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DONA ANA TITLE CO INC.  
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**DECLARATION OF PROTECTIVE COVENANTS  
GREY FOX SUBDIVISION  
(PHASES II, III & IV)  
DONA ANA COUNTY, NEW MEXICO**

KNOW ALL BY THESE PRESENTS: That TCC, LLC, a New Mexico limited liability company, developer and owner of Grey Fox Subdivision (Phases II, III & IV) in Dona Ana County, New Mexico (hereinafter sometimes referred to as the Developer), according to the plat thereof on file in Plat Book 21, Plat 4423, Page(s) 706-709, filed on July 21, 2006, of the records of the County Clerk of Dona Ana County, New Mexico, in consideration of the mutual interest of the owners of real estate in the Grey Fox Subdivision (Phases II, III & IV), covenants and agrees with all future purchasers of lots or building sites in said Subdivