.

3.2. Owners’ Acknowledgment and Notice to Purchasers.

All Owners are given notice that use of their Lots or Parcels and the Common Area is limited by the Use Restrictions. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Lot or Parcel can be affected by this provision, that the Use Restrictions may change from time to time as provided under Section 3.3 and that such changes may not be reflected in a Recorded instrument. All purchasers of Lots or Parcels are on notice that the Association may have adopted changes.

3.3. Rule Making Authority.

(a) Subject to the terms of this Article and the Board's duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may modify, cancel, limit, create exceptions to, or expand the Use Restrictions. To do so the Board shall send notice to all Owners at least five business days prior to the Board meeting at which such action is to be considered. For this purpose, notice may be sent to each Owner by: U.S. mail; electronic telecommunication (*i.e.*, fax, "e-mail", use of the Association's intranet or any other reasonable method of electronic communications whereby the Association can contact all Owners) or publication in the community newsletter delivered or mailed to each Owner, provided that such notice is clearly identified under a separate headline in the newsletter. Members shall have a reasonable opportunity to be heard at the Board meeting prior to such action being taken.

Such action shall become effective, after compliance with Section 3.3(c), unless the Class "B" Member, if any, disapproves, or unless Class "A" Members representing a majority of the total votes in the Association disapprove. During the Class "B" Control Period, such change must be signed by the Class "B" Member before the change becomes effective. The Board shall have no obligation to call a meeting to consider disapproval by the Class "A" Members except upon receipt of a petition of the Members as required for special meetings in the Bylaws. Said petition must be delivered to the Board within thirty (30) days of the Board's action. Upon receipt of such petition, the proposed action shall not become effective until after such meeting is held, and then subject to the outcome of such meeting.

(b) Alternatively, the Class "A" Members representing a majority of the total votes in the Association, at a meeting duly called for such purpose, may adopt provisions which modify, cancel, limit, create exceptions to, or expand the Use Restrictions then in effect. Such action shall require the approval of the Class "B" Member, if any.

(c) Prior to any action taken under this Section becoming effective, the Board shall, in any manner permitted in Section 3.3(a), send a copy of the new or modified Use Restrictions to each Owner. The effective date shall be not less than 30 days following distribution to Owners.

The Association shall provide, without cost, a single copy of the Use Restrictions then in effect to any requesting Member or Mortgagee. The Association may charge a reasonable fee for additional copies.

(d) No action taken under this Article shall have the effect of modifying, repealing, or expanding the Design Guidelines or any provision of this Declaration other than the Use Restrictions. In the event of a conflict between the Design Guidelines and the Use Restrictions, the Design Guidelines shall control.

(e) To change Use Restrictions recorded in a Supplemental Declaration, the Association is only required to provide notice to the Class "A" Members governed by the Supplemental Declaration and the Class "B" Member, if any. Such action shall become effective, after compliance with Section 3.3(c), unless the Class "B" Member, if any, disapproves, or unless Class "A" Members representing a majority of the total votes governed by the Supplemental Declaration disapprove. During the Class "B" Control

Period, such change must be signed by the Class "B" Member before the change becomes effective. The Board shall have no obligation to call a meeting to consider disapproval by the Class "A" Members except upon receipt of a petition signed by at least twenty-five percent (25%) of the Members governed by the Supplemental Declaration. Said petition must be delivered to the Board within thirty (30) days of the Board's action. Upon receipt of such petition, the proposed action shall not become effective until after such meeting is held, and then subject to the outcome of such meeting.

3.4. Protection of Owners and Others.

Except as may be specifically set forth in this Declaration (either initially or by amendment) or in the initial Use Restrictions set forth in Exhibit "C," all Association actions must comply with the following:

(a) Similar Treatment. Similarly situated Owners shall be treated similarly; provided, the Use Restrictions and rules may vary by Neighborhood Area.

(b) Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations inside their Dwelling Units of the kinds normally displayed in dwellings located in single-family residential communities shall not be abridged, except that the Association may adopt time, place, and manner restrictions with respect to such displays visible from or located outside the Dwelling Unit.

(c) Activities Within Dwelling Units. The Association shall not interfere with the activities carried on within the confines of Dwelling Units, except it may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Lots or Parcels, that generate excessive noise or traffic, that create unsightly conditions visible outside the Dwelling Unit, or that create an unreasonable source of annoyance.

(d) Alienation. The Association shall not prohibit leasing or transfer of any Lot or Parcel, or require consent of the Association or Board for leasing or transfer of any Lot or Parcel; provided, the Association or the Board may require a minimum lease term of up to 90 days.

(e) Abridging Existing Rights. The Association may not require an Owner to dispose of personal property that was in or on a Lot or Parcel prior to the adoption of such rule if such personal property was in compliance with all rules previously in force. This exemption shall apply only during the period of such Owner's ownership of the Lot or Parcel and shall not apply to subsequent Owners who take title to the Lot or Parcel after adoption of the rule.

(f) Reasonable Rights To Develop. No action by the Association or Board shall impede Declarant's right to develop the Properties in accordance with the Master Plans and rights reserved to Declarant in this Declaration.

The limitations in this Section shall only limit rulemaking authority exercised under Section 3.3; they shall not apply to amendments to this Declaration adopted in accordance with Article XVI.

ARTICLE IV
DESIGN AND LANDSCAPING

4.1: General

No structure or thing shall be placed, erected, installed, or posted on the Properties and no improvements or other work (including staking, clearing, excavation, grading, and other site work, exterior alterations of existing improvements, or planting or removal of landscaping) shall take place within the Properties, except pursuant to approval in compliance with this Article and the Design Guidelines.

No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any Owner of a Lot may remodel, paint, or redecorate the interior of his or her Dwelling Unit without approval so long as such modifications are not visible from outside of the Dwelling Unit. Furthermore, modifications to the interior of screened porches, patios, and similar portions of a Dwelling Unit visible from outside the structure shall be subject to approval.

All Dwelling Units shall be designed by and built in accordance with the plans and specifications of a licensed architect or similarly licensed building designer unless otherwise approved by Declarant or its designee in its sole discretion.

This Article shall not apply to the activities of Declarant or the Association.

4.2. Design Review.

(a) By Declarant: New Construction. Declarant shall have exclusive authority to administer and enforce architectural controls and to review and act upon all applications for original construction within the Properties. This right shall continue until 100% of the Lots and Parcels planned for development under the Master Plans have been conveyed to Class "A" Members, unless earlier terminated in a written instrument executed and Recorded by Declarant. In reviewing and acting upon any request for approval, Declarant or its designee acts solely in Declarant's interest and shall owe no duty to any other Person.

Declarant may, in its sole discretion, designate one or more Persons from time to time to act on its behalf in reviewing applications hereunder.

Declarant may from time to time, but shall not be obligated to, delegate or assign all or a portion of its reserved rights under this Article to any other Person or committee, including the Lifestyle Enrichment Committee. Any such delegation shall be in writing, specifying the scope of responsibilities delegated, and shall be subject to (i) Declarant's right to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated; and (ii) Declarant's right to veto any decision which Declarant determines, in its sole discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the jurisdiction of other entities shall be limited to such matters as Declarant specifically delegates.

(b) Lifestyle Enrichment Committee: Modifications. At such time as Declarant deems appropriate, at its sole discretion, Declarant shall establish the LEC, which shall consist of at least three Persons. Prior to the establishment of the LEC,

Declarant shall carry out the functions of the LEC. Prior to the termination of the Class "B" Control Period, Declarant shall appoint the members of the LEC. After the termination of Class "B" Control Period, members of the LEC shall be appointed and shall serve at the discretion of the Board.

The LEC shall have exclusive jurisdiction over modifications, additions, or alterations made on or to existing structures located on Lots or Parcels or on or to Lots containing Dwelling Units (including, without limitation, the initial landscaping on a Lot). Subject to Declarant's rights under Section 4.2(a), the LEC also may be assigned jurisdiction over original construction within the Properties. The Association also may assign to the LEC responsibility for monitoring compliance with and enforcement of Use Restrictions and Board promulgated rules.

Prior to the termination of the Class "B" Control Period, the LEC shall notify Declarant of any action to be taken under this Article. During such time, Declarant shall have the right, in its sole and absolute discretion, to veto any action taken by the LEC; provided, Declarant's right to veto must be exercised within 10 business days of its receipt of notice of action taken by the LEC. The party submitting the Plans for approval shall not be notified of the LEC's approval or disapproval until after Declarant's right to veto has been exercised or has expired.

During the Class "B" Control Period, the Declarant, and thereafter, the Board, may create and appoint such subcommittees of the LEC as deemed appropriate. Such subcommittees may be established to preside over particular areas of review (*e.g.*, landscape plans) and shall be governed by such procedures as may be established by the entity appointing the subcommittee. Any action of any subcommittee shall be subject to the review and approval of the LEC and Declarant, during the Class "B" Control Period. Notwithstanding the above, neither the LEC nor Declarant shall be obligated to review all actions of any subcommittees, and the failure to take action in any instance shall not be a waiver of the right of the LEC or Declarant to act in the future.

(c) Reviewer; Fees; Assistance. For purposes of this Article, and throughout the Declaration and Design Guidelines, the entity having jurisdiction in a particular case shall be referred to as the "Reviewer." The Reviewer may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals. Declarant and the Association may employ architects, engineers, or other Persons as deemed necessary to perform the review. The Board may include the compensation of such Persons in the Association's annual operating budget.

4.3. Guidelines and Procedures.

(a) Design Guidelines. Declarant may prepare Design Guidelines containing general provisions applicable to all of Picacho Mountain and all of the Properties, respectively, as well as specific provisions which vary within the Picacho Mountain Community.

The Design Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern to the Reviewer in considering applications. The

Design Guidelines are not the exclusive basis for decisions of the Reviewer, and compliance with the Design Guidelines does not guarantee approval of any application

In addition to guidelines for review of architectural submissions, the Design Guidelines may also include guidelines for construction activities, including, but not limited to, hours of construction, parking requirements, noise restrictions, and cleanup requirements. Such guidelines, if adopted, will become part of this Declaration as if fully set forth herein. The Guidelines may also establish the amount of construction deposit to be deposited by the Owner with the Association before construction can begin, and in no case shall the construction deposit exceed five percent (5%) of the gross sale price of the Lot. The Association may use funds from the construction deposit to remedy any violations of the Owner, including, but not limited to, violations of any of the construction guidelines.

Declarant shall have sole and full authority to amend the Design Guidelines specific to the Properties during the Class "B" Control Period, notwithstanding a delegation of reviewing authority, unless Declarant also delegates the power to amend. Upon termination of Declarant's right to amend, the LEC shall have the authority to amend the Design Guidelines specific to the Properties with the Board's consent. Any amendments to the Design Guidelines shall be prospective only and shall not require modifications to or removal of structures previously approved once the approved construction or modification has commenced. All Members must be given notice of any proposed amendment to the Design Guidelines, and Members shall have twenty one (21) days after being given notice to provide comments relevant to such proposed amendment. Members may request a face-to-face meeting to present comments pertinent to such proposed amendment, and no reasonable request for such a meeting will be denied. Proposed amendments will become effective on the 22nd day after notice of proposed amendment is given. Notice is deemed to be given on the day that such notice is deposited with the United States Postal Service. There shall be no other limitation on the scope of amendments to the Design Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Design Guidelines more or less restrictive.

The Reviewer shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Properties.

(b) Procedures. Except as otherwise specifically provided in the Design Guidelines, no activities shall commence on any portion of the Properties until an application for approval has been submitted to and approved by the Reviewer. Such application shall be in the form required by the Reviewer and shall include information required under the Design Guidelines, such as plans and specifications showing site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, as applicable. The Design Guidelines and the Reviewer may require the submission of such additional information as may be reasonably necessary to consider any application.

In reviewing each submission, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations.

Each Owner acknowledges that determination as to such matters is purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements. The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and such determinations shall not be subject to review so long as made in good faith and in accordance with the procedures set forth herein. The Owners of Lots adjoining any Lot on which an Owner is requesting a variance must be notified of proposed variance and be provided seven calendar days to provide comments to the Reviewer. Notice is deemed to be given when notice is deposited with the United States Postal Service.

The Reviewer shall make a determination on each application after receipt of a completed application and all information required by the Reviewer. The Reviewer may permit or require that an application for approval be submitted or considered in stages, in which case, a final decision shall not be required until after the final, required submission stage. The Reviewer may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application.

Reviewer approval shall not constitute approval of or waiver of approvals or reviews by Dona Ana County or any other municipality or governmental agency or entity having jurisdiction over architectural or construction matters.

The Reviewer shall notify the applicant in writing of the final determination on any application within 60 days after its receipt of a completed application and all requested information. In the event that the Reviewer fails to respond in a timely manner, approval shall be deemed to have been given, subject to Declarant's right to veto pursuant to Section 4.2. However, no approval shall be deemed to have been given to an application that violates any provision of the Declaration. Furthermore, no approval, whether expressly granted or deemed granted, shall be inconsistent with the Design Guidelines unless a written variance has been granted pursuant to Section 4.5.

Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the U. S. Postal Service. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the applicant.

As part of any approval, the Reviewer may require that construction commence in accordance with approved plans within a specified time period. If construction does not commence within the required period, such approval shall be deemed withdrawn and it shall be necessary for the Owner to reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within fourteen (14) months of commencement of pad site dirt work unless otherwise specified in the notice of approval or the Design Guidelines, or unless the Reviewer grants an extension in writing, which it shall not be obligated to do. If approved work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association, Declarant, or any aggrieved Owner.

Notwithstanding the above, landscaping shall be installed, as approved, in the front yard of a Lot, and on any portion of a Lot that is required to be landscaped that is

visible from a street, other Lots or Parcels, or the Common Area, within fourteen (14) months from the start of work on pad site dirt work. The Reviewer's decision as to which portions of a Lot are affected by this requirement shall be final.

The Reviewer may, by resolution, exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution. For example, Builders may submit and receive pre-approval of landscaping or other plans for general application. Such pre-approved plans shall not require resubmission prior to use on a particular Lot.

4.4. No Waiver of Future Approvals.

Each Owner acknowledges that the Persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans, or in connection with any other matter requiring approval, shall not constitute binding precedent in any other matter nor an estoppel or waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

4.5. Variances.

The Reviewer may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) prevent the Reviewer from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance. Notwithstanding the above, the Reviewer may not authorize variances without the written consent of Declarant during the Class "B" Control Period.

4.6. Limitation of Liability.

The standards and procedures in this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Properties; they do not create any duty to any Person. The Reviewer shall not bear any responsibility for ensuring (a) structural integrity or soundness of approved construction or modifications; (b) compliance with building codes and other governmental requirements; (c) that all Dwelling Units are of comparable quality, value, size, or design; or (d) that improvements will be aesthetically pleasing or otherwise acceptable to other Owners. Declarant, the Association, the Board, any committee, or any member of any of the foregoing shall not be held liable for any claim whatsoever arising out of construction on or modifications to any Lot or Parcel. In all matters, the Reviewer shall be defended and indemnified by the Association as provided in Section 8.7..

4.7. Enforcement.

Any construction, alteration, or other work done in violation of this Article or the Design Guidelines shall be deemed to be nonconforming. Furthermore, Declarant, or the Association, shall have the authority to require any Owner or Owner's agents or contractors to cease and desist in constructing or altering any improvements on any Lot or Parcel, where such actions have not first been reviewed and approved, or constitute a violation of this Declaration, the Design Guidelines, or Rules and Regulations. Upon written request from the Association or Declarant, Owners shall, at their own cost and expense and within such reasonable time frame as set forth in such written notice, cure the nonconformance to the satisfaction of the requester or restore the Lot or Parcel to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Association, Declarant, or their designees shall have the right, but not the obligation, to enter the Lot or Parcel, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with the interest at the rate established by the Board (not to exceed the maximum rate then allowed by law), may be assessed against the Lot or Parcel and collected as a Special Assessment.

Declarant, the Association, or any of their agents and assigns, including, but not limited to, the Lifestyle Enrichment Committee, shall have the right, but not the obligation, to enter upon any Lot or Parcel to determine if violations of the Declaration, the Design Guidelines, or Rules and Regulations exist. In so doing, neither Declarant, nor the Association, nor their agents or assigns, shall be subject to any liability for trespass, other tort or damages in connection with, or arising from, such entry. Written notice of violations may be delivered to the Owner or any agent or contractor of the Owner with apparent authority to accept same and notice shall be binding on the Owner as if actually delivered to the Owner.

All approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot or Parcel, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work by the deadline set forth in the approval, Declarant, or the Association, shall be authorized, after notice to the Owner of the Lot or Parcel and an opportunity to be heard, to enter upon the Lot or Parcel and remove or complete any incomplete work and to assess all costs incurred against the Lot or Parcel and the Owner thereof as a Special Assessment unless otherwise prohibited in this Declaration.

All acts by any contractor, subcontractor, agent, employee, or invitee of an Owner shall be deemed as an act done by or on behalf of such Owner. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded from the Properties, after being provided with notice and an opportunity to be heard. In such event, neither Declarant nor the Association, their officers and directors, shall be held liable to any Person for exercising the rights granted by this paragraph.

In addition to the foregoing, the Association and Declarant shall have the authority and standing, but not the obligation, to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the Reviewer.

ARTICLE V

LAND USE CLASSIFICATIONS

5.1 Establishment of Land Use Classifications.

Declarant shall establish the Land Use Classifications for all Lots and Parcels within the Properties. Except for the property set forth in Exhibit A, such Land Use Classifications shall be established in the Supplemental Declaration recorded against the Lots or Parcels. The Land Use Classification for the property set forth in Exhibit A shall be Single Family Residential Use.

The contemplated Land Use Classifications are as follows:

- (a) Single Family Residential Use.
- (b) Cluster Residential Use.
- (c) Condominium Use.
- (d) Commercial Office Use, including by not limited to, office buildings and business parks.
- (e) Apartment Development Use.

Declarant may establish additional Land Use Classifications in a Supplemental Declaration, and may establish the membership and voting rights associated with the Land Use Classifications, to the extent not set forth in this Declaration.

5.2 Change of Land Use Classifications. The Land Use Classifications established for Lots and Parcels may only be changed as follows:

- (a) Declarant may change the Land Use Classifications of any group of Lots or Parcel prior to the conveyance to a subsequent Owner, or, after such conveyance, with the written consent of the Owner(s).
- (b) Upon (a) request by an Owner of a Lot or Parcel for a change of Land Use Classification, (b) approval by Declarant during the Class "B" Control Period (c) adoption of a resolution by the Board stating that in the Board's opinion the then present Land Use Classification of a certain Lot or Parcel is no longer in the best interests of the Owners and Residents, or that an additional Land Use Classification of a certain Lot or Parcel would be beneficial to the Owners, and (d) the approval of such resolution by a majority of the votes of the members present in person or by absentee ballot at a meeting duly called for such purpose, the Board shall have the power and right to change the Land Use Classification of that Lot or Parcel and establish rules and regulations and guidelines that may be necessary or advisable for the change of the Land Use Classification and any construction that may occur thereon; provided, however, that such new Land Use Classification (i) shall not be adverse to the interests of the Owners, and (ii) shall be consistent with any deed restrictions and zoning regulations restricting or limiting the use of the land.

ARTICLE VI

MAINTENANCE AND REPAIR

6.1. Maintenance of Lots and Parcels.

(a) Each Owner shall maintain his or her Lot or Parcel, including all improvements located thereon. Such maintenance shall be performed in a manner consistent with the Governing Documents and all applicable covenants, unless some or all of such maintenance responsibility is otherwise assumed by or assigned to (and accepted by) the Association.

(b) Due to the desire to maintain the natural beauty of the land, many drainage areas exist throughout the Properties. Many of these drainage areas are located on Lots or Parcels. Some of these drainage areas exist in their natural condition and some of them have been improved to assist with the flow of water through the Properties. Natural drainage areas located on Lots or Parcels are herein identified as "Drainage Easements". Drainage areas located on Lots or Parcels that have been improved by Declarant or the Association are herein identified as "Drainage Channels". Owners of Lots and Parcels are required to maintain all Drainage Easements located on their Lots or Parcels. Such maintenance shall require all work that is necessary to make sure that the Drainage Easements are not blocked and are properly flowing water in accordance with the original drainage of the Properties. The Association shall maintain all Drainage Channels located on Lots and Parcels, and shall have an easement to enter the Lot or Parcel to perform all required maintenance on the Drainage Channels. Furthermore, the Declarant reserves a blanket easement on, over and under the ground within the Properties, including all Lots and Parcels, to correct drainage of surface waters and install additional erosion controls on the Lots or Parcels to maintain reasonable standards of health, safety and appearance and shall be entitled to remove trees or vegetation, without liability for replacement or damages, as may be necessary to provide adequate drainage for any portion of the Property. Such right shall pass to the Association upon termination of the Class "B" Control Period. However, nothing herein shall be interpreted to impose a duty upon the Association to correct or maintain any drainage areas upon the Lots or Parcels except to maintain the Drainage Channels.

(c) In addition to any other enforcement rights, if an Owner fails to perform properly his maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred in accordance with Section 9.5. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation. Any such entry by the Association or any of its agents shall not be deemed a trespass, and the Association shall not be liable for any damage created thereby.

6.2 Maintenance of Property within Neighborhood Areas.

If set forth in a Supplemental Declaration, the Owners within each Neighborhood Area shall be responsible for paying, through Neighborhood Assessments, the costs of operating, maintaining, and insuring certain portions of the Area of Common Responsibility within or adjacent to such Neighborhood Area. This may include, without limitation, the costs of maintaining any signage, entry features, right-of-way, and landscaping between the Neighborhood Area and adjacent public roads, private streets within the Neighborhood Area, regardless of ownership and regardless of the fact that

such maintenance may be performed by the Association; provided, however, all Neighborhood Areas which are similarly situated shall be treated the same.

If a separate community association (“sub-association”) is formed for any Neighborhood Area, such sub-association shall maintain its common property and any other property for which it has maintenance responsibility in a manner consistent with the Governing Documents.

The Association shall assume maintenance responsibility for property within any Neighborhood Area, if required by Supplemental Declaration or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with the community. All costs of maintenance pursuant to this paragraph shall be assessed as a Neighborhood Assessment against only the Lots or Parcels within the Neighborhood Area to which the services are provided. The provision of services in accordance with this Section shall not constitute discrimination within a class.

6.3. Responsibility for Repair and Replacement.

Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement.

By taking title to a Lot or Parcel, each Owner covenants and agrees to carry property insurance for the full replacement cost of all insurable improvements on his or her Lot or Parcel, less a reasonable deductible, unless either the sub-association (if any) for the Neighborhood Area in which the Lot or Parcel is located or the Association carries such insurance (which they may, but are not obligated to do hereunder). If the Association assumes responsibility for obtaining any insurance coverage on behalf of Owners, the premiums for such insurance shall be levied as a Neighborhood Assessment against the Lot or Parcel and the Owner.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his Lot or Parcel, the Owner shall promptly repair or reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IV. In the event that such repair and reconstruction cannot be promptly undertaken, the Owner shall clear the Lot or Parcel and maintain it in a neat and attractive condition and shall present a timetable for repair and reconstruction to the Board within 90 days of the damaging or destructive event. The Owner shall pay any costs which are not covered by insurance proceeds.

This Section shall also apply to any sub-association responsible for common property within the Neighborhood Area in the same manner as if a sub-association was an Owner and the common property was a Lot or Parcel. Additional Recorded covenants applicable to any Neighborhood Area may establish requirements for insurance and more stringent standards for rebuilding or reconstructing structures on the Lots or Parcels within such Neighborhood Area and for clearing and maintaining the Lots or Parcels in the event the structures are not rebuilt or reconstructed.

ARTICLE VII

ASSOCIATION GOVERNANCE

7.1. Function of the Association.

The Association shall be the entity responsible for management, maintenance, operation, and control of the Area of Common Responsibility. The Association also has the right, but not the obligation, to enforce the Governing Documents. The Association shall perform its functions in accordance with the Governing Documents and New Mexico law.

7.2. Membership.

Every Owner shall be a Member of the Association. Membership and voting rights shall be established as follows:

(a) For Land Use Classifications of Single Family Residential, Cluster Residential, and Residential Condominium, there shall be one (1) membership per Lot.

(b) For other Land Use Classifications, the calculation and number of memberships shall be determined in the Supplemental Declaration recorded against the property.

If a Lot or Parcel is owned by more than one Person, all co-Owners shall share the privileges of membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 7.3(c) and in the Bylaws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, partner, or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

7.3. Voting.

The Association shall have two classes of membership, Class "A" and Class "B."

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall have votes equal to their membership rights as set forth in this Declaration or a Recorded Supplemental Declaration. No vote shall be exercised for any property which is exempt from assessment under Section 9.9.

(b) Class "B". The sole Class "B" Member shall be Declarant. The Class "B" Member shall not vote on Association matters but may appoint a majority of the members of the Board of Directors during the Class "B" Control Period, as specified in the Bylaws. Additional rights of the Class "B" Member are specified in the relevant sections of the Governing Documents.

Upon termination of the Class "B" Control Period, as set forth in Article II, Declarant shall be a Class "A" Member entitled to Class "A" votes based on Class "A" Membership rights established in this Declaration or a Recorded Supplemental Declaration.

(c) Exercise of Voting Rights. If there is more than one Owner of a Lot or Parcel, the vote for such Lot shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. If no such written notice is given to the Association, but only one co-Owner casts

votes, the Association may accept the co-Owner's votes on behalf of the Owner. Absent such advice and in the event that more than one such co-Owner casts a vote, the vote(s) of the Lot or Parcel shall be suspended and shall not be included in the final vote tally on the matter being voted upon.

7.4. Neighborhood Areas.

By Supplemental Declaration, Declarant may assign property to a specific Neighborhood Area (by name or other identifying designation). Lots or Parcels within a particular Neighborhood Area may be subject to covenants in addition to those set forth in this Declaration and, if required by law or otherwise approved by Declarant, the Owners within the Neighborhood Area may be members of a sub-association in addition to the Association. So long as it has the right to subject additional property to this Declaration pursuant to Section 10.1, Declarant may unilaterally amend this Declaration or any Supplemental Declaration to create Neighborhood Areas or redesignate Neighborhood Area boundaries. However, two or more existing Neighborhood Areas shall not be combined without the consent of Owners of a majority of the Lots or Parcels in the affected Neighborhood Areas.

If required by the Supplemental Declaration designating the Neighborhood Area, the Association shall provide services to such Neighborhood Area which it does not provide to all Lots and Parcels and Owners within the Picacho Mountain Community. For example, without limitation, the Association may maintain an entry feature or a landscaped park or island serving only such Neighborhood Area. The cost of such services, which may include a reasonable administrative charge in such amount as the Board deems appropriate, shall be assessed against the Lots within such Neighborhood Area as a Neighborhood Assessment. Any specific requirements with respect to preparing a budget for such Neighborhood Assessments shall be set forth in the Supplemental Declaration.

ARTICLE VIII

ASSOCIATION POWERS AND RESPONSIBILITIES

8.1. Acceptance and Control of Association Property.

(a) The Association, through action of the Board, may acquire, hold, lease (as lessor or lessee), operate, and dispose of tangible and intangible personal property and real property. The Association may enter into leases, licenses, or operating agreements for portions of the Common Area, for such consideration or no consideration as the Board deems appropriate, to permit use of such portions of the Common Area by third parties, for the provision of goods or services for the general benefit or convenience of Owners and other residents of the Picacho Mountain Community.

(b) Declarant and its designees may convey to the Association for no monetary consideration, and, in such case, the Association shall accept, personal property and fee title, leasehold, or other property interests in any real property, improved or unimproved, described in Exhibits "A" or "B". Upon Declarant's written request, the Association shall reconvey to Declarant any unimproved portions of the Common Area originally conveyed to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.

(c) The Association shall be responsible for management, operation, and control of the Common Area, subject to any covenants and restrictions set forth in the deed or other instrument transferring such property to the Association. Without the necessity of complying with the procedures set out in Article III, the Board may adopt such reasonable rules regulating use of the Common Area as it deems appropriate.

8.2. Maintenance of Area of Common Responsibility.

(a) The Association shall maintain Area of Common Responsibility, which may include, but need not be limited to:

- (i) all portions of and structures situated upon the Common Area;
- (ii) landscaping within public rights-of-way within or abutting the Properties;
- (iii) such portions of any additional property, including areas designated as open space, included within Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, any Plat of any portion of the Properties, or any contract, covenant, or agreement for maintenance thereof entered into by, or for the benefit of, the Association;
- (iv) all Drainage Channels, whether located on the Common Areas, Lots, or Parcels; and
- (v) any property and facilities Declarant owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members. Such property and facilities must be identified by written notice from Declarant to the Association and shall remain a part of the Area of Common Responsibility and shall be maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable for the Association.

The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

(b) The Association shall maintain the Common Area facilities and equipment in continuous operation, except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance or repairs, unless Class "A" Members representing 75% of the votes in the Association and the Class "B" Member, if any, agree in writing to discontinue such operation.

Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means except with the prior written approval of Declarant during the Class "B" Control Period.

(c) The costs associated with maintenance, repair, and replacement of the Area of Common Responsibility shall be a Common Expense; provided, the Association may seek reimbursement from the owner(s) of, or other Persons responsible for, certain

portions of the Area of Common Responsibility pursuant to this Declaration, a Supplemental Declaration, or other Recorded covenants or agreements with the owner(s) thereof.

8.3. Insurance.

(a) Required Coverage. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverage as is reasonably available:

(i) Blanket property insurance covering “risks of direct physical loss” on a “special form” basis (or comparable coverage by whatever name denominated) for all insurable improvements within the Area of Common Responsibility to the extent that the Association has assumed responsibility in the event of a casualty, regardless of ownership. If such coverage is not generally available at reasonable cost, then “broad form” coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes, subject to insurance deductibles;

(ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage (including primary and any umbrella coverage) shall have a limit of at least \$2,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage;

(iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(iv) Directors and officers liability coverage;

(v) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board’s business judgment but not less than an amount equal to one-quarter of the annual Base Assessments on all Lots and Parcels presently subject to the Declaration plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in its business judgment, determines advisable.

In addition, the Association shall, if so specified in a Supplemental Declaration, obtain and maintain property insurance on the insurable improvements on the Lots or Parcels within such Neighborhood Area which insurance shall comply with the requirements of Section 8.3(a)(i). Any such policies shall provide for a certificate of insurance to be furnished upon request to the Owner of each Lot or Parcel insured.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses, unless otherwise specified in a Supplemental Declaration or when

the Board reasonably determines that other treatment of the premiums is more appropriate.

(b) Policy Requirements. The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 8.3(a). In the event of an insured loss, the deductible shall be charged to the Owners in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Lots or Parcels as a Neighborhood Assessment.

(c) Restoring Damaged Improvements. In the event of damage to or destruction of Common Area or other property which the Association is obligated to insure, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Damaged improvements on the Common Area shall be repaired or reconstructed unless the Class "A" Members representing at least 80% of the total votes in the Association, and Declarant, if any, decide within 60 days after the loss not to repair or reconstruct.

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

If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive condition.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by the Association for the benefit of its Members and placed in the Association's reserve fund.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 8.3(a).

8.4. Compliance and Enforcement

(a) The Board may impose sanctions for violation of the Governing Documents after providing the Owner with notice and the opportunity to be heard. Such sanctions may include, without limitation, those otherwise specifically set forth in the Governing Documents, and:

- (i) imposing reasonable monetary fines, which shall constitute a lien upon the violator's Lot or Parcel;
- (ii) suspending an Owner's right to vote;
- (iii) suspending any Person's right to use the Common Area; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Lot or Parcel;
- (iv) suspending any services provided by the Association;
- (v) exercising self-help or taking action to abate any violation of the Governing Documents on a Lot or Parcel in non-emergency situations;
- (vi) without liability to any Person, precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of Article IV and the Design Guidelines from continuing or performing any further activities in the Properties; and
- (vii) levying Specific Assessments to cover costs incurred by the Association to bring a Lot or Parcel into compliance with the Governing Documents.

(b) In addition, the Board may take the following enforcement procedures to ensure compliance with the Governing Documents without providing the Owner with notice and the opportunity to be heard:

- (i) exercising self-help or taking action to abate any violation on the Common Area or in any emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules); and
- (ii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity.

The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

- (i) the Association's position is not strong enough to justify taking any or further action;
- (ii) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;
- (iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or
- (iv) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction, or rule.

The Association, by contract or other agreement, may enforce applicable city and county ordinances, if applicable, and permit Dona Ana County or other governmental authorities to enforce ordinances within the Properties for the benefit of the Association and its Members.

8.5. Attorney's Fees.

In the event the Board employs an attorney or attorneys for collection of any assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, or for any other purpose in connection with the breach of this Declaration, Articles of Incorporation, Bylaws, Design Guidelines, or any Rules and Regulations of the Association, whether or not a lawsuit is filed, each Owner agrees to pay reasonable attorneys' fees and costs thereby incurred, and all other expenses incurred by the Association, in addition to any other amounts due from the owner or any other relief or remedy obtained against said owner. Said amounts shall be considered an assessment against the Owner's Lot or Parcel, subject to an assessment lien, and collectible in the same manner as assessments.

In the event of a default in payment of any such assessment when due, in which case the assessment shall be deemed delinquent, and in addition to any other remedies herein or by law provided, the Board may enforce each such obligation in any manner provided by law or in equity, or without any limitation of the foregoing, by either or both of the following procedures (and the exercise by the Association of one or more of the remedies set forth below shall not prevent the Association from exercising any other remedy available):

(a) The Board may bring a suit at law against each owner to enforce each such assessment obligation. Each owner agrees that any judgment rendered in any such action shall include all attorney's fees and costs incurred by the Association, as set forth above, plus all court costs and necessary expenses and accounting fees incurred by the Association, plus interest on the amount of said assessment at the maximum legal rate allowed by law from the date the assessment becomes delinquent until paid in full.

(b) The Board may foreclose the assessment lien against the Lot in accordance with the then prevailing New Mexico law relating to the foreclosure of realty mortgages (including the right to recover any deficiency), and the Lot may be redeemed after foreclosure sale as provided by law. Each owner agrees that any judgment rendered in any such action shall include all attorney's fees and costs incurred by the Association, as set forth above, plus all court costs, title search fees, interest, and all other costs and expenses to the extent permitted by law, and such costs and expenses shall be added to the lien.

8.6. Implied Rights; Board Authority.

The Association may exercise any right or privilege given to it expressly by the Governing Documents or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

8.7. Indemnification of Officers, Directors, and Others.

(a) The Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which the Association may indemnify its officers, directors and committee members under New Mexico law.

(b) The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association).

8.8. Safety and Security.

Each Owner and occupant of a Lot or Parcel, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Picacho Mountain Community. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to enhance the level of safety or security which each person provides for himself and his property. The Association and Declarant shall not any way be considered insurers or guarantors of safety or security within the Properties, nor shall they be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to the Properties, including manned entry gates, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing its tenants and all occupants of its Lot or Parcel that the Association, its Board and committees, and Declarant are not insurers or guarantors of security or safety and that each Person within the Properties assumes all risks of personal injury and loss or damage to property, including Lots and Parcels and the contents thereof, resulting from acts of third parties.

Perimeter walls and fences are erected for aesthetic purposes only. No representation or warranty is made that such walls and fences are installed to, or will in

any way, enhance safety or security within the Properties. No perimeter wall is planned to encompass all of the Picacho Mountain Community.

8.9. Provision of Services.

The Association may provide, or provide for, services and facilities for all or any of the Members and their Lots or Parcels, and shall be authorized to enter into and terminate contracts or agreements with other entities, including Declarant, to provide such services and facilities. The Board may charge use or service fees for any such services and facilities provided, or may include the costs thereof in the Association's budget as a Common Expense and assess it as part of the Base Assessment if provided to all Lots and Parcels. By way of example, such services and facilities might include landscape maintenance, trash collection, pest control service, cable television service, security, caretaker, transportation, fire protection, utilities, recycling, any services required by Dona Ana County or other applicable governmental authorities, and similar services and facilities.

Nothing in this Section shall be construed as a representation by Declarant or the Association as to what, if any, services shall be provided. In addition, the Board shall be permitted to modify or cancel existing contracts for services in its discretion, unless the provision of such services is otherwise required by the Governing Documents. Non-use of services provided to all Lots and Parcels as a Common Expense shall not exempt any Owner from the obligation to pay assessments for such services.

In any contracts or agreements with third parties for the provision of services within the Properties, the Association may assign to the service provider the right to bill Owners directly and to pursue all legal or equitable remedies otherwise available to the Association in the collection of such bills. Any charge billed directly to an Owner in accordance with such a contract between the Association and the service provider shall be a charge and continuing lien in favor of the service provider against each Owner's Lot or Parcel, enforceable by the service provider or the Association (as per the agreement between the Association and the service provider) in the manner provided for the enforcement of liens for assessments in Article IX.

8.10. Change of Use of Common Area.

During Class "B" Control Period, without the approval or consent of the Members, and thereafter, with the approval of Owners holding a majority of the votes cast on the issue at a meeting held for such purpose, the Board shall have the power and right to change the use of portions of the Common Area. Any such change shall be made by Board resolution stating that: (a) the present use is no longer in the best interest of the Owners or the new use is for the benefit of the Owners, (c) the new use is consistent with any deed restrictions and zoning regulations restricting or limiting the use of the Common Area, and (d) the new use is consistent with the then effective Master Plans.

8.11. View Impairment.

Neither Declarant, nor the Association, makes any guarantee or representation that any view over and across the Lots, Parcels, or any open space within Picacho Mountain will be preserved without impairment. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

8.12. Relationship with Governmental and Tax-Exempt Organizations.

The Association may create, enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Area to state or local governments, public utility providers, and non-profit, tax-exempt organizations for the benefit of the Properties, the Association, its Members, and occupants. The Association may contribute money, real property (including Common Area), personal property, or services to any such entity. Any such contribution shall be a Common Expense of the Association and included as a line item in the Association's annual budget.

For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code ("Code"), such as, but not limited to, entities which are exempt from federal income taxes under Sections 501(c)(3) or 501(c)(4), as the Code may be amended from time to time.

ARTICLE IX

ASSOCIATION FINANCES

9.1. Budgeting and Allocating Common Expenses.

The Association shall levy Base Assessments against all Lots and Parcels. Each Lot or Parcel shall be assessed one Base Assessment per Membership, as such Memberships are determined in this Declaration or a Supplemental Declaration. At least 30 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year, including any contributions to be made to a reserve fund pursuant to Section 9.3. The budget also shall reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Lots and Parcels, and the amount to be generated through the levy of Base Assessments and Special Assessments against the Lots and Parcels, including Lots and Parcels reasonably anticipated to be subject to assessment during the fiscal year.

The Board shall send a notice of the amount of the Base Assessment to be levied pursuant to such budget to each Owner at least 30 days prior to the effective date of such budget. The budget shall not be subject to Owner approval and there shall be no obligation to send each Owner a copy of the budget or call a meeting for the purpose of considering the budget. If, however, the Board wishes to increase the amount of the Base Assessment by more than twenty percent (20%) over the prior fiscal year's Base Assessment, the Board must submit the proposed increase to the Members and hold a meeting of the Members in accordance with the requirements of the Bylaws to vote on such increase. Such increase will not become effective unless approved by a majority of the Members who are voting on the matter at a meeting duly called for such purpose.

If the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined.

The Board may revise the budget and adjust the Base Assessment from time to time during the year, subject to the notice requirements set forth above. In addition, if such revised budget would increase the Base Assessment by more than twenty percent

(20%) over the prior fiscal year's Base Assessment, the Board must submit the proposed increase to the Members and obtain their approval, as set forth above.

The purpose of the Base Assessments is to fund the Common Expenses. The Common Expenses include, but are not limited to, the following:

- (a) Maintenance, repair and replacement of all of the Common Areas, including all improvements located thereon, all other Areas of Common Responsibility, and all other areas that the Association is obligated to maintain, including the establishment of a reserve;
- (b) Administrative costs and fees of the Association, including, but not limited to, management and office costs, insurance, hiring of experts for the Association, such as attorneys and accountants, and other general association expenses;
- (c) Costs of operation of all Areas of Common Responsibility, including hiring of personnel as determined by the Board to properly operate them, and any and/or all amenities located thereon;
- (d) Costs incurred for collection of assessments and other amounts due under the Declaration, and for enforcement of provisions of the Governing Documents;
- (e) Costs for joint services provided to all Members, whether or not Members use such services. Such services include, but are not limited to, the providing of internet access to all of the Lots and Parcels. The Association may provide additional services to all Members by providing the Members with notice of such services. After such notice is provided, the cost of such services shall become a Common Expense, and collected as part of the Base Assessment. Each Owner is obligated to pay these costs as part of the Common Expenses, whether or not the Owner uses such services; and
- (f) Any other expenses that the Board determines to benefit the health, safety or welfare of the Members, or which the Board determines to be in the best interest of the Association.

9.2. Budgeting and Allocating Expenses for Neighborhood Areas.

The Association is hereby authorized to levy Neighborhood Assessments against Lots or Parcels in a Neighborhood Area pursuant to and in accordance with the provisions of any Supplemental Declaration recorded against the Neighborhood Area.

9.3. Budgeting for Reserves.

The Board shall prepare and review periodically a reserve budget for the Area of Common Responsibility. Such budget shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. If the Board elects, in the exercise of its business judgment, to fund reserves, the Board shall include in the Common Expense budget adopted pursuant to Section 9.1 a capital contribution to fund reserves in an amount sufficient to meet the projected need with respect both to amount and timing by annual contributions over the budget period. So long as the Board exercises business judgment in determining the necessity of a reserve fund, and an adequate amount of reserves, the amount of the reserve fund shall be considered adequate. Funds collected for Reserves shall be maintained in an interest bearing account separate from accounts used for operational funds.

The Board may adopt resolutions regarding the expenditure of reserve funds, including policies designating the nature of assets for which reserve funds may be expended. Such policies may differ for general Association purposes and for each Neighborhood Area. During the Class "B" Control Period, neither the Association nor the Board shall adopt, modify, limit, or expand such policies without Declarant's prior written consent.

9.4. Special Assessments.

In addition to other authorized assessments, the Association may levy Special Assessments to cover unbudgeted Common Expenses or expenses in excess of those budgeted. A Special Assessment for Common Expenses shall be levied against the entire membership. A Special Assessment for expenses that the Association incurs for the benefit of a specific Neighborhood based on a Supplemental Declaration shall be assessed only against the Owners within the affected Neighborhood. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. However, any Special Assessment that applies to the entire membership and exceeds ten percent (10%) of the Base Assessment for the same year shall require the approval of a majority of the Members who are voting on the matter at a meeting duly called for such purpose in accordance with the requirements of the Bylaws.

9.5. Specific Assessments

In addition to assessments levied against all Owners within a Neighborhood Area pursuant to a Supplemental Declaration, the Association shall have the power to levy Neighborhood Assessments against a particular Lot or Parcel as follows:

(a) to cover the costs, including overhead and administrative costs, of providing specific services to Lots or Parcels upon request of an Owner pursuant to any menu of special services which may be offered by the Association. Specific Assessments for special services may be levied in advance of the provision of the requested service; and,

(b) to cover costs incurred in bringing the Lot or Parcel into compliance with the Governing Documents or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot or Parcel, their agents, contractors, employees, licensees, invitees, or guests.

9.6. Commencement of Payment Obligation; Time of Payment.

The obligation to pay assessments shall commence as to each Lot or Parcel on the first day of the month following: (a) the month in which the Lot or Parcel is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. **However, until the earlier of (a) twelve months after a Lot or Parcel is conveyed to a Builder, or (b) a certificate of occupancy is issued for the Dwelling Unit on the Lot or structure on the Parcel, such Lot or Parcel shall be assessed only 50% of the full Base Assessment rate and only 50% of any Special Assessment levied during such period.** The first annual Base Assessment levied on each Lot and Parcel shall be adjusted according to the

number of months remaining in the fiscal year at the time assessments commence on the Lot or Parcel.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Lot or Parcel and impose special requirements for Owners with a history of delinquent payment. The Board may require assessments to be paid in quarterly or monthly installments. Unless the Board otherwise provides, the Base Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Lot or Parcel, the Board may require the outstanding balance on all assessments to be paid in full immediately.

9.7. Obligation for Assessments.

(a) Personal Obligation. Each Owner, by accepting a deed or entering into a Recorded contract of sale for any Lot or Parcel, is deemed to covenant and agree to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a maximum rate of 18% per annum or such higher rate as the Board may establish, subject to the limitations of New Mexico law), reasonable late charges as determined by Board resolution, costs, and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Lot or Parcel until paid in full. Upon a transfer of title to a Lot or Parcel, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

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

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

Upon written request from an Owner, Mortgagee, or other Person designated by the Owner, the Association shall furnish a statement setting forth the amount of any unpaid assessment against such Owner's Lot or Parcel. The Association may require the advance payment of a reasonable processing fee for the issuance of such statement.

(b) Declarant's Obligation.

(i) Payment of the "Shortage". During the Class "B" Control Period, and after the termination of the Class "B" Control Period, Declarant may elect to pay

assessments described in Section 9.7(b)(i) on each of its unsold Lots and Parcels that are presently subject to the Declaration or, alternatively, at its discretion, may choose to pay the “shortage” (i.e. operating deficit) for each fiscal year. Declarant’s election may be made separately with respect to Base Assessments and Neighborhood Assessments. Declarant may make this decision on an annual basis. A “shortage” shall exist if Income and Revenues (as defined below) for a particular fiscal year are less than Expenditures (as defined below) incurred for the same fiscal year. Unless Declarant otherwise notifies the Board in writing at least 60 days before the beginning of each fiscal year, Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. Income and Revenues and Expenditures are to be calculated using the accrual basis of accounting. If Declarant chooses to pay the “shortage” rather than pay the assessments for the Lots or Parcels in a particular year, in no event shall Declarant be obligated to pay more than Declarant would have paid had Declarant paid assessments for the Lots and Parcels for that year.”

(A) Income and Revenues are: the amount of all income and revenue of any kind earned by the Association during the subject fiscal year, including, but not limited to, assessments, use fees, subsidies (if any) provided by Declarant, Lifestyle Improvement Fees, transfer fees, and income from all other sources. For purposes of this Section, assessments for each Lot or Parcel are deemed earned on the annual anniversary date of the commencement of assessments with respect to such Lot or Parcel.

(B) Expenditures are: the amount of all actual operating expenses incurred, or obligated for, by the Association during the subject fiscal year, including without limitation (1) any reserve contributions for such year, as determined in the sole discretion of the Board, and (2) any budgeted or approved non-budgeted capital assets acquired during the fiscal year, but excluding (1) all non-cash expenses such as depreciation or amortization, (2) expenditures for or purchase of non-budgeted, non-approved items, and (3) all expenditures made from reserve funds. For purposes of this paragraph, “approved” shall mean prior written approval of Declarant.

(C) Any shortage in a particular fiscal year is to be offset by any surplus from a previous fiscal year. A surplus is achieved when, using an accrual basis of accounting, Income and Revenues for a particular fiscal year exceed Expenditures for the same fiscal year.

(iii) Subsidies/”In Kind” Contribution. The Association is specifically authorized to enter into subsidy contracts or contracts for “in kind” contribution of services, materials, or a combination of services and materials with Declarant or other entities for payment of Common Expenses. Declarant’s payment of assessments may be reduced or abated by the agreed value of any such services or materials provided by Declarant, in accordance with any such contract or agreement with the Association.

9.8. Lien for Assessments.

Subject to any limitations imposed by New Mexico law, all assessments and other charges of the Association authorized in this Article or elsewhere in this Declaration shall

constitute a lien against the Lot or Parcel against which they are levied from the time such assessments or charges become due until paid. The lien shall also secure payment of interest (subject to any limitations of New Mexico law), late charges, and costs of collection (including attorneys' fees, lien fees and administrative costs). Such lien shall be superior to all other liens, except the lien or charge of any Recorded first Mortgage (meaning a Recorded first Mortgage with first priority over other Mortgages) made in good faith and for value, and those deemed by New Mexico law to be superior. The lien created by this Article shall have priority over any lien for assessments asserted by any other community or property owners association. The Association may enforce such lien, when any assessment or other charge is delinquent, by suit, judgment, and foreclosure.

The Association may assign its lien rights to third parties, including service providers.

The Association may bid for the Lot or Parcel at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot or Parcel. While a Lot or Parcel is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; and (b) no assessment shall be levied on it. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Lot or Parcel shall not affect the assessment lien or relieve such Lot or Parcel from the lien for any subsequent assessments. However, the sale or transfer of any Lot or Parcel pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to the foreclosure. The subsequent Owner to the foreclosed Lot or Parcel shall not be personally liable for assessments on such Lot or Parcel due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Lots or Parcel subject to assessment, including such acquirer, its successors and assigns.

9.9. Exempt Property.

The following property shall be exempt from payment of Base Assessments and Special Assessments:

- (a) all Common Area and such portions of the Area of Common Responsibility which are not Lots or Parcels;
- (b) any property dedicated to and accepted by any governmental authority or public utility; and
- (c) property owned by a community or property owners association for the common use and enjoyment of its members, or owned by the members of a condominium association as tenants-in-common.

In addition, both Declarant and the Association shall have the right, but not the obligation, to grant exemptions to certain Persons qualifying for tax exempt status under Section 501(c) of the Internal Revenue Code so long as such Persons own property subject to this Declaration for purposes listed in Section 501(c).

9.10. Lifestyle Improvement Fee.

(a) Authority. As an additional funding source, the Association shall establish a fee to be collected upon each transfer of title to a Lot or Parcel. Such fee shall be charged to the grantor of the property, shall be payable to the Association at the closing of the transfer, and shall be secured by the Association's lien for assessments. Each Owner transferring a Lot or Parcel shall notify the Association (at its principal place of business) at least fourteen days prior to the scheduled transfer. Such notice shall include the name of the buyer, the date of title transfer, and other information the Board reasonably may require.

(b) Fee Limit. The initial amount of the Lifestyle Improvement Fee shall be ½% of the Gross Selling Price of the property. Thereafter, the Board shall have the sole discretion to specify the amount and method of determining the Lifestyle Improvement Fee; provided, the Lifestyle Improvement Fee shall not exceed 1% of the Gross Selling Price of the property. The fee may be based upon a sliding scale which varies in accordance with the "Gross Selling Price" of the property. The Gross Selling Price shall be the total cost to the purchaser of the property, excluding transfer taxes and title fees imposed by Dona Ana County, New Mexico, or other applicable governmental authority.

(c) Purpose. Lifestyle Improvement Fees shall be used for the following purposes as the Board deems beneficial to the general good and welfare of the Picacho Mountain Community:

(i) preservation and maintenance of natural areas, and sponsorship of educational programs and activities which contribute to the overall understanding, appreciation, and preservation of the natural environment within and surrounding the Picacho Mountain Community;

(ii) programs, services, and activities which serve to promote a sense of community within the Picacho Mountain Community, such as recreational leagues, cultural programs, educational programs, festivals and holiday celebrations and activities, and a community computer network;

(iii) social services, community outreach programs, and other charitable causes;

(iv) construction of additional capital improvements; and

(iv) Association reserve accounts."

(d) Exempt Transfers. Notwithstanding the above, no Lifestyle Improvement Fee shall be levied upon transfer of title to property:

(i) by or to Declarant;

(ii) by or to a licensed Builder holding title solely for purposes of development and resale;

(iii) by a co-owner to any Person who was a co-owner immediately prior to such transfer;

(iv) to the Owner's estate, surviving spouse, or heirs at law upon the death of the Owner;

(v) to an entity wholly owned by the grantor or to a family trust created by the grantor for the direct benefit of the grantor and his or her spouse and/or heirs at law; provided, upon any subsequent transfer of an ownership interest in such entity, the Lifestyle Improvement Fee shall become due; or

(vi) to an institutional lender as security for the performance of an obligation pursuant to a Mortgage.

ARTICLE X

EXPANSION OF THE COMMUNITY

10.1. Expansion by Declarant.

Declarant may from time to time subject to the provisions of this Declaration all or any portion of the property described in Exhibit "B" by Recording a Supplemental Declaration describing the additional property to be subjected. A Supplemental Declaration Recorded pursuant to this Section shall not require the consent of any Person except the owner of such property, if other than Declarant.

Declarant's right to expand the community pursuant to this Section shall expire when all property described in Exhibit "B" has been subjected to this Declaration or 40 years after this Declaration is Recorded, whichever is earlier. Declarant may transfer or assign this right to any Person who is the developer of at least a portion of the real property described in Exhibits "A" or "B." Any such transfer shall be memorialized in a written, Recorded instrument executed by Declarant.

Nothing in this Declaration shall be construed to require Declarant or any successor to subject additional property to this Declaration or to develop any of the property described in Exhibit "B" in any manner whatsoever.

10.2. Expansion by the Association.

The Association also may subject additional property to the provisions of this Declaration by Recording a Supplemental Declaration describing the additional property. Any such Supplemental Declaration shall require the affirmative vote of Members representing 67% of the Class "A" votes in the Association present in person or by proxy at a meeting duly called for such purpose, and the consent of the owner of the property. In addition, during the Class "B" Control Period, Declarant's consent is required. Any such Supplemental Declaration shall be signed by the President and Secretary of the Association, by the owner of the property and by Declarant, if Declarant's consent is required.

10.3. Additional Covenants and Easements - Supplemental Declarations.

Declarant may subject any portion of the Properties to additional covenants and easements, including covenants obligating the Association to maintain and insure such property or provide services and authorizing the Association to recover its costs through Neighborhood Assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration referencing the property governed by the Supplemental Declaration. If the property is owned by someone other than Declarant, then the consent

of the Owner(s) shall be necessary and shall be evidenced by their execution of the Supplemental Declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

All Members shall be given notice of any proposed Supplemental Declarations and shall be given twenty one (21) days to provide comments. Notice shall be deemed to have been given when notice is placed in the United States Postal Service. Members may request a face-to-face meeting within 25 miles of the Picacho Mountain development during the last seven (7) days of the notice period, and such reasonable request will not be denied.

A Supplemental Declaration also may designate portions of the Common Area as "Limited Common Area" which is reserved for the exclusive or primary benefit of particular Owners. By way of illustration and not limitation, Limited Common Areas may include entry features, recreational facilities, landscaped medians and cul-de-sacs, and other portions of the Common Area.

10.4. Effect of Filing Supplemental Declaration.

Any Supplemental Declaration Recorded pursuant to this Article shall be effective upon Recording unless otherwise specified in such Supplemental Declaration. On the effective date of the Supplemental Declaration, all Lots or Parcels made subject to this Declaration shall have equal voting rights and an equal, pro rata share of liability for Base Assessments.

ARTICLE XI

ADDITIONAL RIGHTS RESERVED TO DECLARANT

11.1. Withdrawal of Property.

Declarant reserves the right to amend this Declaration so long as it has a right unilaterally to annex additional property pursuant to this Article, without prior notice and without the consent of any Person, for the purpose of removing property then owned by Declarant, its affiliates, or the Association from the coverage of this Declaration, to the extent originally included in error or as a result of any changes in Declarant's plans for the Properties. If the property so removed is owned by the Association, the Association shall convey such property to Declarant upon the request of Declarant. Notwithstanding the above, any withdrawal resulting from changes in Declarant's plans for development of the Properties shall not materially adversely affect the overall, uniform scheme of development for the Properties.

11.2. Marketing and Sales Activities.

Notwithstanding any provision in this Declaration, including Exhibit "C," to the contrary, Declarant and Builders, to the extent authorized by Declarant, may construct

and maintain upon portions of the Common Area, and other property owned by Declarant or such authorized Builder, such facilities, activities, improvements and personal property that, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of Lots or Parcels. Such permitted facilities, activities, improvements and personal property shall include, without limitation, business offices, signs, flags (whether hung from flag poles or attached to a structure), model Lots, sales offices, holding or sponsoring special events, and exterior lighting features or displays. In addition, if reasonably required, convenient, or incidental to construction or sales activities, Declarant and Builders, to the extent authorized by Declarant, may park vehicles in areas other than garages or driveways, including on streets. Declarant and Builders, to the extent authorized by Declarant, shall have easements for access to and use of such facilities at no charge.

11.3. Right To Develop.

Declarant and its employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Common Area for the purpose of making, constructing, and installing such improvements to the Common Area and to the property described on Exhibit "B" as it deems appropriate in its sole discretion.

Each Person acquiring an interest in the Properties acknowledges that the Picacho Mountain Community is a master planned community, the development of which is likely to extend over many years, and agrees not to protest, challenge, or otherwise object to (a) changes in uses or density of property outside the Neighborhood Area in which such Person holds an interest, or (b) changes in the Master Plans as it relates to property outside the Neighborhood Area in which such Person holds an interest.

11.4. Right To Designate Sites for Governmental and Public Interests.

During the Class "B" Control Period, Declarant may designate sites within the Properties for government, education, or religious activities and interests, including without limitation, fire, police, and utility facilities, schools and educational facilities, houses of worship, parks, and other public facilities. The sites may include Common Area, in which case the Association shall take whatever action is required with respect to such site to permit such use, including dedication or conveyance of the site, if so directed, by Declarant.

11.5. Right To Approve Additional Covenants.

No Person shall Record any declaration of covenants, conditions, and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties without Declarant's review and written consent, during the Class "B" Control Period and, thereafter, the Association's review and written consent. Such written consent shall be evidenced by the signing of the Recorded instrument. Any instrument Recorded without such written consent shall be void and of no force and effect unless subsequently approved by written consent signed by Declarant and Recorded, or, after the Class "B" Control Period, signed by the President of the Association and Recorded.

11.6. Right To Transfer or Assign Declarant Rights.

Any or all of the special rights and obligations of Declarant set forth in this Declaration or the Bylaws may be transferred in whole or in part to other Persons;

provided, the transfer shall not reduce an obligation or enlarge a right beyond that which Declarant has under this Declaration or the Bylaws. No such transfer or assignment shall be effective unless it is in a written, Recorded instrument signed by Declarant. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one-time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to Record any written assignment unless necessary to evidence Declarant's consent to such exercise.

11.7. Easement to Inspect and Right to Correct.

Declarant reserves for itself and others it may designate the right, but not the obligation, to inspect, monitor, test, redesign, and correct any structure; improvement, or condition which may exist on any portion of the Properties, including Lots and Parcels, and a perpetual non-exclusive easement of access throughout the Properties to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Lot or Parcel shall be only after reasonable notice to the Owner and no entry into a dwelling shall be permitted without the consent of the Owner.

11.8. Right to Notice of Design or Construction Claims.

No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within the Properties in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless Declarant and any Builder involved in the design or construction have been first notified in writing and given an opportunity to meet with the Owner to discuss the Owner's concerns and conduct their own inspection.

11.9. Exclusive Rights To Use Name of Development.

No Person shall use the name "Picacho Mountain" or any derivative of such name in any printed or promotional material without Declarant's prior written consent. However, Owners may use the name "Picacho Mountain" in printed or promotional matter where such term is used solely to specify that particular property is located within "Picacho Mountain" and the Association shall be entitled to use the words "Picacho Mountain" in its name.

11.10. Declarant Trademarks.

Any use by the Association of names, marks, or symbols of Declarant or Community Builders International ("CBI"), or any of their affiliates (collectively "Declarant Trademarks") shall inure to the benefit of Declarant and CBI, and shall be subject to Declarant and CBI's periodic review for quality control. The Association shall enter into license agreements with the holder of the Declarant Trademarks, terminable with or without cause and in a form specified by the holder of the Declarant Trademarks, in its sole discretion, with respect to permissive use of certain Declarant Trademarks. The Association shall not use any Declarant Trademark without the prior written consent of the holder of the Declarant Trademark.

11.11. Equal Treatment.

During the Class "B" Control Period, neither the Association nor any other entity shall, without the prior written consent of Declarant, adopt any policy, rule, or procedure that:

(a) limits the access of Declarant, its successors, assigns, and/or affiliates or their personnel and/or guests, including visitors, to the Common Areas of the Association or to any property owned by any of them;

(b) limits or prevents Declarant, its successors, assigns, and/or affiliates or their personnel from advertising marketing, or using the Association or its Common Areas or any property owned by any of them in promotional materials;

(c) limits or prevents purchasers of new residential housing constructed by Declarant, its successors, assigns, and/or affiliates in the Picacho Mountain Community from becoming members of the Association or enjoying full use of its Common Areas, subject to the membership provisions of this Declaration and the Bylaws;

(d) discriminates against or singles out any group of Members or prospective Members or Declarant [this provision shall expressly prohibit the establishment of a fee structure (*i.e.*, assessments, Special Assessments and other mandatory fees or charges other than Neighborhood Assessments, chartered club dues, and use fees) that discriminates against or singles out any group of Members or Declarant, but shall not prohibit the establishment of Neighborhood Assessments];

(e) impacts the ability of Declarant, its successors, assigns, and/or affiliates to carry out to completion its development plans and related construction activities for the Picacho Mountain Community, as such plans are expressed in the Master Plans, as such may be amended and updated from time to time. Policies, rules, or procedures affecting the provisions of existing easements established by Declarant and limiting the establishment by Declarant of easements necessary to complete the Picacho Mountain Community shall be expressly included in this provision. Easements that may be established by Declarant shall include but shall not be limited to easements for development, construction, and landscaping activities and utilities; or

(f) impacts the ability of Declarant, its successors, assigns, and/or affiliates to develop and conduct customer service programs and activities in a customary and reasonable manner.

Neither the Association nor any other entity shall exercise its authority over the Common Areas (including, but not limited to, any gated entrances and other means of access to the Properties or the Exhibit "B" property) to interfere with the rights of Declarant set forth in this Declaration or to impede access to any portion of the Properties or the Exhibit "B" property over the streets and other Common Areas within the Properties.

11.12. Right To Use Common Area for Special Events.

During the Class "B" Control Period," Declarant shall have the right to use all Common Area to sponsor special events for charitable, philanthropic, political, or marketing purposes as determined by Declarant in its sole discretion. Any such event shall be subject to the following conditions:

(a) the availability of the facilities at the time a request is submitted to the Association;

(b) Declarant shall pay all costs and expenses incurred and shall indemnify the Association against any loss or damage resulting from the special event; and

(c) Declarant shall return the facilities and personal property owned by the Association and used in conjunction with the special event, to the Association in the same condition as existed prior to the special events.

Declarant shall have the right to assign the rights contained in this Section 11.12 to charitable organizations or foundations selected by Declarant. Declarant's right to use the Common Area for special events shall be enforceable by injunction, by any other remedy in law or equity, and by the terms of this Declaration.

11.13. Termination of Rights.

The rights contained in this Article shall terminate upon the earlier of (a) 40 years from the date this Declaration is Recorded, or (b) Recording by Declarant of a written statement that all sales activity has ceased. Thereafter, Declarant may continue to use the Common Areas for the purposes stated in this Article only pursuant to a rental or lease agreement between Declarant and the Association which provides for rental payments based on the fair market rental value of any such portion of the Common Areas. This **Article XI** shall not be amended without the written consent of Declarant during the Class "B" Control Period.

**ARTICLE XII
EASEMENTS**

12.1. Easements in Common Area.

Declarant grants to each Owner a non-exclusive right and easement of use, access, and enjoyment in and to the Common Area, subject to:

(a) the Governing Documents;

(b) any restrictions or limitations contained in any deed conveying such property to the Association;

(c) the Board's right to:

(i) adopt rules regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;

(ii) suspend the right of an Owner to use facilities within the Common Area:

(A) for any period during which any charge against such Owner's Lot or Parcel remains delinquent; and

(B) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation, of the Governing Documents after providing the Owner with notice and the opportunity to be heard;

(iii) dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration;

(iv) rent or lease any portion of any clubhouse or other recreational facilities within the Common Area on a short-term basis to any Person approved by the Board for such Person's exclusive use;

(v) permit use by Persons other than Owners, their families, lessees, and guests upon payment of admission charges, membership fees, or other use fees established by the Board;

(vi) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; and

(vii) create, enter into agreements with, and grant easements to tax-exempt organizations under Section 8.12.

(e) the rights of certain Owners to the exclusive use of those portions of the Common Area designated "Limited Common Areas," as described in a Supplemental Declaration;

(f) the Association's right to require Members, Owners, and/or their guests to present activity or use privilege cards, as may be issued by the Association, for access and use of amenities or facilities within the Properties; and

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, social invitees, and occupants of his Lot or Parcel, as applicable, subject to reasonable regulation by the Board. An Owner who leases his Lot or Parcel in its entirety shall be deemed to have assigned all such rights to the lessee of such Lot or Parcel for the period of the lease.

12.2. Easements of Encroachment.

Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot or Parcel and any adjacent Common Area, between adjacent Lots and Parcels, between adjacent Parcels, and between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

12.3. Easements for Utilities and Development.

(a) Installation and Maintenance. Declarant reserves for itself, during the Class "B" Control Period, and grants to the Association, and all utility providers designated by

Declarant, perpetual non-exclusive easements throughout all of the Properties (but not through a structure) to the extent reasonably necessary for the purpose of:

(i) installing utilities and infrastructure to serve the Properties and other portions of Picacho Mountain, cable and other systems for sending and receiving data and/or other electronic signals, security and similar systems, walkways, pathways and trails, drainage systems, street lights, and signage on property which Declarant owns or within the Common Area, public rights-of-way or easements located on Lots or Parcels reserved for such purpose on Recorded plats;

(ii) inspecting, maintaining, repairing and replacing the utilities, infrastructure and other improvements described in Section 12.3(a)(i); and

(iii) access to read utility meters.

Notwithstanding the above, Declarant reserves the right to deny access to any utility or service provider, to the extent permitted by law, or to condition such access on the payment of reasonable consideration.

(b) Specific Easements. Declarant also reserves for itself the non-exclusive right and power to grant and Record such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described in Exhibits "A" and "B." The location of any such easement shall be subject to the written consent of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed, or conditioned.

(c) Construction within Easements. No structure may be constructed within an easement recorded against the Lot or Parcel. Furthermore, no trees shall be planted within a recorded easement on the Lot or Parcel.

(d) Minimal Interference. All work associated with the exercise of the easements described in subsections (a) and (b) of this Section shall be performed in such a manner as to minimize interference with the use and enjoyment of the burdened property. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. However, the Person exercising the easement shall have no obligation of restoring any structures or trees located in the easement area. The exercise of these easements shall not extend to permitting entry into the structures on any Lot or Parcel, nor shall it unreasonably interfere with the use of any Lot or Parcel and, except in an emergency, entry onto any Lot or Parcel shall be made only after reasonable notice to the Owner or occupant of the Lot or Parcel.

12.4. Easements To Serve Additional Property.

Declarant hereby reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit "B," whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property.

Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof benefiting from such easement is not made subject to this Declaration, Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of any maintenance which the Association provides to or along any roadway providing access to such Property.

12.5. Easements for Maintenance, Emergency, and Enforcement.

Declarant grants to the Association easements over the Properties, including all Lots and Parcels, as reasonably necessary for the fulfillment of any rights or duties set forth in this Declaration. Such easements shall include the right, but not the obligation, to enter upon any Lot or Parcel for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforcing the Governing Documents. Such right may be exercised by the duly authorized agents and assignees of the Association, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall be only during reasonable hours and after notice to the Owner.

Declarant grants to the Association an easement and the right to enter a Lot or Parcel to abate or remove, using such measures as may be reasonably necessary, any structure, thing or condition which violates the Governing Documents. All costs incurred, including reasonable attorney fees, shall be assessed against the violator as a Specific Assessment.

12.6 Flyover Easement Serving Las Cruces International Airport.

The Declarant hereby reserves to itself and for the benefit of the City of Las Cruces, New Mexico, Dona Ana County, New Mexico, the Las Cruces International Airport, and the general public at large, a perpetual easement for the free and unobstructed passage of aircraft and the unrestricted right of flight over and above the Properties above a height of thirty-five (35) feet from the surface of the Properties. In addition to all other required approvals by this Declaration for any construction or modifications to a Lot or Parcel, each Owner, by accepting title to a Lot or Parcel subject to this Declaration, agrees that no structure, landscape, tree, or improvement will be constructed or erected on any Lot or Parcel at a height in excess of thirty-five (35) feet above the elevation of the Lot or Parcel unless any structure, landscape, tree or improvement in excess of thirty-five (35) feet have first been approved by the Reviewer and any applicable governmental authorities. In addition, each Owner, by accepting title to any property subject to this Declaration, hereby waives and relinquishes any and all loss, liability, damage, actions, suits, proceedings, demands and claims (hereinafter collectively "Causes of Action") against Declarant, the City of Las Cruces, New Mexico, Dona Ana County, New Mexico, the Las Cruces International Airport and all organizations, entities and/or political subdivisions with responsibility for operating the same for any Causes of Action arising out of or relating in any way to the operation of aircraft over and above the Properties and the ingress and egress of such aircraft to and from the Las Cruces International Airport. By accepting any deed to any Lot, Parcel, or portion thereof, each Owner accepts such deed

with full knowledge of the foregoing easement, disclaimer and release, and the proximity of the Properties to the Las Cruces International Airport.

12.7. Easements for Cross-Drainage.

Every Lot, Parcel, and the Common Area shall be burdened with easements for natural drainage of storm water runoff from other portions of the Properties; provided, no Person shall alter the natural drainage on any Lot or Parcel to increase materially the drainage of storm water onto adjacent portions of the Properties without the consent of the Owner(s) of the affected property, the Board, and Declarant during the Class "B" Control Period. Furthermore, no structure, plant or material shall be placed or permitted to remain within any Drainage Easement or Drainage Channel, or anywhere else on any Lot or Parcel, that damages or interferes with the installation and/or maintenance of such Drainage Easements or Drainage Channels, or that may hinder or change drainage patterns or the direction or flow of the Drainage Channels or Drainage Easements.

12.8. Rights to Stormwater Runoff, Effluent and Water Reclamation.

Declarant hereby reserves for itself and its designees all rights to ground water, surface water, storm water runoff, and effluent located or produced within the Properties, and each Owner agrees, by acceptance of a deed to a Lot or Parcel, that Declarant shall retain all such rights. Such rights shall include the reservation of an easement over the Properties for access, and for installation and maintenance of facilities and equipment to capture and transport such water, runoff, and effluent. This Section may not be amended without the consent of Declarant and the rights created in this Section shall survive termination of this Declaration.

ARTICLE XIII

MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors, of first Mortgages on Lots or Parcels.

13.1. Notices of Action.

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

(a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Lot or Parcel on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder,

(b) Any delinquency in the payment of assessments or charges owed by a Lot or Parcel subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Lot or Parcel which is not cured within 60 days; or

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

13.2. No Priority.

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

13.3. Notice to Association.

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

ARTICLE XIV

CHANGES IN OWNERSHIP OF LOTS AND PARCELS

Any Owner, other than Declarant, desiring to sell or otherwise transfer title to his or her Lot or Parcel shall give the Association (at its principal place of business) written notice at least fourteen (14) days prior to the pending sale or transfer. The written notice shall include the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. Within ten (10) business days after receipt of such notice, the Association shall provide the purchaser with copies of the Governing Documents (which may be provided in electronic format), the amounts of any unpaid assessments, and any other information that the Board wishes to provide to the purchaser. The Association may charge the Owner a reasonable fee to pay for the costs incurred in preparing the documents.

The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot or Parcel, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

ARTICLE XV

CHANGES IN COMMON AREA

15.1. Condemnation.

Whenever any part of the Common Area shall be taken or conveyed under threat of condemnation by any authority having the power of eminent domain, the Board shall determine, in the exercise of its business judgment, whether each Owner shall be entitled to notice thereof. The Board may convey Common Area under threat of condemnation if approved by Declarant during the Class "B" Control Period.

The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent practicable, unless the Declarant, during the Class "B" Control Period, and at least 67% of the total Class "A" Members in the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board.

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

15.2. Partition.

Except as permitted in this Declaration, the Common Area shall remain undivided and no Person shall bring any action for partition of any portion of the Common Area without the written consent of all Owners and Mortgagees. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

15.3. Transfer or Dedication of Common Area.

The Association may dedicate portions of the Common Area to Dona Ana County, New Mexico, or to any other local, state, or federal governmental or quasi-governmental entity.

ARTICLE XVI

AMENDMENT OF DECLARATION

16.1. Corrective Amendments.

In addition to specific amendment rights granted elsewhere in this Declaration, until conveyance of a Lot or Parcel to a Class "A" Member other than a Builder, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, Declarant, or the Board with consent of the Declarant, may unilaterally amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Lots or Parcels; (c) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on the Lots or Parcels; or (d) to satisfy the requirements of any local, state, or federal governmental agency. However, any such amendment shall not adversely affect the title to any specific Lot or Parcel unless the Owner shall consent in writing.

In addition, during the Class "B" Control Period, Declarant may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner.

16.2. By Members.

Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing 67% of the Class “A” votes in the Association, and the consent of Declarant, during the Class “B” Control Period.

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

16.3. Validity and Effective Date.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant (or the assignee of such right or privilege).

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

Any amendment validly adopted by the Association shall be certified by the President or Secretary of the Association, and shall become effective upon Recording, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its Recording or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

Nothing in this Article shall be construed to permit termination of any easement created in this Declaration or Supplemental Declaration without the consent of the holder of such easement.

16.4. Exhibits.

Exhibits “A” and “B” attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by this Article. Exhibit “C” is incorporated by this reference and may be amended pursuant to Sections 16.1 and 16.2, or as provided in Article III.

ARTICLE XVII

GENERAL PROVISIONS

17.1 Owners’ Rights of Enforcement.

In addition to the enforcement rights of Declarant and the Association as set forth in this Declaration, each Owner, at his own expense, shall have the right to enforce, by proceedings at law or in equity, all restrictions, covenants, conditions, reservations and all other provisions set out in this Declaration. In any such action, the prevailing party shall be entitled to recover his costs, including reasonable attorney’s fees.

17.2 Interpretation.

Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive, and binding as to all Persons and Properties benefited or bound by this Declaration.

17.3 Severability.

Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

17.4 Change of Circumstances.

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

17.5 Declarant's Disclaimer of Representations.

Anything to the contrary in this Declaration notwithstanding, Declarant makes not warranties or representations whatsoever that the plans presently envisioned for the complete development of the Picacho Mountain Community can or will be carried out, or that any land now owned or hereafter acquired by it is or will be subjected to this Declaration, or that any such land (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such land is once used for a particular use, such use will continue in effect.

17.6 Gender and Number.

Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

17.7 Captions and Titles.

All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent of the context thereof.

17.8 Notices.

Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, post-paid via the United States Postal Service to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

EXHIBITS

Exhibit "A" Land Initially Submitted

Exhibit "B" Land Subject to Annexation

Exhibit "C" Initial Use Restrictions

[SIGNATURES ON FOLLOWING PAGE]

EXHIBIT A
LAND INITIALLY SUBMITTED

20 February, 2007

LEGAL DESCRIPTION OF LAND INITIALLY SUBMITTED:

TRACT 3A1, ENCHANTED DESERT SUBDIVISION, REPLAT NO.2 OF TRACT 3, BEING A REPLAT OF TRACT 3A, ENCHANTED DESERT SUBDIVISION, REPLAT NO.1 OF TRACT 3, DONA ANA COUNTY, NEW MEXICO, FILED IN THE OFFICE OF THE COUNTY CLERK OF SAID COUNTY ON JULY 21, 2005 IN PLAT BOOK 21 AT PAGE 275, OF PLAT RECORDS.

EXHIBIT B
LAND SUBJECT TO ANNEXATION

20 February 2007

LEGAL DESCRIPTION OF LAND SUBJECT TO ANNEXATION:

TRACT 3A2A, TRACT 3A2B, AND TRACT 3A2C OF THE ENCHANTED DESERT SUBDIVISION REPLAT NO. 1 OF TRACT 3A2, BEING A REPLAT OF TRACT 3A2, ENCHANTED DESERT SUBDIVISION, REPLAT NO. 2 OF TRACT 3, AS RECORDED IN PLAT BOOK 21 PAGE 275, JULY 21, 2005, LOCATED IN PROJECTED SECTIONS 7 & 18, T.23S., R.1E., AND PROJECTED SECTIONS 12 & 13, T.23S., R.1W., N.M.P.M., WITHIN THE MESILLA CIVIC COLONY GRANT TRACT 2, WEST OF LAS CRUCES, DONA ANA COUNTY, NEW MEXICO

AND:

TRACT 2, ENCHANTED DESERT SUBDIVISION AS RECORDED IN PLAT RECORD BOOK 233, PAGES 472-478, AUGUST 18, 2000,

EXHIBIT C
INITIAL USE RESTRICTIONS
OF
PICACHO MOUNTAIN

20 February 2007

Initial Use Restrictions

1. Use Restrictions Applicable to All Lots and Parcels

Section 1.1 Temporary and Other Structures. No structure of a temporary character, trailer, mobile, modular or prefabricated home, tent, shack, barn, or any other temporary structure or building, including short-wave radio or other antennas shall be placed on any Lot or Parcel. The only structures that can be placed on any Lot are a Dwelling Unit and a shed, of a size and type approved by the Reviewer. Furthermore, no dwelling, garage or other structure appurtenant thereto, shall be moved upon any Lot from another location; except, however, that Declarant reserves the exclusive right to erect, place and maintain, and to permit builders to erect, place and maintain, such areas in and upon the Properties as in its sole discretion may be necessary or convenient during the period of and in connection with the sale of Lots or Parcels, construction and selling of Dwelling Units and constructing other improvements in the Properties. Such areas may include, but are not necessarily be limited to, a temporary office building, storage area, signs, portable toilet areas and sales office. Declarant and builders shall also have the temporary right to use a Dwelling Unit situated on a Lot as a temporary office or model home during the period of and in connection with construction and sales operations in the Properties, but in no event shall a builder have such right for a period in excess of one (1) year from the date of substantial completion of his last Dwelling Unit in the Properties.

Section 1.2 Nuisance. No noxious or offensive activity shall be carried on or permitted upon any Lot, Parcel, or upon the Common Areas, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood or to other Owners. The Board of Directors of the Association shall have the sole and exclusive discretion to determine what constitutes a nuisance or annoyance. No repair work, dismantling, or assembling of motor vehicles or other machinery or equipment shall be done or permitted on any street, driveway or any part of the Common Areas. Junk or junk yards of any kind or character shall not be permitted, nor shall accumulation of scrap, used materials, inoperative automobiles, or machinery, or other unsightly storage of personal property be permitted. The use or discharge of firearms, firecrackers, or other fireworks in the Properties is prohibited. No motor bikes, motorcycles, off-road vehicles, motor scooters, "go-carts", or other similar vehicles shall be permitted to be operated in the Properties if, in the sole judgment of the Board of Directors of the Association, such operation, by reason of noise or fumes emitted, or by reason of manner of use, shall constitute a nuisance.

Section 1.3 Removal of Dirt. The digging of dirt or the removal of any dirt from any Lot or Parcel is prohibited, except as necessary in conjunction with landscaping or construction of improvements thereon.

Section 1.4 Garbage and Refuse Storage and Disposal. All Lots, Parcels, and the Common Areas shall at all times be kept in a healthful, sanitary and attractive condition. No Lot, Parcel, or any part of the Common Areas shall be used or maintained

as a dumping ground for garbage, trash, junk or other waste matter. All trash, garbage, or waste matter shall be kept in adequate containers constructed of metal, plastic or masonry materials, with tight-fitting lids, which shall be maintained in a clean and sanitary condition and screened from public view. No Lot or Parcel shall be used for open storage of any materials whatsoever, which storage is visible from the street, except that new building materials used in the construction of improvements erected on any Lot or Parcel may be placed upon such Lot or Parcel at the time construction is commenced and may be maintained thereon for a reasonable time, so long as the construction progresses without unreasonable delay, until completion of the improvements, after which time these materials shall either be removed from the Lot or Parcel or stored in a suitable enclosure on the Lot or Parcel. No garbage, trash, debris, or other waste matter of any kind shall be burned on any Lot or Parcel.

Section 1.5 Septic Tanks. No privy, cesspool, or septic tank shall be placed or maintained upon or in any Lot or Parcel, or other portion of the Properties without express written consent of the Reviewer, or as allowed by the final plat.

Section 1.6 Oil and Mining Operations. No oil drilling or development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot or Parcel, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot or Parcel. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot or Parcel.

Section 1.7 Upkeep by Owner. All improvements on each Lot and Parcel must be kept in good repair. The Owner of each Lot or Parcel shall maintain paint, stucco, walls, driveways and other improvements in good condition. Owners are required to repair cracked or broken walls, to repaint cracked, peeling, or blistering paint, to recondition and repair driveways that are eroded, spalled, broken, or significantly stained (as determined by the Board), and to repair stucco that is peeling, cracked or unsightly. The Board of Directors shall be the final determiner as to whether a Lot or Parcel is being properly maintained.

Section 1.8 Airport Consideration Restriction. No use is permitted that may create electrical interference with navigational signals or radio communication between airport and aircraft, make it difficult for pilots to distinguish between airport lights and others, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create bird strike hazards or otherwise in any way endanger or interfere with the landing, takeoff, or maneuvering of aircraft intending to use the airport.

Section 1.9 Compliance with Laws. At all times, each Owner shall comply with all applicable federal, state, county and municipal laws, ordinances, rules and regulations with respect to the use, occupancy, and condition of his Lot or Parcel and any improvements thereon.

Section 1.10 Occupants Bound. All provisions of the Governing Documents shall apply to all occupants, lessees, guests, and invitees of any Lot or Parcel. Every Owner shall cause all occupants of his or her Lot or Parcel to comply with the foregoing and shall be responsible for all violations and losses to the Common Area caused by such occupants.

2. Use Restrictions Applicable to all Lots Classified as Single Family Residential.

Section 2.1 Residence Buildings and Garages. No building or other structure shall be built, placed, constructed, reconstructed, or altered on any Lot other than a single family residence, and no structure shall be occupied or used until the exterior construction thereof is completed. Each single family residence situated on a Lot shall have an enclosed, attached or detached garage for not less than two (2) nor more than four (4) automobiles. No such detached garage shall have more than one (1) story. Space for parking one (1) RV may be incorporated into a garage in addition to the allocated automobile spaces, however, such space must be designed so that the additional height and size of the garage does not become a major design element of the Dwelling Unit as viewed from the street directly in front of the center of the Lot's street frontage. No carport shall be built, placed, constructed or reconstructed on any Lot. No garage shall ever be changed, altered, reconstructed or otherwise converted for any purpose inconsistent with the garaging of automobiles. All Owners, their families, residents, tenants and contract purchasers shall, to the greatest extent practicable, utilize such garages for the garaging of vehicles belonging to them.

Section 2.2 Single Family Residential Use. Each Lot (including land and improvements) shall be used and occupied for single family residential purposes only. As used herein the term "single family residential purposes" shall refer not only to the architectural design of the dwelling but also to the permitted number of inhabitants, which shall be limited to a single nuclear family, as defined below. No multifamily dwellings may be constructed on any portion of a Lot, and no building, out building or portion thereof shall be constructed for income property, such that tenants would occupy less than the entire Lot and improvements thereon. For purposes of these restrictions, a "single nuclear family" shall be defined as any of the following: (1) any number of persons related by blood, marriage or adoption, but only to the second generation, or (2) no more than two (2) persons who are not so related and living as a single household unit. This restriction does not preclude the construction of guest quarters, so long as said guest quarters is developed as a visual extension of the Dwelling Unit and is connected by design elements of the Dwelling Unit, landscaping and/or walls and is within the designated building pad area of the Lot. It is not the intent of Declarant to exclude from a Lot any individual who is authorized to remain by state or federal law. If it is found that this definition, or any other provision contained in this Declaration is in violation of any law, then this Section shall be interpreted to be as restrictive as possible to preserve as much of the original Section as allowed by law.

No Lot shall be used or occupied for any business, commercial, trade, or professional purpose, either apart from or in connection with the use thereof as a private residence, whether for profit or not, except that an Owner or occupant may conduct business activities that are merely incidental to the Owner's residential use within a dwelling so long as:

- (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the dwelling;
- (b) the business activity conforms to all zoning requirements and other restrictive covenants applicable to the Lot;
- (c) the business activity does not involve visitation of the dwelling or Lot by clients, customers, suppliers or other business invitees or door-to-door solicitation of residents within the Properties; and
- (d) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as determined in the sole discretion of the Board of Directors. A daycare area, home daycare area, church, nursery, preschool, beauty parlor, barbershop or other similar area are expressly prohibited.

Section 2.3 Signs. Except for signs, billboards or other advertising devices displayed by Declarant for so long as Declarant or any successors or assigns of Declarant to whom the rights of Declarant under **this Section 8.05** are expressly transferred, shall own any portion of the Properties, no sign of any kind, including but not limited to political and advertising signs, shall be displayed to the public view on any Lot or on the Common Areas, except:

- (a) Builders may display one (1) sign of an Architectural Review Committee approved design and material that is not more than six (6) square feet (for example, 2 feet by 3 feet is 6 square feet) on a Lot to advertise the Lot and any residential structure situated thereon for sale during the sales and/or construction period; and
- (b) Any Owner may display one (1) sign of an approved design and material as set forth in the Design Guidelines that is not more than six (6) square feet on a Lot improved with a Dwelling Unit to advertise the Lot and Dwelling Unit for sale or rent.

Declarant or its agent and the Association shall have the right to remove any sign not complying with the provisions of this section, and in so doing shall not be liable and are expressly relieved of any liability for trespass or other tort in connection therewith, or arising from such removal.

Section 2.4 Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except that dogs, cats or other common household pets (not to exceed three (3) adult animals) may be kept, but they shall not be bred or kept for commercial purposes. It is the purpose of these provisions to restrict the use of the property so that no Person shall quarter on the premises cows, horses, bees, hogs, pigs, sheep, goats, guinea fowls, ducks, chickens, roosters, geese, turkeys, skunks or any other animals that may interfere with the quiet enjoyment, health, or safety of the Picacho Mountain Community. Pets must be restrained or confined on the Owner's rear Lot inside a fenced area or within the house. It is the pet owner's responsibility to keep the Lot clean and free of pet debris. All animals must be properly tagged for identification.

Pets which are permitted to roam free, or, in the sole discretion of the Association, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to, the Owners or occupants of other Lots shall be removed upon the Board's request at the Owner's expense. If the Owner fails to honor such request, the Board may cause the pet to be removed at the Owner's expense.

The Board may adopt, by resolution, reasonable regulations designed to minimize damage and disturbance to other Owners and occupants, including rules requiring waste removal, leash controls, noise controls, and pet occupancy limits. The Board may also adopt rules which prohibit pets from certain Common Area locations. No pets shall be kept, bred, or maintained for any commercial purpose.

Section 2.5 Access. No driveways or roadways may be constructed on any Lot to provide access to any adjoining Lot or other portion of the Properties unless the express written consent of the Reviewer first shall have been obtained.

Section 2.6 Parking.

The term "vehicle" as used in this Section, shall include without limitation, automobiles, trucks, boats, trailers, motorcycles, campers, vans, and recreational vehicles.

No vehicle may be parked or left upon any portion of the Properties except in a garage, driveway, parking pad, street or other area designated by the Board. Vehicles are prohibited from parking on non-paved areas. No vehicle may be parked overnight on the street, except with prior permission from the Board in the form of a permit. The Board shall have the right to establish what hours are considered "overnight."

No person shall park any commercial vehicles, recreational vehicles, mobile homes, trailers, campers, boats or other watercraft, or other oversized vehicles, stored vehicles, and unlicensed vehicles or inoperable vehicles within the Properties other than in enclosed garages; provided, however, one boat may be temporarily kept or stored completely in a driveway or completely on a parking pad on a Lot for not more than four nights within each calendar month. This Section shall not apply to emergency vehicle repairs. "Commercial Vehicle" shall be defined as any vehicle that meets any one or more of the following criteria: any type of signage, design or lettering for advertising, vehicle classed by manufacturer's rating exceeding 1-ton, commercial utility racks

located on the vehicle, or work equipment stored on the vehicle that is visible from outside of the vehicle.

Notwithstanding the above, for purposes of cleaning, loading, unloading, and short term parking, recreational vehicles may be parked on the Properties for 72 hours per calendar month. Owners must obtain a recreational vehicle permit for such short term parking from the Association office.

Section 2.7 Utilities. Each Dwelling Unit situated on a Lot shall be connected to the water and sewer lines as soon as practicable after same are available at the Lot line.

Section 2.8 Minimum Lot Area. No Lot or Lots may be resubdivided into a greater number of Lots. Any number of Lots may, however, be subdivided into a lesser number of Lots so long as none of the resulting Lots is smaller than the smallest of the Lots resubdivided and the Owner of the Lots has obtained the prior approval of the Reviewer. For example, three Lots could be resubdivided into two Lots so long as both of the new Lots are larger than the smallest of the original three. If Lots are resubdivided into a lesser number of Lots, the Owner of the Lot shall pay assessments according to the number of Lots originally platted. For example, if three (3) Lots are resubdivided into two (2) Lots, each Owner of a subdivided Lot will pay assessments for 1 ½ Lots.

Section 2.9 Prohibited Conditions. The following conditions, structures, or activities are prohibited on any Lot:

- (a) Walls, dog runs, and animal pens of any kind on any Lot;
- (b) Detached garages. Garage doors shall remain closed at all times except when entering and exiting the garage;
- (c) Excessive exterior lighting on any Lot. The Board, in its sole discretion, shall determine whether any exterior lighting is excessive;
- (d) Storage (except in approved structures or containers) of furniture, fixtures, appliances, machinery, equipment or other goods and chattels not in active use on the Common Area or any portion of a Lot which, is visible from outside the Lot. Detached storage buildings and detached sheds are prohibited;
- (e) Above-ground pools, compost piles or containers, statues, and front yard fountains;
- (f) Outside clotheslines or other outside facilities for drying or airing clothes.

In any event, and notwithstanding the above list of prohibited conditions, any structure, improvement, or thing proposed for construction, erection, installation, or placement on a Lot requires prior Reviewer approval unless otherwise specifically exempt under the Design Guidelines.

Section 2.10 Sight Distance at Intersections. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner Lot within the

triangular area formed by the street boundary lines and a line connecting them at points twenty-five (25) feet from the intersection of the street boundary lines, or in the case of a rounded property corner, from the intersection of the street boundary lines extended. The same sight line limitations shall apply on any Lot within ten (10) feet from the intersection of a street boundary line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

Section 2.11 Chimneys and Exterior Fireplaces. All fireplace flues, smoke stacks, and spark arrestors shall be completely enclosed and concealed in finished chimneys of materials architecturally compatible with the principal finish material of the exterior walls of the dwelling. Manufactured fireplace flue caps are not acceptable finish materials. No material causing a foul, noxious, or objectionable odor may be burned. Material producing burning ash, flying embers, or other cause of spread of fire may not be burned. No material which produces an ash residue outside of the fireplace itself may be burned.

Section 2.12 Window Treatment. No aluminum foil, reflective film or similar treatment shall be placed on windows or glass doors. This does not preclude the use of architectural windows that have UV coatings or other special coatings and features so long as those features do not create glare, or coloration inconsistent with the approved color palette provided for the Neighborhood. All windows visible to the street, including garage windows, shall require window treatments.

Section 2.13 Seasonal Decorations. Outdoor seasonal decorations must be in working order, good repair, and shall not become a fire hazard or threaten public safety. Decorations will be set up and taken down in a timely manner as determined by the Association, but in any case not more than sixty (60) days prior to the holiday, and not more than thirty (30) days after. The Association may establish shorter time periods by its Rules and Regulations.

Section 2.14 Grass and Weeds. Yards and landscape areas shall be maintained in such a way that promotes the standards of the Association. Yards consisting of grass must consist of accepted grass types. A list of approved plants, grasses and trees shall be made a part of the Design Guidelines. Grass shall be kept less than 6 inches high. Other vegetation shall be properly trimmed and maintained, while keeping a natural desert landscape appearance, on any landscape visible to the street as viewed from directly in front of the center of the Dwelling Unit. If an Owner fails to properly maintain the Lot, the Association may, at its option, have the grass, weeds and vegetation cut, after providing the Owner with at least seven (7) days notice. The cost incurred by the Association shall be treated as a Specific Assessment against the Lot, collectible in the same manner as other Assessments.

Section 2.15 Air-conditioning. All air-conditioning apparatus must be installed on the ground, along the side or back of the Dwelling Unit, in a manner that conceals such apparatus. No air-conditioning apparatus shall be installed on the ground in front of

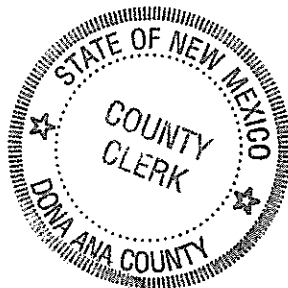
a Dwelling Unit. No air-conditioning apparatus or any evaporative cooler shall be attached to any wall or window of a Dwelling Unit. Any air conditioning apparatus or evaporative cooler must be concealed from public view as viewed from the street.

Section 2.16 Airport Consideration Restriction. No use is permitted that may create electrical interference with navigational signals or radio communication between airport and aircraft, make it difficult for pilots to distinguish between airport lights and others, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create bird strike hazards or otherwise in any way endanger or interfere with the landing, takeoff, or maneuvering of aircraft intending to use the airport.

Section 2.17 Flags and flagpoles. Flagpoles may not exceed 20 feet in height, and must be set back, at least the height of the pole, including the pole topper, from any Lot line, wall, walking trail, sidewalk or public area. Flagpoles must match the color of the Dwelling Unit on the Lot, and must receive the prior written approval of the Reviewer before installation. Flag lighting may not be used. Only the United States Flag, and those of the State of New Mexico, Prisoner of War, and military service flags may be flown. No flag shall exceed three (3) feet by five (5) feet in size, and unless otherwise restricted, proper flag etiquette shall be observed as provided in the United States Flag Code/

Section 2.18 Time-Sharing. No Lot shall be made subject to any type of timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Lot rotates among members of the program on a fixed or floating time schedule over a period of years. However, Declarant hereby reserves the right for itself and its assigns to operate such a program.

Section 2.19 Antennas and Satellite Dishes. Unless governed by 47 C.F.R. § 1.400 (Over-the-Air Reception Devices Rule), as amended, repealed, or recodified, no antenna or other device for the transmission or reception of television, internet or radio signals or any other form of electromagnetic radiation or any associated equipment shall be erected, used or maintained outdoors on any Lot or Parcel or Common Area, whether attached to a building or structure or otherwise, so as to be Visible From Neighboring Property or the street, unless approved in writing by the Lifestyle Enrichment Committee. Any device governed by 47 C.F.R. § 1.400 (Over-the-Air Reception Devices Rule), as amended, repealed, or recodified, shall comply with the applicable antenna installation rules of the Association and shall be mounted, to the extent reasonably possible, so as to not be Visible From Neighboring Property or the street.



1498

State of New Mexico
County of Dona Ana, ss
RECEPTION NO. 60309
I hereby certify that this
instrument was filed for
recording and duly recorded on
FEB 20 2007
at 2:53 o'clock PM
Book 789 Page 1435-98
of the Records of said County.
Rita Torres, County Clerk
BY: [Signature] DEPUTY

DESIGN GUIDELINES

PICACHO MOUNTAIN ESTATE HOMES and CLUSTER VILLAGE HOMES

**FOR ALL NEW RESIDENCES,
MODIFICATIONS and ADDITIONS**



**Revised
June 15, 2018**

Exhibit B

PICACHO MOUNTAIN DESIGN GUIDELINES

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SECTION I

INTRODUCTION

Section 1.1 Introduction.

Picacho Mountain is being developed and presented with the intent to create an upscale community in Las Cruces, with residences thoughtfully designed and constructed to be harmonious with the existing desert environment. Much of the land is intended to remain undisturbed in this community, and walking trails will encourage residents to more fully experience the high desert. The natural arroyos, vegetation and view aspect of each lot contributes greatly to the character of each lot, and the homes should be constructed in a manner that enhances these features without altering the desert's natural character. The intent is for the homes to blend subtly with the natural features of the terrain. These Design Guidelines are an effort to assist homeowners, architects and builders understand, create and sustain a community wide cohesive design scheme that has proven to enhance long term resale values both to individual residences as well as the community as a whole. Particular continuous attention will be paid to the adherence of the Covenants, Conditions, and Restrictions (CC&R's) guidelines referenced herein. This will ensure that both an aesthetically coherent community and a more valuable community will be created.



As a mixed-use, master planned community, Picacho Mountain will include a mix of residential types:

- Estate Homes are single-family detached residences built on lots of one-half (1/2) acre or more.
- Cluster Village Homes are single-family detached residences built on lots of less than one-half (1/2) acre located in village-type settings included in the overall Picacho Mountain Master Plan.

To insure that all Picacho Mountain residences blend with the natural desert colors and character, all residences will be subject to the guidelines contained herein and to those additional unique requirements included in any applicable Supplemental Declarations.

Section 1.2 Design Philosophy.

We are passionately committed to setting the standard for traditional southwest living in our region. Our communities promote harmony with the natural environment, simplicity over opulence, and still manage to carve out a special place of their own. We believe that the desert is a beautiful place, and the more it is left as we found it, the better.

Because good design isn't always as simple as it sounds, we believe in using professional architects and designers. They are best equipped to help you achieve an award-winning home design that:

- Uses traditional, understated southwestern architecture,
- Blends harmoniously into the natural landscape using exterior colors and materials that key on earth tones and other neutral, natural colors from the surrounding desert palette,
- Maximizes views while protecting view corridors of surrounding lots for the benefit of the entire community,
- Is tailored to your site and focuses attention on natural arroyos, elevation changes, open space, and views of the Valley, Picacho Peak, and the Organ and Doña Ana Mountains,
- Minimizes disturbance of the existing desert environment,
- Uses native landscaping as a dominant architectural feature that matures and grows with age and employs re-vegetation wherever disturbance has occurred,
- Possesses proper scale and massing of details in relationship of different components of the building facade and structure, and
- Subtly use Universal Design Standards to insure life-long living convenience.

Section 1.3 Lifestyle Enrichment Committee

The Lifestyle Enrichment Committee (LEC) is formed to ensure that all improvements meet the appropriate Picacho Mountain design criteria, as may be amended from time to time. The Lifestyle Enrichment Committee has all administrative and interpretive authority in the design review process and is referred to herein alternately also as "Reviewer". The LEC at inception is operated by the Declarant and is subsequently operated by a board of directors as allowed by the Declaration of CC&R's for Picacho Mountain.

The design review responsibility of the LEC is:

- 1) To approve or disapprove designs and plans for site planning, construction, landscape, lighting and all other improvements including modifications and additions;
- 2) To ensure compliance of construction to LEC approved plans, including identifying non-compliance and recommending enforcement actions; and
- 3) To maintain and make available to residents the standards and guidelines of the community.

The LEC reserves the right to grant any variance to any proposed improvement that the LEC finds desirable for the overall aesthetics and/or value of the community and its residents as a whole. Such a variance, if granted, does not by virtue of its approval and granting, change the established Design Guidelines or establish a precedent that a similar future variance will be granted.

Section 1.4 Green and Sustainable Building

Although the LEC does not require green or sustainable building practices, the LEC strongly encourages these types of building processes and will work closely with owners and builders who wish to employ progressive techniques to make their homes energy efficient and environmentally friendly. The LEC will make special exceptions on a case-by-case basis for "green" homes that employ water, energy, or environmentally advanced elements within the existing design framework for the community. For example, elements such as water harvesting, gray water irrigation, Low-E glass, low flow toilets, solar panels, Energy Star products, and the use of sustainable materials is recommended and encouraged. We are excited and hopeful to see these practices employed, and the LEC will be as flexible as possible while ensuring the implementation occurs in an aesthetically pleasing manner.

Section 1.5 Solar Plan

Every attempt should be made to minimize the visual impact of solar equipment. To assure compliance with this Design Guidelines for initial or future solar installations, all new Picacho Mountain homes must have a Solar Plan as part of the Final Design Submission. The plan shall be sized to sufficiently power the needs of the home.

For roof-mounting, the plan shall include a percentage of parapet walls at least 24 inches in height so that panels can be hidden at higher, more efficient angles. The optimal solar panel angle for Picacho Mountain is approximately 30 degrees. For ground-mounting, the plan must show that the solar equipment is hidden from view and that it is located within the Building Envelope.

For owners planning to retrofit roof-mounted solar panels on homes completed by August 2013, the panels must be installed such that the highest elements of the panels are level with the existing surrounding parapets. Alternately, the surrounding parapets must be raised such that they are level with the highest elements of the planned panel mounting.

Solar equipment, parapets, walls or other solar screening must conform to building height restrictions as defined in Section 4.2. In all of the above, additional screening may be required as determined by the LEC.

SECTION II

DESIGN REVIEWS

This Design Guidelines establishes design criteria for Picacho Mountain under the power and authority of the Declaration of Covenants, Conditions and Restrictions for Picacho Mountain (CC&R's) as filed by the Declarant. The following design review process and procedures for Picacho Mountain is a condensed version extracted from the CC&R's for ease of reference, however, in case of conflict, the Design Guidelines shall rule.

The Design Review process and procedures described below provide for a coordinated and cooperative collaboration between a lot owner planning to construct a new residence, or a homeowner desiring to modify an existing structure, and the Declarant and Lifestyle Enrichment Committee (LEC) with the intent to insure compliance with the Design Guidelines requirements. Timely submissions of the documents and information described in Section 2.2 below will help insure that the process can be expedited as quickly and easily as possible.

Declarant may, in its sole discretion, grant blanket design approvals for cluster village residential subdivisions where predesigned residential products are being constructed by a single builder or development entity. In that case, the builder/developer must submit all home designs to be built and sold in the subdivision according to the design review process herein described. Builder/Developer will submit typical lot layouts, color palettes, lighting and landscape designs. Any deviation from materials, colors, concepts and designs, must be submitted individually to the LEC for approval. If multiple builders and/or developers build in a cluster village subdivision, each individual residential unit must be submitted to the LEC for approval as per the process set out in Section II herein.

Once approval has been granted for predesigned residential products, builder may permit and commence construction without going through the formal review process. All other requirements of the Design Guidelines shall still apply.

All modifications by individuals purchasing cluster village homes must be submitted to the LEC according to the process set out in these Design Guidelines.

All submissions must include one full paper set and one full set in electronic format (PDF, JPEG, CAD, etc.) mailed or delivered to:

Picacho Mountain Community Association, Inc.
P.O. Box 1305
Fairacres, NM 88033
Telephone: 575-523-2500 email: HOA@picachomountain.com

Section 2.1 Design Review Authorities

(a) Declarant shall have exclusive authority to review and act upon applications for all original construction and all subsequent modifications within the Properties and to administer and enforce architectural controls.

(b) Declarant may, in its sole discretion, designate one or more Persons, including the Lifestyle Enrichment Committee (LEC), from time to time to act on its behalf in reviewing applications for new construction and/or modifications hereunder. Any such delegation shall be subject to:

- (i) Declarant's right to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated; and
- (ii) Declarant's right to veto any decision of the LEC which Declarant determines, in its sole discretion, to be inappropriate or inadvisable for any reason

(c) Subject to Declarant's rights, the LEC may be assigned jurisdiction over original construction and modifications within the Properties. The Association also may assign to the LEC responsibility for monitoring compliance with and enforcement of Use Restrictions and Board promulgated rules.

(d) Declarant shall have the right, in its sole and absolute discretion, to veto any action taken by the LEC; provided, Declarant's right to veto must be exercised within 10 business days of its receipt of notice of action taken by the LEC. The party submitting the Plans for approval shall not be notified of the LEC's approval or disapproval until after Declarant's right to veto has been exercised or has expired.

(e) The LEC may engage other Persons to assist in the review process; however, the LEC shall remain the "Reviewer." The LEC may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals.

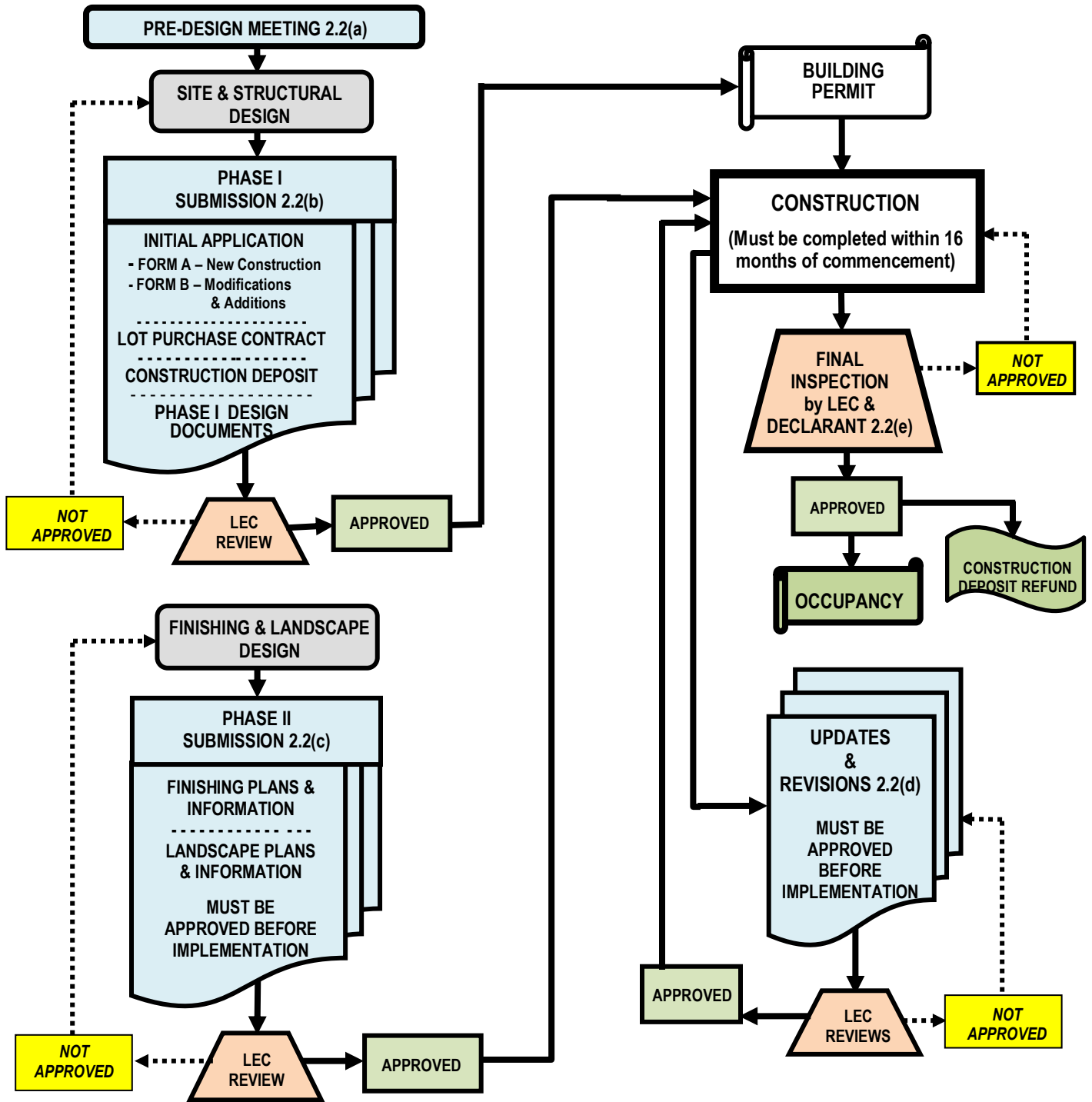
Declarant and the Association may employ architects, engineers, or other Persons as deemed necessary to perform reviews. The Board may include the compensation of such Persons in the Association's annual operating budget.

Section 2.2 Design Review Process

- In order to assure that all Picacho Mountain residents enjoy the benefits of living in a well-designed environment the drawings, documents, and related design and construction information for each proposed residence (or modifications and/or additions to any residence) must be submitted for review and approval by the Declarant and LEC.
- Except as otherwise specifically provided in the Design Guidelines, no activities shall commence on any portion of any of the Properties until the required applications and documentation has been submitted to, and approved by, the Declarant. Commencement of activities prior to written approval of the Declarant or his designee shall cause an assessment of thirty dollars (\$30.00) per day payable by the Owner to the Picacho Mountain Homeowners Association for each day, or portion thereof, for the period between commencement of such non-approved activities on any portion of the Properties and the date of the Declarant's approvals.
- Applications and documents shall be in the form required by the Declarant and shall include information required under this Design Guidelines including plans and specifications showing site layout, structural design, exterior elevations, exterior materials and colors, solar equipment, landscaping, drainage, exterior lighting, irrigation, and other features of the proposed construction, as applicable.
- The Declarant may require the submission and approval of such additional information as may be reasonably necessary to consider any application.
- In reviewing each Application and Submission the Reviewer may consider any factors deemed relevant including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determination as to such matters is purely subjective and opinions may vary as to the desirability and/or attractiveness of particular designs and improvements.
- The Declarant shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and such determinations shall not be subject to review so long as they have been made in good faith and in accordance with the procedures set forth herein.
- For each Submission the Declarant may:
 - i. Approve the submission with or without conditions, or
 - ii. Approve a portion of the submission and disapprove other portions, or
 - iii. Disapprove the entire submission.
- As part of any approval the Declarant may require that construction commence in accordance with approved plans within a specified time period. If construction does not commence within the required period such approval shall be deemed withdrawn and it shall be necessary for the Owner to reapply for approval before commencing any subsequent project activities.
- Approval by the Declarant shall not constitute approval or, or waiver of reviews and approvals by, Doña Ana County or any other municipality or governmental agency or entity having jurisdiction over architectural or construction matters.
- The Declarant shall, upon completion of the review of each submission, notify the applicant in writing of the determination of the Reviewer within twenty (20) business days after receipt of the required applications, documents and related information.

An outline of the Design Review Process is shown below. Additional information regarding each phase of the process is described in the following subsections 2.2 (a) through 2.2 (f).

DESIGN REVIEW PROCESS OVERVIEW



2.2(a) PRE-DESIGN MEETING

To initiate the review and approval process prior to preparing any designs and drawings for a proposed residence (or modification or addition to a residence) it is recommended that the Owner, together with other members of the project team (architect, landscape architect, civil/structural engineer, general contractor, etc.) meet with the LEC to discuss the proposed project and to explore and resolve any questions regarding the Picacho Mountain design requirements.

This informal review is to offer guidance to the project team including providing them with a Site Plan for the lot where the proposed residence will be built. The Site Plan shows the pad location, pad elevation, maximum disturbed area, existing contours, curbs, existing elevations, corner locations, and street and legal names.

Any questions regarding the interpretation of the Design Guidelines requirements as well as the current policies and procedures may also be obtained at this time. Items discussed during this meeting are not binding on the Declarant or LEC, nor do they constitute formal approval of the project parameters.

2.2(b) PHASE I SUBMISSION – Initial Application and Phase I Design Documents.

• Initial Applications

- A copy of “FORM A - Initial Application for New Residence” is included on pages 10 & 11.
- A copy of “FORM B – Initial Application for Modifications and Additions” is included on pages 13 & 14.

Complete the relevant FORM A or FORM B and submit it, along with the required Phase I Design Documents as listed either:

- a) in Section 2.2(b)1 on page 12 of the Design Guidelines for a New Residence, or
- b) at the bottom of Page 2 of FORM B for Modification and Additions.

Please insure that all necessary documents and information are submitted to the Reviewer in a complete fashion. This will greatly assist in making the review and approval processes as efficient as possible.

• Construction Deposit for New Residence

In accordance with Section 4.3.a of the CC&Rs a deposit shall be paid by the Applicant when submitting an Application for Design Review for New Residence (FORM A). The deposit shall be five percent (5%) of the gross purchase price of the Lot. A valid copy of the Lot purchase contract must be submitted with the Application.

Construction deposit funds shall be maintained in an Escrow Account by the Association. Escrowed funds may be used by the Association to remedy any violations of the CC&Rs and Design Guidelines. The entire Construction Deposit, or such portion that remains after the use of funds by the Association to remedy violations, will be refunded after Final Inspection if there are no outstanding violations or non-compliance issues. Deposit will be refunded if the Applicant withdraws the Application and does not commence construction on the Lot or after all observed issues have been addressed to the Association’s satisfaction. Furthermore, pursuant to Section 2.2(e) herein, the construction deposit may be forfeited, in whole or in part, if identified issues are not remedied in a timely manner.

• Phase I Design Documents

All of the plans and documents listed above related to the Initial Application Forms are to be submitted in the proper scale as listed and should be printed on 24” x 36” sheets (at a minimum). Larger sheets may be required in order to include all necessary dimensions, notes, etc. for large residences.

All plans and documents and related information must be submitted in digital file format (PDF, JPEG, etc.) along with the printed materials. Digital files should be saved at the highest quality possible. Submit digital files on a single CD/DVD for each review.

Picacho Mountain Homeowners Association
Application for Design Review
for New Residence

Application for Lot #: _____ Application Fee Paid - \$100 non-refundable: _____

Date Received: _____ Construction Deposit - per Section 2.2 (b): _____

In order to maximize conformance with the Designs Guidelines requirements and to minimize potential non-compliance and redesign efforts this completed application for new construction, along with the Phase I Design Documents listed in Section 2.2 (b)1 on page 12 of the Design Guidelines and a copy of the Lot purchase contract, must be reviewed and approved by the Declarant.

Applications must be submitted along with the Phase I Design Documents detailing the intended construction with one full paper set and one full set in electronic format (PDF, JPEG, CAD, etc.) to:

Picacho Mountain Community Association, Inc.
P.O. Box 1305
Fairacres, NM 88033

Phone: 575-523-2500

e-mail: HOA@picachomountain.com

Name of Applicant (Owner): _____

Property Address: _____

Neighborhood (i.e. Las Estancias): _____ Lot # _____

Style of Home/Exterior Elevation Description: _____

Mailing Address (required): _____

Phone # (Daytime): _____ (Evening): _____

E-mail Address (required): _____

Indicate Largest Dimensions of Proposed Residence (Height, Width, and Length):

Maximum Overall Height _____ Maximum Overall Width _____ Maximum Overall Length _____

Indicate Square Footages: Air Conditioned _____ Covered Patio _____ Garage/Mechanical _____

Licensed Contractor performing the work: _____

Licensed Contractor New Mexico License #: _____

Licensed Contractor performing work contact phone #: _____

Estimated Beginning Date: _____ Estimated Completion Date: _____



I submit this application and attachments for review and approval and certify that all the information contained here and in the attachments is accurate to the proposed plans. I understand and acknowledge that no work may commence prior to approval and that I will be liable for all costs necessary to bring any nonconforming work into compliance. I understand that as part of the review process the Declarant or designee may contact my surrounding neighbors regarding this project. I agree to maintain the improvement if approved. I understand that the project must commence within one calendar year from the date of approval of the Phase I Design Documents or the approval shall expire. I will comply with all city, county and state laws and will obtain all necessary permits prior to start of construction if necessary.

Owner Print Name: _____

Owner Signature: _____ Date: _____

Contractor's Acknowledgement of receiving and reading the Design Guidelines

Contractor Print Name _____

Contractor Signature: _____ Date _____

**NOTE: Attach all Phase I Design Documents listed in
Section 2.2 (b)1 on Page 12 of the Design Guidelines**

2.2(b)1 Phase I Design Documents

Topographic Survey of Lot and Surroundings (1/20 scale)

- ___ Vicinity of site map
- ___ Adjacent lot numbers
- ___ 10' contours of entire lot
- ___ Property boundary lines
- ___ Easements
- ___ Set back lines from property boundary lines for: dimensioned building(s), roof overhangs, pools, patios

Site Plan (1/20 scale with North designation)

- ___ Existing and proposed grades (on plan)
- ___ Proposed finished floor elevation
- ___ Proposed Building Envelope with the Maximum Disturbed Area (clearly delineated on related documents and drawings)
- ___ Proposed schematic site design concept with drives, walks, patios, pools, etc.
 - NOTE: The building site must be within the allowable disturbed area of the lot per Section 3.1**
- ___ Utility Line Locations
- ___ Proposed location of Retaining and Stem Walls (these walls must be constructed before pad is poured)
- ___ Proposed locations, sections and details of all yard, garden and other landscape walls
- ___ Collection pond locations, shapes and pond calculations (recommended pond shapes are more oval/organic than square)
- ___ Proposed grading and drainage details

Storm Water Pollution Prevention Plan (SWPPP)

Floor Plan (1/4" Scale)

- ___ Proposed Floor Plan with rooms designated by name
- ___ Room dimensions
- ___ Location(s) of exterior HVAC unit(s) with required screening

Exterior Elevations (1/4" Scale)

- ___ Four (4) proposed elevations identified as North, South, East, and West
- ___ Entry Doors, Garage Doors, Courtyard & Garden Gates, Columns, Ornamental Work, Exterior Trim
- ___ Special Features: Skylights, Solar Panels, Exterior Lighting Locations, etc.
- ___ Items Evident on Exterior: Chimney conceal shrouds, Louvers, Vents, Roof Drains, Gutter Outlets, Access Openings, Utility Meter Boxes, Electrical Fixtures, Flashing, Tile or Masonry Feature Strips, etc.
- ___ Maximum Height of Finished Structure

Roof Plan (1/4" Scale)

- ___ Skylight sizes and locations
- ___ Solar panel locations, sizes and directional orientation with section views of surrounding parapets
- ___ Gutters, Roof Drains, Scuppers or Canales, Flashings, & Related Sheet Metal (not over HVAC unit)
- ___ Roof Slopes and Water Flow with Directional Arrows
- ___ All Roofing Materials and Colors

Foundation and Framing Details (1/4" Scale)

- ___ All Slab Elevations (verify elevation with nearest benchmark at front of curb)
- ___ References and Details Required for Construction of Foundation and Installation of Concrete
- ___ Framing Details

Electrical Plan (1/4" Scale)

Miscellaneous Details

- ___ Windows and window frames: materials, colors, and glass selections
- ___ Building Sections, HVAC, Plumbing, Exterior Soffits locations and details
- ___ Chimney conceal shrouds and other vents should be painted a color similar to the house
- ___ Any Additional Plans Necessary for Completion of the Project

Picacho Mountain Homeowners Association
Application for Design Review for
Modifications or Additions to Residence

Application for Lot #: _____ Application Fee Paid: _____

Date Received: _____ Fee Received By: _____

In order to maximize conformance with the Design Guidelines requirements and to minimize potential non-compliance and redesign efforts this application for modifications and/or other additions, along with the Schematic Design Documents listed below on page 2 of this Application, must be reviewed and approved by the Declarant.

Applications must be submitted with the Schematic Design Documents listed below detailing the intended construction with one full paper set and one full set in electronic format (PDF, JPEG, CAD, etc.) to:

Picacho Mountain Community Association, Inc.
P.O. Box 1305
Fairacres, NM 88033

Phone: 575-523-2500

e-mail: HOA@picachomountain.com

Name of Applicant (Owner): _____

Property Address: _____

Neighborhood (i.e. Las Estancias): _____ Lot # _____

Mailing Address (if different from above): _____

Phone # (Daytime): _____ (Evening): _____

E-mail: _____

Reason(s) for Design Review Application (please check all that apply);

- Checkboxes for: Addition to House, Ancillary Building, Shade Structure (Awning, Canopy), Add Pool or Spa, Add Fireplace/BBQ, Revise Landscape/Hardscape, Add/Expand Patio, Add/Modify Patio Cover, Add Ramada or Gazebo, Recreation/Play Equipment, Security Screens or Coverings (Doors, Windows), Exterior Paint Color(s), OTHER (explain):

Indicate Largest Dimensions of Modification or Addition (Height, Width, and Length):

Maximum Overall Height _____ Maximum Overall Width _____ Maximum Overall Length _____

Licensed Contractor performing the work: _____

Licensed Contractor New Mexico License #: _____

Licensed Contractor performing work contact phone #: _____

Estimated Beginning Date: _____ Estimated Completion Date: _____



I submit this application and attachments for review and approval and certify that all the information contained here and in the attachments is accurate to the proposed plans. I understand and acknowledge that no work may commence prior to approval and that I will be liable for all costs necessary to bring any nonconforming work into compliance. I understand that as part of the review process the Declarant or designee may contact my surrounding neighbors regarding this project. I agree to maintain the improvement if approved. I understand that the project must commence within ninety (90) days from the date of approval of the Schematic Design Documents or the approval shall expire. I understand that all work must be completed within one-hundred-eighty (180) day after commencement unless otherwise approved. I will comply with all city, county and state laws and will obtain all necessary permits prior to start of construction if necessary.

Owner Print Name: _____

Owner Signature: _____ Date: _____

Contractor's Acknowledgement of receiving and reading the Design Guidelines;

Contractor Print Name _____

Contractor Signature: _____ Date _____

Schematic Design Documents (as applicable):

Photos of Existing Residence

Topographic Data (1/20 scale with North designation)

- ____ Location(s) of modifications or additions relative to property boundary lines, set back lines, and easements
- ____ Proposed revisions to finished floor elevation(s)
- ____ Proposed additional Maximum Disturbed Area

Site Plan (1/20 scale with North designation)

- ____ Proposed schematic site design concept with drives, walks, patios, pools, etc.
NOTE: The building site must be within the allowable disturbed area of the lot per Section 3.1
- ____ Additional or revised utility locations
- ____ Revisions to existing landscape
- ____ Revisions to collection ponds and pond calculations

Updated Floor Plan (1/4" Scale) - Illustrate modifications or additions

Exterior Elevations of Modification or Addition (1/8" or 1/4" Scale) - Illustrate modifications or additions

Samples and Descriptions of Proposed Exterior Materials and Colors

Product brochures, specifications and descriptions of proposed equipment, lighting and other exterior feature



After the LEC and Declarant have approved the Initial Submission and the Construction Deposit has been made to the Association the Owner or Owner's Agent may submit the documents, drawings and related information to the county for a building permit. Once the applicable building permit has been issued, based on the documents, drawings and information approved by the Declarant, and a copy of the building permit has been provided to the Declarant, construction may commence.

2.2 (c) Phase II Submission

Prior to beginning exterior finishing and landscaping all of the drawings, documents and related information necessary to describe and define these elements of the project must be submitted for review and approval. The Phase II Submission will be reviewed for compliance with the previously approved Phase I Design submittals as well as Design Guidelines requirements. All plans and information must be submitted in a PDF format as well as printed copies.

At the discretion of the LEC, the documents and information required to be submitted for modification and addition projects may not need to include all of the documents and information included in this Section.

2.2. (c)i Finishing Plans and Information - Submission of material samples, photos, specifications, and detailed descriptions of the products, materials, sizes and colors of all proposed exterior finish items are required (refer to Section 4.5). Minimum requirements include information illustrating, describing and specifying the following:

- Exterior Materials: Stucco, Stone, Other
- Exterior Colors: Primary and Secondary Paint Colors and Paint Manufacturer
- Exterior Doors: Materials & Colors
- Accent Trim: Materials & Colors
- Driveway: Materials & Colors
- Exterior Lighting: Fixture Descriptions, Locations & Finishes/Colors

2.2 (c) ii Landscape Plans and Information – Minimum working drawing requirement include;

Plant List

- A complete list of the proposed plants for the landscaping plan (from the Picacho Mountain approved plant list - must include common and botanical names, sizes, locations and quantities)

Landscape Plan (Planting & Hardscape - 1/8" to 1/20 Scale)

- Show and Describe all Hardscape (Material, Color, and Finish)
- Drainage Plan

Pool, Spa, and Fountain Plans and Details

- Plans, Sections, and Details for All Water Features on Lot
- Pertinent Electrical Details.

Landscape Lighting

- Locations of all Landscape Lighting and Features
- Directional arrows indicating lights patterns and aim
- Examples of all Fixtures Used (photo copy)
- Exterior Lighting on Home, Screens, Yard and Garden Walls, etc. on Elevation Views

After the LEC and Declarant have approved the Phase II Submission implementation of the finishing and landscaping may commence.

2.2 (d) REVISIONS AND UPDATES

- Revisions and updates to the previously submitted and approved Phase I and Phase II Submission documents and information may be submitted subsequent to obtaining a building permit and commencing construction. However, all revisions and updates must be reviewed and approved prior to implementation. Submission of revisions and updates to these plans must be submitted no later than six (6) months after the date on which the Phase I Submission notice of approval is given.

- The revision and update submissions will be reviewed for compliance with the previously approved submissions as well as the Design Guide requirements. The submission documents must include complete symbol and abbreviation legends. All documents must be submitted in a PDF format as well as printed copies.
- Once construction has commenced it must be diligently pursued to completion. The date of issuance of the building permit shall be considered as the date on which construction has commenced. All work shall be completed within sixteen (16) months of commencement of construction unless otherwise specified in the notices of approval or in this Design Guide, or unless the Declarant grants an extension in writing. If approved work is not completed within the required time it will be considered nonconforming and will be subject to enforcement action by the Association, Declarant, or any aggrieved Owner.
- Notwithstanding the above, landscaping shall be installed, as approved, in the front yard of a Lot, and on any portion of a Lot that is required to be landscaped that is visible from a street, other Lots or Parcels, or the Common Areas, within sixteen (16) months from the date of commencement of construction. The Declarant's decision as to which portions of a lot are affected by this requirement is final.

2.2 (e) FINAL INSPECTION

- The Owner shall provide written notification to the Declarant upon substantial completion of the residence (or modifications and/or additions) for which approval was previously given. Within a reasonable time the Declarant shall notify the Owner of the date and time at which a Final Inspection of the project will take place. The Owner and/or his agent shall have the opportunity to attend the inspection.
- A report of the results of this inspection will be issued within ten (10) business days after the inspection noting any deficiencies, violations or unapproved variations from the approved submissions. If the inspection indicates that the project is deemed to comply with all approved submissions and the Design Guidelines, and the policies, restrictions and regulations in effect, the Declarant shall issue a written final approval
- If the Owner has failed to remedy any non-compliance within thirty (30) calendar days from the date that the Final Inspection report is issued the Declarant shall notify the Owner and may take such action to complete or remove or remedy the non-complying elements as is permitted in this Design Guidelines and the Declaration of Covenants, Conditions and Restrictions for Picacho Mountain and to retain all, or a portion of, any of the Construction Deposit. Declarant or authorized designees shall be allowed to make any number of observations and/or site visits to discuss or review the progress related to remedying any non-conformance.

2.2 (f) NOTICES OF APPROVAL

- Notices shall be deemed to have been given at the time the envelope containing the written determination of the response is deposited with the U. S. Postal Service. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the applicant.
- EMAIL NOTIFICATION: Whenever possible, notification will also be emailed to the applicant, but formalized notice shall only be deemed to have been given via the methods described above. Email notifications are for information purposes only and do not qualify as formalized notification as required for approval.
- In the event that the Reviewer fails to respond in the timelines specified above, approval shall be deemed to have been given, subject to Declarant's right to veto.
- No approval shall be deemed to have been given to any applications or plans that violate any provision of the Declaration.
- No approval, whether expressly granted or deemed granted, shall be inconsistent with the Design Guidelines unless a written variance has been granted.

Section 2.3 No Waiver of Future Approvals.

- Each Owner acknowledges that the Persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly.
- Each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the Declarant may refuse to approve similar proposals in the future.
- Approval of applications or plans, or in connection with any other matter requiring approval, shall not constitute binding precedent in any other matter nor an estoppel or waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

Section 2.4 Variances.

- The Declarant may authorize variances from compliance with any of its standards and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require attention.
- Such variances may only be granted when unique circumstances dictate and no variance shall:
 - (a) be effective unless in writing;
 - (b) be contrary to this Declaration; or
 - (c) prevent the Reviewer from denying a variance in other circumstances.
- For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance. Notwithstanding the above, the LEC may not authorize variances without the written consent of the Declarant during the Class "B" Control Period.

Section 2.5 Limitation of Liability.

- The standards and procedures in this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Properties; they do not create any duty to any Person.
 - (i) Neither the Declarant nor the Reviewer shall bear any responsibility for ensuring:
 - (a) structural integrity or soundness of approved construction or modifications;
 - (b) compliance with building codes and other governmental requirements;
 - (c) that all Dwelling Units are of comparable quality, value, size, or design; or
 - (d) that improvements will be aesthetically pleasing or otherwise acceptable to other Owners.
 - Declarant, the Reviewer, the Association, the Board, any committee, or any member of any of the foregoing shall not be held liable for any claim whatsoever arising out of construction on, or modifications to, any Lot or Parcel. In all matters, the Reviewer shall be defended and indemnified by the Association.
 - (ii) Both Lot Owner and his Contractor as well as all subcontractors, consultants, agents, employees, agree to hold Declarant, the Reviewer, the Association, the Board, any committee, or any member of any of the foregoing shall not be held liable for any claim whatsoever arising out of any unsafe construction practice whether leading to injury or fire on any Lot or Parcel. In all safety matters, the Declarant, et al shall be defended and indemnified by the Lot Owner et al.
 - (iii) Lot Owner and his Contractor as well as all subcontractors, consultants, agents, and employees agree to hold Declarant, the Reviewer, the Association, the Board, any committee of the Association, and/or any member of any of the foregoing not liable for any claim whatsoever arising out of damages caused by a fire for any reason. In any matter of fire or damage to any structure, landscape foliage, etc. the Declarant, et al shall be defended and indemnified by the Lot Owner et al.

Section 2.6 Enforcement.

- Any construction, alteration, or other work done in violation of this Article or the Design Guidelines shall be deemed to be nonconforming.
- Furthermore, Declarant, or the Association, shall have the authority to require any Owner or Owner's agents or contractors to cease and desist in constructing or altering any improvements on any Lot or Parcel, where such actions have not first been reviewed and approved, or which constitute a violation of this Declaration, the Design Guidelines, or the Declaration of Covenants, Conditions and Restrictions for Picacho Mountain (CC&Rs).
- Upon occurrence of violation(s) a Notice of Nonconformance shall be sent to the Owner via first class US Mail by the Declarant or the Association. The Notice shall inform the Owner of the nonconformance items and the time frame for cure and shall be considered the sole document required to inform the Owner of such nonconformance. The Owner shall respond to such Notice within fifteen (15) calendar days of the date of mailing of the Notice to identify cures to the nonconformance. Should Owner not respond within fifteen (15) calendar days to such Notice the Declarant or Association shall conclude that the Owner agrees with the statement of nonconformance as described in the Notice and will implement the cure(s) within the time frame stated in the Notice.
- Upon written Notice of Nonconformance from the Association or Declarant, Owners shall, at their own cost and expense and within such reasonable time frame as set forth in such written Notice, cure the nonconformance to the satisfaction of the requester or restore the Lot or Parcel to substantially the same condition as existed prior to the nonconforming work.
- Should an Owner fail to cure as required, the Association, Declarant, or their designees shall have the right, but not the obligation, to affect any or all of the following remedies and the exercise of any one remedy shall not prevent the Association or Declarant from exercising any other remedy available to it, whether listed below of at law or in equity:
 - garnishment of the Construction Deposit held in escrow by the Association,
 - levying fines against the Owner's property to be paid to the Association based on the time period elapsed from the end of the time frame stated in the Notice and the time at which the nonconformance is cured,
 - take actions judged commensurate with the nonconformance that are in the best interests of the Declarant and Association including, but not limited to, assessing additional fines, filing liens, pursuing lien foreclosure, etc.,
 - enter the Lot or Parcel, remove the violation, and restore the property to substantially the same condition as previously existed.
 - All costs incurred by the Declarant or Association related to curing nonconformance may be assessed against the Lot or Parcel and collected as a Special Assessment.
- Upon re-occurrences of any cured nonconformance conditions the Declarant or Association may take actions in addition to the foregoing judged to be appropriate for the circumstances.
- All approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot or Parcel, unless approval to modify any application has been obtained. In the event that any Person fails to commence, and diligently pursue to completion, all approved work by the deadline set forth in the approval, Declarant, or the Association, shall be authorized, after notice to the Owner of the Lot or Parcel including opportunity to be heard, to enter upon the Lot or Parcel and remove or complete any incomplete work and to assess all costs incurred against the Lot or Parcel and the Owner thereof as a Special Assessment unless otherwise prohibited in this Declaration.
- All acts by any contractor, subcontractor, agent, employee, or invitee of an Owner shall be deemed as an act done by or on behalf of such Owner. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded from the Properties, after being provided with notice and an opportunity to be heard. In such event, neither Declarant nor the Association, their officers and directors, shall be held liable to any Person for exercising the rights granted by this paragraph.
- In addition to the foregoing, the Association and Declarant shall have the authority and standing, but not the obligation, to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the Reviewer including retention of all, or a portion of, the Construction Deposit.



Section 3.1 Building Location and Allowable Disturbed Area.

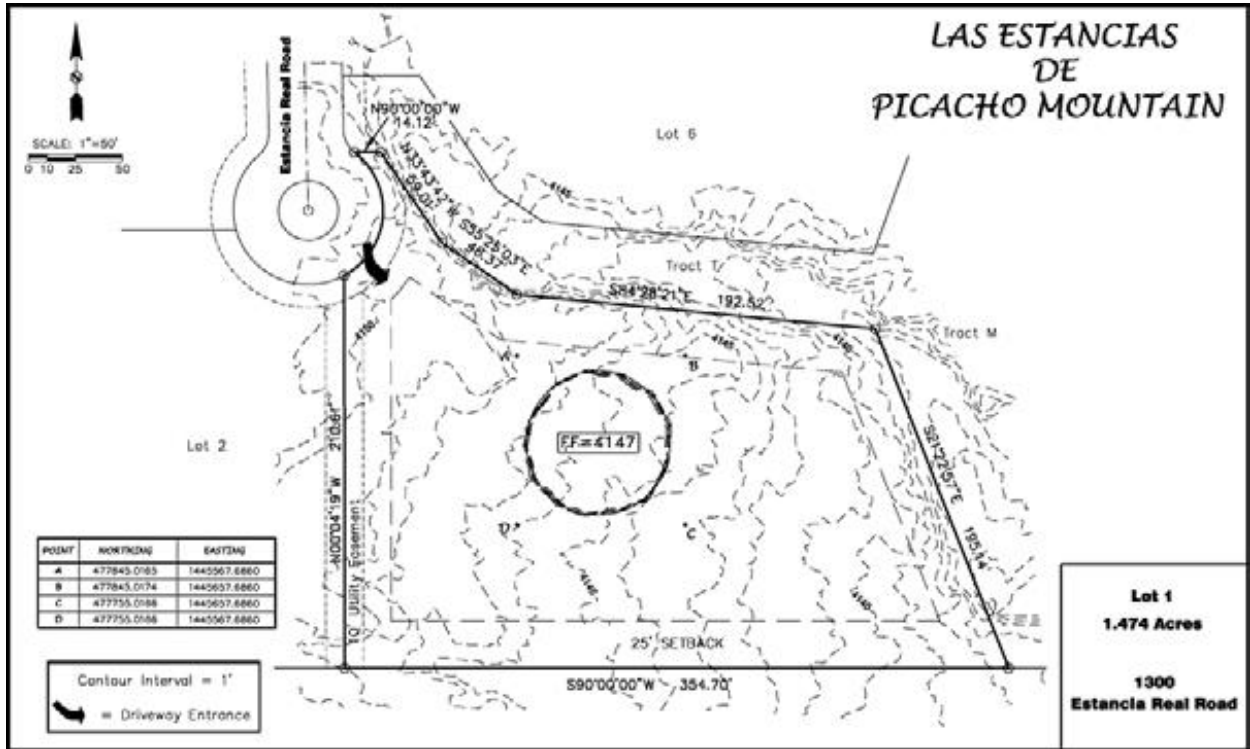
No structure shall be located on any Lot that violates the setback requirements of the Uniform Development Code (UDC) ordinances of the County of Doña Ana and/or other applicable authorities.

3.1.1 Building Envelope. All buildings and structures will be built within an allowable disturbed area of the lot, at the elevations recorded on the plat map, unless otherwise approved in writing or already accordingly adjusted by the Lifestyle Enrichment Committee. This maximum disturbed area is designated the "Building Envelope". The ***approximate*** location/size of the building envelope will be 10' out from the building pad, driveway, and other approved structures. This 10' dimension will vary according to site topography and other construction requirements. The exact location of the building envelope will be decided by the LEC.

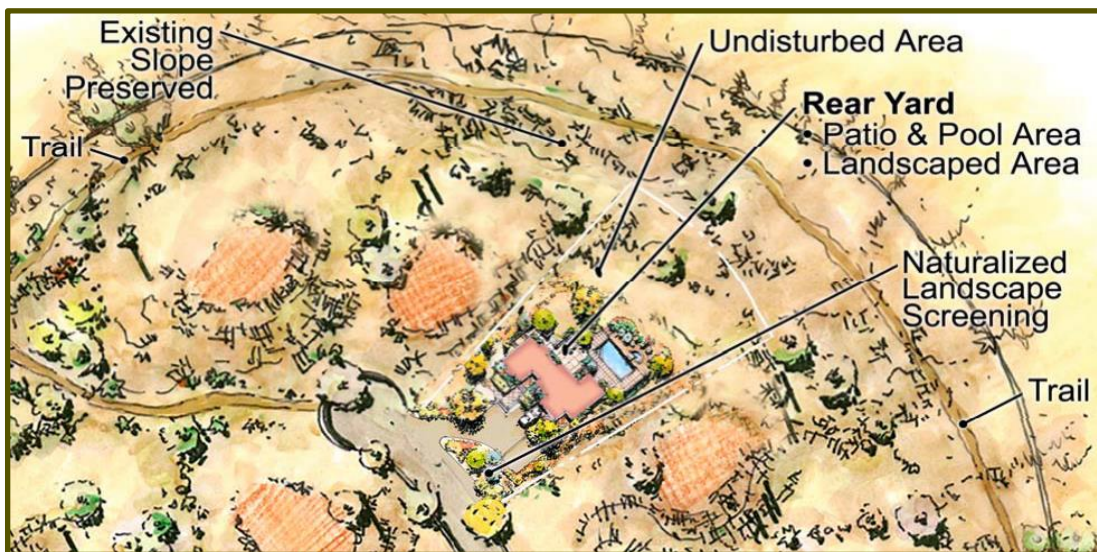
The building envelope approved by the LEC will be staked with standard 3' high SILT fencing or otherwise clearly marked before any construction begins. All construction, construction traffic, material movement, and disturbance to the site will be done inside the building envelope. Any unapproved work done outside the building envelope makes the owner/builder liable to replace/repair any damage that the LEC believes is necessary to return the land to the original condition. This includes but is not limited to replacing vegetation and wildlife. This will be a non-negotiated assessment from the LEC.

All of the building envelope markers shall remain in place until Final Approval of the project by the LEC.

3.1.2 Site Plan. The site plan Picacho Mountain provides contains four (4) specific points determined by Picacho Mountain as the general area for the residence pad. These points are field locatable, and they should be placed and verified when the builder has the pad area surveyed and staked. Any pad built higher than the allowed pad elevation must be remedied to allowable height prior to the slab being poured. The finished floor elevation will be determined as the pad elevation plus 4 inches.



3.1.3 Allowable Disturbed Area. No more than two-thirds (2/3) of any lot area is to be disturbed by any construction activities related to the driveway or residence (includes building pad, patios, yards, pools, casitas, ponds, etc.). All requests for an increased Allowable Disturbed Area will be considered on a case by case basis and any decision will not be considered as setting a precedent. The image below shows a typical lot situated on a lot within its maximum area of disturbance.



The pads are built in an organically shaped manner that fits the house onto existing topography, and does not use large amounts of grading to force the construction of the pad. The topography should be considered when locating the house site. For example, sites with hilly topography may not be suitable for large yards, as all grading must remain within the Building Envelope. Note the diagonal driveway that does not go straight to the home. This provides an effect of the home being surrounded by landscape and natural desert, instead of a wide paved corridor from the street to the house.

Due to the smaller size of Cluster Village residence sites, it will be necessary to grade the entire home site. No disturbance outside the individual site is allowed other than subdivision site work for the installation of infrastructure and common area amenities.

Disturbed Area Illustration 1:



Disturbed Area Illustration 2:



3.1.4 Typical Slab Construction. The monolithic turn down slab is the typical slab construction method. This method involves building the pad through cutting, filling, grading, and compaction.

Because we hope to maintain as much natural landscape as possible, and because of the unique elevation changes present on many of our lots, this method does not prove effective in many circumstances.

When the pad elevation is more than +/- 3ft of the existing grades, grading to achieve the desired pad elevation will destroy too much of the native vegetation and landscape.

Section 3.2 Setbacks.

The setbacks requirements for the Picacho Mountain Estate Homes are:

- (a) All structures will maintain a minimum separation of twenty (20) feet from overhang to overhang.
- (b) 25' front and rear setbacks, 10' side setbacks.

The setback requirements for the Cluster Village Homes will be as required by the County of Dona Ana UDC and/or any applicable authorities.

SECTION IV

ARCHITECTURAL REQUIREMENTS



Section 4.1 Architectural Styles

Generally accepted southwest architectural styles may be used. These styles are described as Pueblo/Santa Fe style, Territorial style, Spanish or Spanish Colonial style, Mission style, and Contemporary Southwestern style. There are distinctive characteristics of each of these styles, and it is the intent of this Design Guidelines to maintain a single architectural style throughout the construction of any home. Each home may be different, but each home should be consistent with a single architectural style. The intent is for homes to blend seamlessly with the natural surroundings by using a muted color palette, organic textures and a single architectural style.

4.1.1 Pueblo / Santa Fe Style



Pueblo homes have many of these features:

- Flat roof with no overhang
- Massive, round-edged walls made with adobe or adobe-like material
- Rounded parapets with spouts in the parapets to direct rainwater
- Stepped levels
- Vigas (heavy timbers) extending through walls serve as main roof support beams
- Latillas (poles) placed above vigas in angled pattern
- Deep, simple window and door openings
- Kiva “beehive” corner fireplace
- Bancos (benches) that protrude from walls
- Nichos (niches) carved out of wall for display purposes
- Brick, wood, or flagstone floors

Several variations of Pueblo style exist. Some of these are:

- Pueblo Revival: Spanish influenced design with porches held up with zapatas (posts), enclosed patios, heavy wooden doors, and elaborate corbels
- Pueblo Deco: Combines Pueblo Revival with Art Deco architecture. These homes are decorated with geometric patterns and Native American designs
- Santa Fe Style: This type of Pueblo became the standard in New Mexico after it was defined by the Santa Fe Historic Zoning Ordinance of 1957
- Contemporary Pueblo: These are stripped down, un-ornamented Pueblos without posts, beams, or vigas
- Territorial Pueblo: Windows are framed with straight wooden moldings

4.1.2 Territorial Style



Southwestern Territorial homes have many of these features:

- Flat roofs with parapets above the walls
- Corners are square instead of round
- Smooth plaster or stucco walls
- Sturdy vigas supporting the ceiling structures
- Coping at the tops of the walls
- Milled woodwork, such as pedimented lintels above window frames
- Painted wood trim at the doors and windows
- Turned wood posts to support the porches (portales)

Due to the blending of styles that is common in the Southwest today, true Territorial-style architecture may be difficult to find. However, the features found in this style home are often found blended with other types of architecture.

4.1.3 Spanish / Spanish Colonial Style



Spanish inspired houses usually have these features:

- Low-pitched roof
- Roof tiles (*please see Sec 4.4 for details on how much of the roof may be tiled*)
- Little or no overhanging eaves
- Stucco siding
- Arches, especially above doors, porch entries and main windows

Some Spanish inspired homes have:

- Asymmetrical shape w/cross gables and side wings
- Flat roof and parapets - or a hipped roof
- Carved doors
- Spiral columns and pilasters
- Courtyards
- Carved stonework or cast ornaments
- Patterned tile floors and wall surfaces

4.1.4 Mission Style



Spanish Mission style houses have many of these features:

- Smooth stucco siding
- Roof parapets
- Large square pillars with twisted columns
- Arcaded entry porch
- Round or quatrefoil windows
- Roof tiles (*please see Sec 4.4 for details on how much of the roof may be tiled*)
- The front door is often rounded with wrought iron hardware
- Arched dormers and elaborate arches
- Decorative work such as patterned tile work, stone carvings, or elaborate grillwork

4.1.5 Southwest Contemporary Style



The Southwest Contemporary architecture is more difficult to define because it is still emerging.

It can be loosely described as a clean, sharp, modern interpretation of Pueblo / Santa Fe influences.



Section 4.2 Size of Residences.

The floor plan areas of all residences shall be exclusive of the area of attached garages, porches, servant’s quarters, guest houses, or other appurtenances or appendages that require exiting the main residence in order to gain access.

No Estate Home residence with a floor plan area of less than Two Thousand Four Hundred (2,400) square feet shall be erected on any Lot.

No Cluster Village Home single-family residence with floor a plan area of less than One Thousand Four Hundred (1,400) square feet shall be erected on any Lot.

Except as herein provided, no residential structure erected on any Lot shall have more than one (1) story, nor exceed twenty (20) feet in height as measured from the finished floor elevation recorded on the original LEC pad elevation sheet (which identifies the original planned pad elevation of each lot) to the top of the highest point of the roof. Not more than one half (1/2) of the residence by square footage shall reach the 20 feet height and the remainder of the home may not exceed sixteen (16) feet in height.

Two-story or multi-level homes may be approved only when the topographical features of the lot are such that a two-story or multi-level home may be constructed without intrusion into view corridors of residences of neighboring lots. Those lots which are known to have such topography may be further identified by lot number by the association. Those identified lots will be the only lots upon which it is permissible to build two-story or multi-level homes, subject to the approval of the Lifestyle Enrichment Committee.

The height of any addition to an existing structure will not be higher than the highest roofline of the original construction.

Example of varying roofline heights



Section 4.3 Building Pads and Driveways.

Building pads and driveways shall be constructed within the areas so designated on the site plan. Any proposed changes must be submitted to the Lifestyle Enrichment Committee in writing with appropriate drawings of proposed changes of locations and/or elevations.

- No driveway that causes more than one entrance from the street will be permitted. This ensures that as much desert is protected as possible. In the event that the site presents a unique opportunity to use a circle drive, obtaining a variance from the LEC is always an option.
- Regardless of the type of material chosen to complete the majority of the driveway, at least the first twenty (20) feet of the entry, starting at the curb, must be concrete in order to prevent as much silt as possible from running onto the streets.
- While it is not required, the use of muted natural color pigmented concrete or earth-tone brick pavers for driveways is encouraged.

Building pads must be built upon within 30 days of completion and must provide retaining walls or other approved methods to eliminate erosion of pad into native landscape. Pads and driveways shall be protected during construction to prohibit erosion of silt on to the streets, into the native landscape, or into the natural arroyos.

Driveway Detail with proper design (Entry paved, drainage solutions, re-vegetation, materials, etc.)



Driveway Detail with poor erosion control



Section 4.4 Roof Design.

Roofs shall be designed and constructed in the southwest style using southwest design materials approved by the Lifestyle Enrichment Committee and with low pitch or flat style, in no instance exceeding a maximum pitch of 5 vertical rise over 12 horizontal run. Parapet walls must be constructed at least 12 inches taller than the roof surface in closest proximity. No roof area greater than 1500 sq. ft. shall be permitted without a parapet wall separating that roof area from adjacent roof area. False parapet walls may be used to break up the roof plane, however when any end of a parapet wall is exposed to public view so that the cross section width is evident, that end must be built to a minimum width of twelve (12) inches.

Neither metal roofs nor cement tile will be permitted unless so approved by specific variance issued by the LEC. Working with these materials requires special aesthetic attention and will be approved on a case-by-case method only. Consideration for the materials will take place only during Schematic Design or Design Development review per the variance procedures listed in this document.

All roofs shall have a low light reflectance value. No roof shall cover more than 30% of the square footage of the home with tile. Tiled areas of roof may not be comprised of a traditional one-color terra-cotta effect. All tiled areas of roof must have a variegated or mottled color effect. No tiles are allowed to have a shiny or glossy finish. No machines, equipment, fixtures or furnishings of any nature (except solar energy collection panels that are hidden from view) shall be permitted on any roof, to include evaporative coolers and/or air conditioners. Skylights shall blend into the overall roof design and color scheme, and must not be mirrored or overly reflective as determined by the Lifestyle Enrichment Committee. Chimneys must be enclosed, and all sheet metal vents and vent piping must be painted to match the home and concealed from view to the extent allowed by local code.

Roof-top color shall be the same color as the major surface color of the primary residence. This application of color may be of a lighter tone, but the color tone used in this application must compliment the major surface color. The terrain of Picacho Mountain has a west to east sloping characteristic, and it is the intent of this roof-top coloration requirement to protect the natural desert colors, and to prevent the occurrence of views filled with white or other nonconforming colored rooftops.

Roof Design Illustrated 1

(Slope, Coloring, Mechanical Considerations, Parapet Height, Etc.)



Roof Design Illustrated 2

(Slope, Coloring, Mechanical Considerations, Parapet Height, Etc.)



Section 4.5 Exterior Surface Materials.

Exterior surface materials shall be such that they blend with the natural desert environment and landscape. Masonry, stucco, stone/rock veneer, and adobe are acceptable exterior surface materials. The colors of these materials shall be natural in character, and subdued in general appearance to blend with the natural desert colors. A palette of approved colors will be provided by the LEC.

Wood accents, and exposed wood structural beams are permitted, so long as wood is not used to cover large surfaces such as wood siding. Exterior walls must be finished down to finish grade with the exterior surface material, to eliminate view of unfinished foundation walls. Windows and doors may not be mirrored and frames must be of a color that blends with or accents the color scheme of the entire home. In addition, garages and garage doors must be located such that they are not a major visual impact from the street. Though not required, side entry garages are encouraged.

Exterior Example 1



Exterior Example 2



Example of Wood Details



Section 4.6 Residence Buildings and Garages.

No building or other structure shall be built, placed, constructed, reconstructed, or altered on any Lot other than a single-family residence, and no structure will be occupied or used until the exterior construction thereof is completed. Detached accessory buildings or structures including but not limited to guesthouses, casitas, pool houses, cabanas, garages, and etcetera, must appear as integral to the primary residence structure, and attached by a common wall. In accordance with the Declaration of Covenants, Conditions, and Restrictions (CC&Rs) for Picacho Mountain, Exhibit C - Initial Use Restrictions, Section 2.1 - Residence Buildings and Garages each single-family residence situated on a Lot shall have an enclosed, attached garage for not less than two (2) nor more than four (4) automobiles.

No garage shall have more than one (1) story. Space for parking one (1) RV may be incorporated into a garage in addition to the allocated automobile spaces, however, such space must be designed so that the additional height and size of the garage does not become a major design element of the residence as viewed from the street directly in front of the center of the lot's street frontage. The suggested design for the RV garage is a design that incorporates a low driveway that allows the roofline to be the same height as the home. No carport shall be built, placed, constructed or reconstructed on any Lot.

No garage shall ever be changed, altered, reconstructed or otherwise converted for any purpose inconsistent with the garaging of automobiles if such change reduces the total number of garage spaces to less than two. All Owners, their families, tenants and contract purchasers shall, to the greatest extent practicable, utilize such garages for the garaging of vehicles belonging to them.

Section 4.7 Septic Tanks.

No privy, cesspool, or septic tank shall be placed or maintained upon or in any Lot or other portion of the Properties without express written consent of Declarant, or as allowed by the filed final plat.

Section 4.8 Access.

No driveways or roadways may be constructed on any Lot to provide access to any adjoining Lot or other portion of the Properties unless the express written consent of the Lifestyle Enrichment Committee has been obtained.

Section 4.9 Chimneys and Exterior Fireplaces.

All fireplace flues, smoke stacks, and spark arrestors must be completely enclosed and concealed from public view in finished chimneys of materials architecturally compatible with the principal finish material of the exterior walls of the dwelling. Bare manufactured fireplace flue caps are not acceptable finish materials. No material causing a foul, noxious, or objectionable odor may be burned. Material producing burning ash, flying embers, or other cause of spread of fire may not be burned. No material which produces an ash residue outside of the fireplace itself may be burned. Gas burning installations are preferred. All chimneys must be capped with a spark arrestor that will not allow sparks and burning detritus that is a one-half inch (1/2") or greater sphere to pass through. Typically, a five-eighths inch (5/8") size spark arrestor will meet this requirement as it will not allow passage of 1/2" spherical material. All installations must meet local fire code.

Examples of Chimney Details



Section 4.10 Window Treatment.

No aluminum foil, reflective film or similar treatment shall be placed on windows or glass doors. This does not preclude the use of architectural windows that have UV coatings or other special coatings and features so long as those features do not create glare or coloration inconsistent with the approved color palette provided for the Neighborhood. All windows visible to the street shall require window treatments, this includes garage windows. Awnings, canopies or sunscreens must be approved by the LEC prior to installation, and must be complimentary to the style and appearance of the primary residence.

Section 4.11 Air-conditioning.

All air-conditioning apparatus must be installed on the ground, along the side or back of the home in a manner that conceals such apparatus. No air-conditioning apparatus shall be installed on the ground in front of a residence. No air-conditioning apparatus or any evaporative cooler shall be attached to any wall or window of a residence. Any air conditioning apparatus or evaporative cooler must be concealed from public view as viewed from the street.

Section 4.12 Walls, Fences and Hedges.

Walls and fences must be of stucco, ornamental iron, rock or masonry construction, or combination thereof. Stucco for fences and walls is the preferred construction material, as stucco blends into the desert more readily than rock wall, and appears more natural in character. Walls and fences must blend with the exterior color of the residence, and of a color approved for use within the Picacho Mountain community. Walls erected for the purpose of screening views may not exceed six (6) feet in height and whenever possible, would consist of the lower half solid and the upper half open (wrought iron) picket style. Lot perimeter walls are not permitted except on Cluster Village lots of ¼ acre or less. No chain link fences will be permitted.



Ownership of any wall, fence or hedge erected by Declarant as a protective screening on any Lot shall pass with title to such Lot and it shall be the Owners responsibility to maintain thereafter and evermore. In the event of default on the part of the Owner or occupant of any Lot in maintaining said protective screening and such failure continuing after ten (10) days' written notice thereof, Declarant or its successors or assigns may, at its option, without liability to the Owner or occupant in trespass or otherwise, enter upon said Lot and cause said protective screening to be repaired or maintained or to do any other thing necessary to secure compliance with this Declaration or any Supplemental Declaration, so as to place said protective screening in a satisfactory condition, and may charge the Owner or occupant of such Lot for the cost of such work. The Owner or occupant, as the case may be, agrees by the purchase or occupancy of such Lot to pay such statement immediately upon receipt thereof. Side walls must be within the property line or may be centered on the property line of the adjoining Lots, as mutually agreed by the owners of the adjoining lots.

Wall, Fence, and Hedge Details (Include Illustration of Heights/Types in Elevation Format)



Wall, Fence, and Hedge Details (continued)



Section 4.13 Sporting Activities (Courts, Goals, Ramps, Etc.).

The sounds of a basketball bouncing on a hard surface, tennis rackets volleying back and forth, or skateboards chattering up a ramp are loud and common complaints from residents in upscale neighborhoods. In order to protect those residents who wish to experience an upscale neighborhood in a naturally quiet desert setting, basketball goals, skateboard ramps, or any other outdoor sporting equipment or accessories may not be installed without the prior approval of the LEC.

Section 4.14 Ornamentation (Including Street Numbers).

Exterior ornamentation such as artwork, sculpture and etcetera shall not be visible from the street or from a neighboring lot, or cause a nuisance as determined solely by the LEC. This does not prohibit displaying the house address on stone in the front yard. The LEC reserves the sole right to approve the way that the house address is displayed in front of the residence, and will adhere to the overall design philosophy in such determination.

As a guide, please refer to the following examples of street numbering designs:



SECTION V CONSTRUCTION REQUIREMENTS

Note the preservation of natural landscape around the house and the stem wall construction.



Section 5.1 Minimum Construction Standards

The Lifestyle Enrichment Committee reserves the right to modify this Design Guidelines in the future as required.

- (a) **LEC Approval of plans** must be received by owner in writing from the LEC prior to any work commencing on any lot. Plans should be submitted to the LEC for approval *prior* to submittal to local government authorities. The prior approval of plans by the LEC will minimize time and effort spent in the case of changes required by the LEC. The LEC will meet with the owner/builder before construction begins to insure that there is a good understanding of the Design Guidelines, its philosophy and several items that have been historically flagged as probable issues.
- (b) **All appropriate government approval** of plans must be received by owner and/or builder in writing prior to any work commencing on any lot and a copy of such approval must be submitted to the LEC. Local government approvals do not imply LEC approval.
- (c) **Permitted plans** are required to be kept on site at all times once construction begins, and the LEC reserves the right to inspect these plans and insure that they are in compliance and agreement with the set the LEC was presented during Final Submission Document review. Periodic inspections by the LEC or Reviewer, including but not limited to, verification of disturbed areas, verification of slab location and construction, and verification of finished floor elevation, may take place at the discretion of the LEC, any time after construction has commenced.
- (d) **Material storage** must be within the LEC approved buildable pad area of the lot. No materials may be stored on streets or neighboring lots.
- (e) **Trash** receptacles/dumpsters must be provided as needed for debris and trash removal. All trash and debris must be removed from the jobsite at the end of each day by the owner or contractor. Dirt, mud and sand that collects in the street due to the work on the improvement must be removed at the end of each day. Failure to clean the job site may result in a fine of one-hundred dollars (\$100.00) per occurrence. Failure to clean the site within 48 hours after being notified of the failure, the LEC may hire services to clean the area, and the cost may be charged to the owner of the lot.

- (f) **Sanitation facilities** shall be provided and maintained by the owner or builder for workers. Portable facilities locations and length of use must be approved by the LEC, to minimize odor and visual impact to the neighborhood.
- (g) **Construction parking** shall not block traffic on streets. Vehicles must be parked in a manner that does not disturb landscaping. Overnight parking of construction vehicles and/or equipment is prohibited.
- (h) **Hours of construction** shall be from 7 AM to 6 PM on Weekdays and from 8 AM to 6 PM on Saturdays. No construction will be allowed on Sundays except with prior written approval of the Declarant.
- (i) **Construction signage** will consist of a Picacho Mountain Standard Sign that will be used on all constructions sites. This signage will be supplied by Picacho Mountain.
- (j) **Property damage** caused by construction activity must be repaired at the expense of the owner of the lot on which the construction activity which caused the damage is occurring.
- (k) **Prohibited conduct** of contractors, sub-contractors, builders and their agents or employees include the following expressly prohibited activities that are offensive as determined solely by the LEC:
 - a) Vehicular access of or transport over any undeveloped area of Picacho Mountain
 - b) Vehicular access of or transport over any common area, trail or pathway
 - c) Removal of any plant, rock or soil from any property in Picacho Mountain, including any other lot, common area, or undeveloped area
 - d) Children or minors may not be on the work site
 - e) Pets may not be brought to the work site
 - f) Having an open fire
 - g) Use of alcohol or drugs
 - h) Use of profane language
 - i) Having loud music/radios
 - j) Speeding vehicular traffic
- (l) **Exterior construction** of the primary residential structure, garage, porches, and any other buildings appurtenances or appendages of every kind and character on any Lot and all landscaping in front yards and side yards abutting streets shall be subject to the following construction time table:

Construction Timeline:

Pad Site Dirt Work ---May not begin until lot owner is ready to undertake all construction needed to complete the residence, and must be complete within two (2) months from start of pad site dirt work. This work shall include any planned retaining walls.

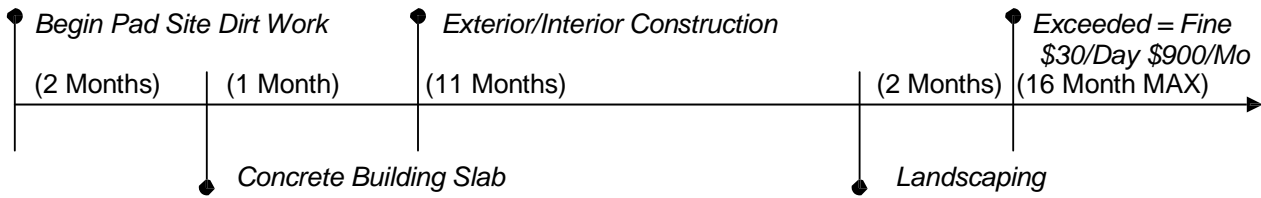
Concrete Building Slab--Must be complete within three (3) months from start of work on Pad Site Dirt Work.

Exterior/Interior Construction----Must be finished within Fourteen (14) months from the start of work on Pad Site Dirt Work.

Landscaping-----Must be complete within sixteen (16) months from the start of work on Pad Site Dirt Work.

Exceeded Timetable---Any Owner of any lot that is being improved shall be assessed thirty dollars (\$30.00) per day payable to the Picacho Mountain Homeowners Association for each day or portion thereof that exceeds the construction timetable set forth in this Section 5.1 (l).

Graphic Timeline Representation:



- (m) **No window or wall-type air conditioners** shall be permitted to be used, placed or maintained on or in any building in any part of the Properties.
- (n) **Approval of landscaping** must be given by the LEC before landscaping shall be done in the front of any newly constructed residential structure. Such landscaping is to be done in/around the driveway area and on the front of the Lot as viewed from the street at the time the residential structure is being completed and before occupancy. Please refer to section 6 for details concerning landscaping design and to Section 2.2 for landscaping plan submittal and review procedures.
- (o) **Exterior antennas, aerials, satellite dishes, or solar collectors** or other apparatus for reception of solar energy, television, radio, satellite or other signals of any kind shall not be placed, allowed, or maintained upon any portion of any Lot which is visible from any street, common area or other Lot unless it is impossible to receive signals from another location on the lot that is concealed from public view. In that event, the receiving device may be placed in a visible location as approved by the Lifestyle Enrichment Committee. The Lifestyle Enrichment Committee may require as much screening as possible while not substantially interfering with reception.

No satellite dishes shall be permitted which are larger than one (1) meter in diameter. No broadcast antenna mast may exceed the height of the center ridge of the roofline, or exceed the height of the parapet wall. No exterior antennas, aerials, satellite dishes or other apparatus which transmit television, radio, satellite or other signals of any kind shall be placed, allowed, or maintained upon any portion of any Lot without prior approval by the LEC. This subpart shall be interpreted to be as restrictive as possible while not violating the Telecommunication Act of 1996, as may be amended from time to time.

The use of solar energy collection is encouraged; however, the placement of these panels must be such that they do not negatively impact the visual aesthetics of the home and/or neighborhood, as solely determined by the LEC.

Refer to Section 1.5 above for more details regarding solar panel installation.

- (p) **Utilities (Gas, Water, & Electricity)** shall be run from stub out to house in the least destructive manner possible. Anywhere possible, the utilities should follow the shortest possible path to the home without undue destruction of the natural environment. In either case, anywhere visible destruction occurs, the LEC reserves the right to enforce mandatory re-vegetation of the natural landscape at the expense of the site's owner.

Section 5.2 Pad Construction.

It is recommended that each lot have a soils boring performed and a geotechnical engineering report provided prior to construction of the pad. The recommendation of the engineer should be followed, and each pad built to the recommended specification. Such borings and reports in the Las Cruces area may be obtained from several companies who perform this service. This may add a small cost to the overall construction budget; however the long term benefit and assurance of having an engineered house pad in this sandy desert environment should be considered. Additionally, please refer to subsections 3.1.2 through 3.1.4 for details on recommended foundation/pad designs that help minimize the negative impact on the desert landscape surrounding the proposed home.

**General Notes**

Picacho Mountain encourages each lot owner to engage the service of a qualified landscape architect or designer. The quality of mature landscaping can add many thousands of dollars to the value of a home, and is a major element of any neighborhood. The time and effort spent in this area will reward the owner both during residence and at resale.

Please note that even though you may choose not to enlist the assistance of a landscape architect or designer, a detailed landscaping plan and plant list will still be required per the requirements noted in Section 2.2.

Section 6.1 Landscape Plant and Tree Height.

Trees and plants used in landscaping may not exceed the height of the primary residence.

Section 6.2 Grass.

It is the intention of this section to keep those areas of the Properties visible to the street as natural as possible, and to that end, grass may not be used for lawns or landscaping on front yards, or any street frontage. Artificial grass or natural grass of approved types may be used in areas of backyards not visible from the street at the vantage point directly in front of the center of the home.

Section 6.3 Plants.

All plants used for landscaping must be approved by the LEC and included in the Approved Plant List. It is the intent of this section to limit invasive, destructive, high water use, or otherwise undesirable plants.

Section 6.4 Minimum Planting Requirement.

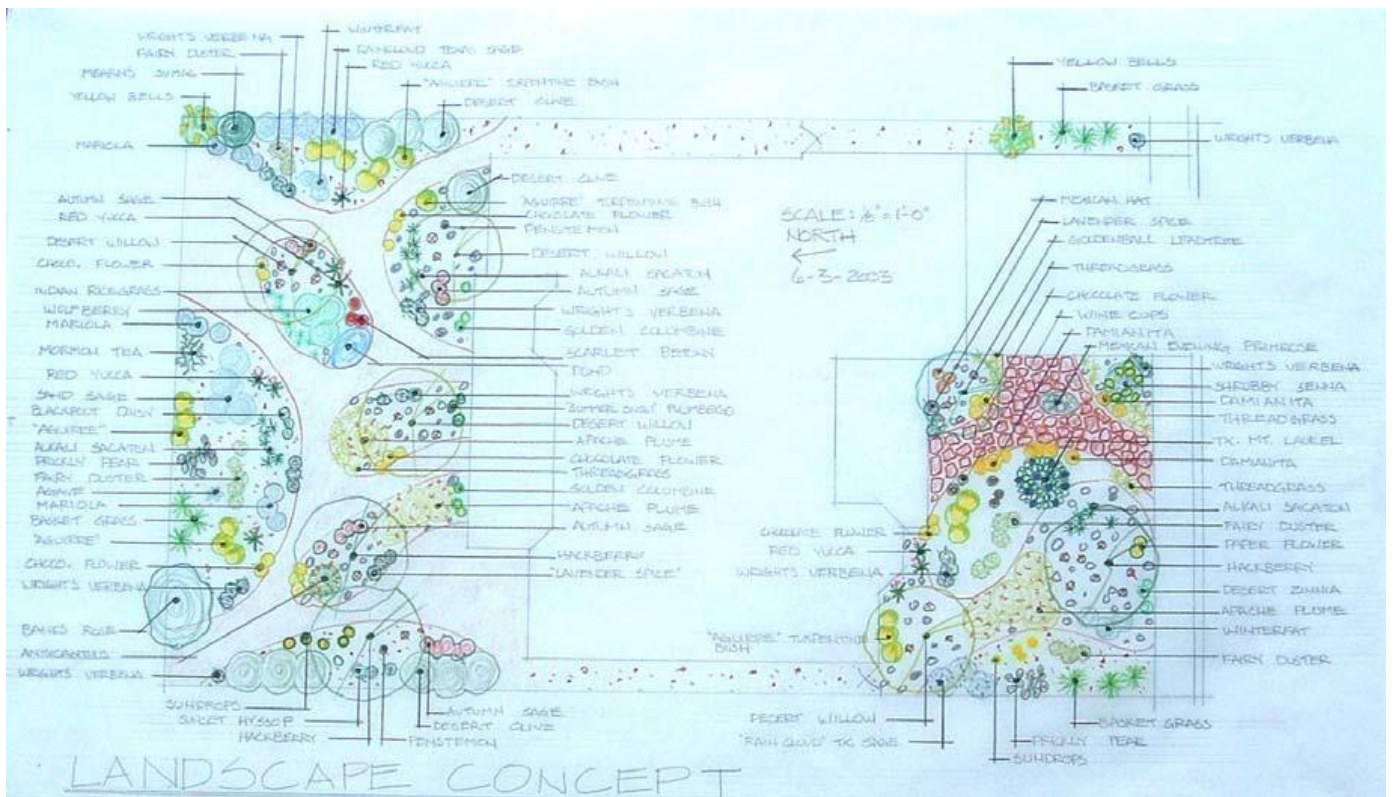
Each Estate Home lot owner shall plant a minimum of:

- (a) three (3) specimen trees of a minimum of 2" caliper in the landscape area in front of the primary residence;
- (b) Other landscape plants, including shrubs, grass, perennials, succulents and additional trees, must be planted at a density to cover at least 65% of the landscaped area at plant maturity or three years, whichever comes first. The landscape plan should reflect the mature plant sizes. It is recommended that larger container size plant be used in order to obtain a mature look as quickly as possible.

Each Custer Village Home conform with the Landscape Requirements in accordance with applicable Supplemental Declarations on record with Doña Ana County.

Section 6.5 Sample Landscaping Plan Illustrating Requirements.

The following sample illustrates what to expect from a landscaping plan as well as the execution of the aforementioned planting requirements as well as Section 2.2 requirements:



SECTION VII

DRAINAGE REQUIREMENTS



Section 7.1 Lot Site Runoff.

Lot site work and hardscape design shall provide for on-site retention of runoff created by roof drains, patios, driveways and any other design feature that may create runoff. Landscape swales and other design features shall not be constructed in a manner that could lead to soil erosion, or divert runoff to neighboring lots unless they are part of existing arroyos as defined on the site plan. Runoff shall be mitigated as much as possible on grades and slopes by the use of natural desert wildflowers and plants and rock mulches if necessary. Obstruction or re-direction of drainage following the initial location and installation of drainage swales, storm sewers, drainage channels or structures is expressly prohibited.

Drainage Details



Drainage Details (continued)

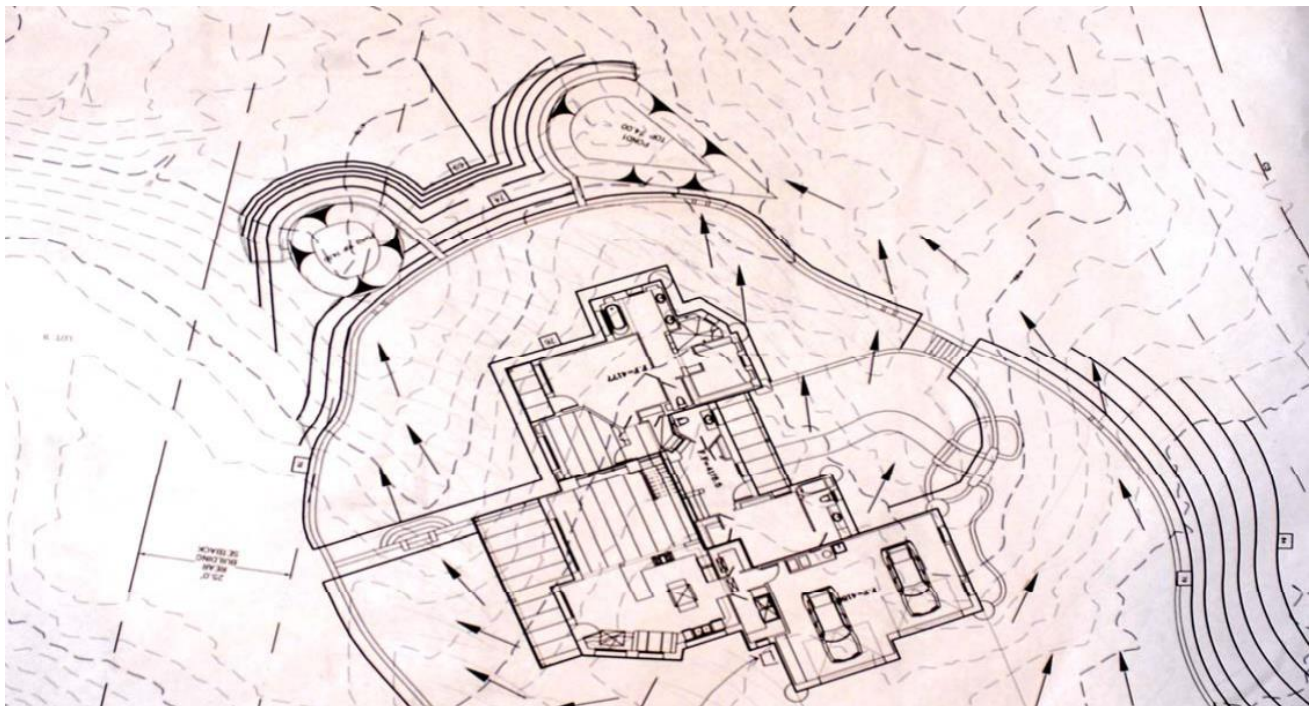


Materials used to slow runoff and stabilize slopes must incorporate multiple colors of multiple sized materials. No slope or grade shall be covered in one size or one color material. The placement of stabilization material should imitate the features of the natural terrain as closely as possible.

It is the responsibility of the owner and or builder of each lot during construction to abide by the EPA NPDES (including a Storm Water Pollution Prevention Plan) program as it pertains to individual lot construction.

Furthermore, any silt that washes into the streets as a result of improper site runoff control will be the responsibility of that site's owner to clean or repair. In the event that the silt is not properly removed, the LEC may exercise the right to clean or repair the problem and bill the site owner accordingly. Please refer to your covenants for more details in this area.

Drainage Plan Example



Note: Calculations for ponding areas and channels need to be shown.

SECTION VIII

LIGHTING REQUIREMENTS



Section 8.1 Lighting.

It is the intent to preserve the natural desert nighttime environment, and exterior lighting and landscape lighting should be used in a low or negligible impact manner. For purposes of this Section the lumen value (brightness) of any fixture shall be considered as the sum of the rated lumen values of each light source within each fixture.

To this end, exterior lighting shall be limited as follows:

- a) Exterior building mounted lighting fixtures may be installed for security, area or general illumination, provided such light is directed downward and away from adjacent lots, public areas, and streets.
- b) No exposed bulbs or bulbs under clear or lightly tinted protective fixtures shall be permitted.
- c) Lighting seen from the street shall be muted, and reflected or cast downward, not causing a bright spot that can impair night vision.
- d) No high power area floodlights will be permitted, and no fixture with a total lumen value greater than 450 shall be used in any exterior application unless the fixture is a fully shielded dark sky fixture. A maximum total lumen value of 1,200 is permitted for a fully shielded dark sky fixture.
- e) No light may be mounted on a pole or post.
- f) Limited subdued lighting may be used to reflect against the home as accent lighting, upon review and approval by the LEC in each location.

Exterior lighting requirements for Cluster Village Homes shall conform with applicable Supplemental Declarations on record with Doña Ana County.

Exterior Lighting Examples



Section 8.2 Security Lighting

Security lighting is discouraged; including motion detector activated lighting, and may be allowed only when the following standards are satisfied:

- a) Security lighting is prohibited on any residence elevation facing a street.
- b) Security lighting fixtures may not exceed the lumen value of 1,200 per location.
- c) If on a switch, security lighting may not be left on past midnight, and if on a motion detector activation system, the lighting may not remain lit for more than twenty (20) minutes.
- d) Security lighting may not be used for general illumination.
- e) Security lights must be shielded by a hood or shield that extends at least one (1) foot beyond the face of the lamp.
- f) If problems with security lights occur, the LEC and the Association reserves the right to demand that the fixtures be disconnected, and in the case of non-compliance to cause the lights to be disconnected and the cost assessed to the homeowner.

Section 8.3 Landscape Lighting Landscape lighting may be used sparingly in accordance with the following:

- a) Landscape lighting directed upward shall not be permitted due to the close proximity to the airport and restrictions required to conform with the UDC. The only exception to this, as an example, would be on approval by the LEC to accent trees or major plants by a single shielded or hooded lighting fixture.
- b) Each landscape lighting fixture must not exceed 450 lumens in any single installation, and be directed downward onto the ground (except as otherwise provided for in this Section), vegetation and other ground features, not onto any reflective surface, or any other surface that may produce a glare.
- c) All wiring for fixtures must be buried below grade
- d) Colored light bulbs, lens or reflectors are not permitted.

Landscape Lighting Examples



SECTION IX

SIGNAGE REQUIREMENTS

9.1 Lot Sale Signs

Signs for sale of a lot are to be consistent with the original Picacho Mountain lot sale signs as shown in the example below. Only one (1) sign per lot is allowed. No element of the sign may be closer to any street than five feet from the outside edge of the curb bordering the lot.

Conforming Lot Sale Sign Example



9.2 House Sale Signs

Signs for sale of a house should be consistent with signage and orientations currently used by local realtors but not more than six (6) square feet in area. Only one (1) sign per lot is allowed on the lot on which the house is located and no additional signage at other locations is allowed except for temporary special events (i.e. open house, etc.)

9.3 Builder's Signs

During the construction period builders may display one (1) sign of a design and material approved by the LEC that is not more than six (6) square feet in area on the lot on which the residential structure is to be constructed. No element of the sign may be closer to any street than five feet from the outside edge of the curb bordering the lot. Builder signs must be removed when construction is completed and a certificate of occupancy has been issued.

9.4 Construction Signs

Refer to Section 5.1 (i) above.

9.5 Other Signs

No other types of signs are allowed at other locations (i.e. street corners) except for temporary special events.

SECTION X AIRPORT CONSIDERATION

Airport Consideration Restriction.

The Picacho Mountain subdivision and all of the neighborhoods therein are in the Airport Operations District and are subject to the Flyover easement serving Las Cruces International Airport:

The Declarant hereby reserves to itself and for the benefit of the City of Las Cruces, New Mexico, Doña Ana County, New Mexico, the Las Cruces International Airport, and the general public at large, a perpetual easement for the free and unobstructed passage of aircraft and the unrestricted right of flight over and above the Property above a height of thirty-five (35) feet from the surface of the Property. Each Owner, by accepting title to a Lot subject to this Declaration, agrees that no structure will be constructed or erected on any Lot at a height in excess of thirty-five (35) feet above the elevation of the Lot unless any structure or improvements in excess of thirty-five (35) feet have first been approved by the LEC and any applicable governmental authorities.

In addition, each Owner, by accepting title to any Property subject to this Declaration, hereby waives and relinquishes any and all loss, liability, damage, actions, suits, proceedings, demands and claims (hereinafter collectively "Causes of Action") against Declarant, the City of Las Cruces, New Mexico, Doña Ana County, New Mexico, the Las Cruces International Airport and all organizations, entities and/or political subdivisions with responsibility for operating the same for any Causes of Action arising out of or relating in any way to the operation of aircraft over and above the Property and the ingress and egress of such aircraft to and from the Las Cruces International Airport.

By accepting any deed to any Lot or portion thereof, each Owner accepts such deed with full knowledge of the foregoing easement, disclaimer and release, the proximity of the Property to the Las Cruces International Airport, and all restrictions imposed by applicable laws, rules and regulations on the use of the Property by virtue of its proximity to the Las Cruces International Airport, or otherwise.

SECTION XI GLOSSARY and KEY TERMINOLOGY

- Architectural Guidelines. As outlined herein – to be used as an architecture guide.
- Design Guidelines. This document.
- Declarer/Declarant. Master Developer and Owner’s Representative for Picacho Mountain.
- LEC - Life Enrichment Committee. Committee appointed by Declarer/Declarant and formed to ensure that all design, improvements and construction meets the design criteria as established herein.
- Reviewer. Appointed by LEC and has administrative and interpretive authority both in the design review process and during construction to completion.
- Declaration of Covenants. Covenants Conditions and Restrictions or CC&Rs. Overall community guidelines that are a deed restriction on all property located within the confines of the Picacho Mountain community. Attached and/or available upon request.
- Design Review Process. The meetings, applications and submissions described in Section 2.2 that enables collaboration between the Owner and the Declarant and LEC in designing and constructing residences at Picacho Mountain compliant with the Design Guidelines.
- General Contractor. Licensed New Mexico contractor holding a GB98 general contractors license and who is responsible for building any improvement in Picacho Mountain.
- Notice of Approval. Formal written notification from the Declarant to applicant of the determination of the Reviewer regarding any Application or Submission as noted in Section 2.2 and Section 2.2 (f). Such Notice is required prior to commencing construction.
- Non-Conformance/Non-Compliance. Any work done in violation of this Design Guidelines, CC&Rs, and/or the applicable local and county codes and laws. Refer to Section 2.2 (e) and Section 2.6 for potential remedies and penalties.
- Owner. The buyer of the lot.
- Site Requirements. In order to maintain the overall community theme Picacho Mountain focuses a great deal of attention on the details of very specific guidelines. Section IV-Architectural Requirements is included in this Design Guidelines to emphasize the importance of architectural consistency to collectively achieve the desired end result . . . a beautiful coherent community.
- Uniform Development Code (UDC). Rules and regulations applying to unincorporated areas of Dona Ana County pertaining to all aspects of the planning, platting, zoning and subdivision of land, including but not limited to allowable and prohibited uses of land, design and construction standards, application procedures, reviewing agencies, etc., in accordance with the Joint Powers Agreement between the City of Las Cruces and the County of Dona Ana approved December 28, 2016.

Picacho Mountain Approved Plant List

(Any plants not listed must receive prior approved by the Design Control Committee)

Whitethorn Acacia	Sideoats Grama
<i>Acacia constricta</i>	<i>Bouteloua curtipendula</i>
Catclaw Acacia	Blue Grama
<i>Acacia greggii</i>	<i>Bouteloua gracilis</i>
Sweet Acacia	Buffalo Grass
<i>Acacia farnesiana</i> (<i>A. smallii</i>)	<i>Buchloe dactyloides</i>
Sunset Hyssop	Woolly Butterfly Bush
<i>Agastache rupestris</i>	<i>Buddleja marrubifolia</i>
Century Plant	Pink Fairy Duster
<i>Agave americana</i>	<i>Calliandra eriophylla</i>
Lechuguilla	'Sierra Starr' Fairy Duster
<i>Agave lechuguilla</i>	<i>Calliandra</i> x
Parry's Agave	Desert Bird of Paradise
<i>Agave parryi</i>	<i>Caesalpinia gilliesii</i>
New Mexico Agave	Sundrops
<i>Agave parryi</i> var. <i>neomexicana</i>	<i>Calylophus hartwegii</i>
Artichoke Agave	Desert Hackberry
<i>Agave parryi</i> var. <i>truncata</i>	<i>Celtis pallida</i>
Palmer's Agave	Netleaf Hackberry
<i>Agave palmeri</i>	<i>Celtis laevigata</i> var. <i>reticulata</i>
Compact Queen Victoria Agave	Mexican Redbud
<i>Agave victoria-reginae compacta</i>	<i>Cercis canadensis</i> var. <i>mexicana</i>
Flame Anisacanthus	Desert Willow
<i>Anisacanthus quadrifidus</i> var.	<i>Chilopsis linearis</i>
<i>wrightii</i>	'Lucretia Hamilton' Desert Willow
Desert Honeysuckle	<i>Chilopsis linearis</i> 'Lucretia
<i>Anisacanthus thurberi</i>	Hamilton'
Purple Threeawn	'Warren Jones' Desert Willow
<i>Aristida purpurea</i>	<i>Chilopsis linearis</i> 'Warren Jones'
Sand Sage	Damianita
<i>Artemisia filifolia</i>	<i>Chrysactinia mexicana</i>
Four-wing Saltbush	'Boothill' Eupatorium
<i>Atriplex canescens</i>	<i>Conoclinium greggii</i> 'Boothill'
Coyote Bush	(<i>Eupatorium greggii</i> 'Boothill')
<i>Baccharis pilularis</i>	Arizona Cypress
Desert Broom	<i>Cupressus arizonica</i>
<i>Baccharis sarothroides</i>	Feather Dalea
Thompson Baccharis	<i>Dalea formosa</i>
<i>Baccharis</i> hybrid 'Starn'	Black Dalea
Desert Marigold	<i>Dalea frutescens</i>
<i>Baileya multiradiata</i>	Trailing Indigo Bush
Chocolate Flower	<i>Dalea greggii</i>
<i>Berlandiera lyrata</i>	Desert Spoon, Sotol

Dasyliirion wheeleri
Hedgehog Cactus
Echinocereus engelmannii
Rainbow Cactus
Echinocereus pectinatus
Claretcup Cactus
Echinocereus triglochidiatus
Brittlebush
Encelia farinosa
Mormon Tea
Ephedra torreyana
Hummingbird Bush
Epilobium canum (*Zauschneria californica*)
'Aguirre' Turpentine Bush
Ericameria laricifolia "Aguirre"
Chamisa, Rabbitbrush
Ericameria nauseosus
(*Chrysothamnus*)
Dwarf Chamisa
Ericameria nauseosus var.
nauseosus (*Chrysothamnus*)
Green Rabbitbrush
Ericameria viscidiflorus
(*Chrysothamnus*)
Native Fleabane
Erigeron divergens
Gopher Plant
Euphorbia rigida
Apache Plume
Fallugia paradoxa
Fishhook Barrel Cactus
Ferocactus wislizenii
New Mexico Olive
Forestiera neomexicana
Ocotillo
Fouquieria splendens
Goodding's Verbena
Glandularia gooddingii (*Verbena*)
Wright's Verbena
Glandularia wrightii (*Verbena*)
Snakeweed
Gutierrezia sarothrae
Bell Flower Hesperaloe
Hesperaloe funifera
Red Yucca

Hesperaloe parviflora 'Red'
Yellow Yucca
Hesperaloe parviflora 'Yellow'
Arizona Walnut
Juglans major
Alligator Juniper
Juniperus deppeana
One-seed Juniper
Juniperus monosperma
'New Gold' Lantana
Lantana spp. 'New Gold'
Creosote
Larrea tridentata
'Thunder Cloud' Texas Sage
Leucophyllum candidum
'Thunder Cloud'
Compact Texas Sage
Leucophyllum frutescens
'Compact'
'Silverado' Texas Sage
Leucophyllum frutescens
'Bertstar Dwarf'
'Green Cloud' Texas Sage
Leucophyllum frutescens 'Green Cloud'
'Heavenly Cloud' Texas Sage
Leucophyllum frutescens
'Heavenly Cloud'
'Majestic Cloud' Texas Sage
Leucophyllum frutescens
'Majestic Cloud'
'Rain Cloud' Texas Sage
Leucophyllum minus x frutescens
'Rain Cloud'
Chihuahuan Sage
Leucophyllum laevigatum
'Lynn's Legacy' Rain-sage
Leucophyllum langmaniae
'Lynn's Legacy'
'Rio Bravo' Rain-sage
Leucophyllum langmaniae 'Rio Bravo'
'Cimmaron' Blue Ranger
Leucophyllum zygophyllum
'Cimmaron'
Berlandier Wolfberry

Lycium berlandieri
Wolfberry
Lycium fremontii
Pale Wolfberry
Lycium pallidum
Blackfoot Daisy
Melampodium leucanthum
Desert Four O'Clock
Mirabilis multiflora
'Regal Mist' Grass
Muhlenbergia capillaris 'Regal
Mist'
'El Toro' Grass
Muhlenbergia emersleyi 'El Toro'
'Autumn Glow' Grass
Muhlenbergia lindheimeri
'Autumn Glow'
Bush Muhly Grass
Muhlenbergia porteri
Deer Grass
Muhlenbergia rigens
'Nashville' Grass
Muhlenbergia rigida 'Nashville'
Mexican Feather Grass
Nassella tenuissima (*Stipa*
tenuissima)
Beargrass
Nolina microcarpa
Basket Grass
Nolina texana
Tree Cholla
Opuntia imbricata
Engelmann Prickly Pear
Opuntia engelmannii
Cow's Tongue Prickly Pear
Opuntia engelmannii var.
linguiformis
Desert Christmas Cactus
Opuntia leptocaulis
Purple Prickly Pear
Opuntia macrocenta
'Desert Museum' Palo Verde
Parkinsonia x 'Desert Museum'
Bush Penstemon
Penstemon ambiguus
Rock Penstemon

Penstemon baccharifolius
Firecracker Plant
Penstemon eatonii
Parry's Penstemon
Penstemon parryi
Canyon Penstemon
Penstemon pseudospectabilis
Superb Penstemon
Penstemon superbus
Piñon Pine
Pinus edulis
Afghan Pine, Mondel Pine
Pinus eldarica
Aleppo Pine
Pinus halepensis
Italian Stone Pine
Pinus pinea
Chinese Pistachio
Pistacia chinensis
Arizona Sycamore
Platanus wrightii
'Lavender Spice'
Poliomintha maderensis
'Lavender Spice'
Texas Honey Mesquite
Prosopis glandulosa var.
glandulosa
Maverick™ Mesquite
Prosopis glandulosa 'Maverick'
Screwbean Mesquite
Prosopis pubescens
Paperflower
Psilostrophe tagetina
Broom Dalea, Indigo Broom
Psoralea argophylla
Texas Red Oak
Quercus buckleyi (*Q. texana*)
Escarpment Live Oak
Quercus fusiformis
Chinquapin Oak
Quercus muhlenbergii
Scrub Oak
Quercus turbinella
Prairie Flameleaf Sumac
Rhus lanceolata
Littleleaf Sumac

Rhus microphylla
'Autumn Amber' Sumac
Rhus aromatica 'Autumn Amber'
Three-leafed Sumac
Rhus trilobata
Evergreen Sumac
Rhus virens
Mearn Sumac
Rhus virens var. *choriophylla*
Blue Sage
Salvia chamaedryoides
Autumn Sage
Salvia greggii
'Sierra Linda' Autumn Sage
Salvia greggii 'Sierra Linda'
Trident Sage
Salvia x 'Trident Sage'
Shrubby Senna
Senna wislizenii (*Cassia wislizenii*)
Texas Mountain Laurel
Sophora secundiflora
'Silver Peso' Texas Mountain Laurel
Sophora secundiflora 'Silver Peso'
'Louis Hamilton' Globemallow
Sphaeralcea ambigua 'Louis Hamilton'
Alkali Sacaton
Sporobolus airoides
Yellow Bells
Tecoma stans v. *angustata*
Angelita Daisy
Tetrandeum acaulis (*Hymenoxys*)
Mexican Buckeye
Ungnadia speciosa
Arizona Rosewood
Vauquelinia californica
Banana Yucca
Yucca baccata
Soaptree Yucca
Yucca elata
Giant Yucca
Yucca faxoniana
Thompson's Yucca

Yucca thompsoniana
Desert Zinnia
Zinnia acerosa
Prairie Zinnia
Zinnia grandiflora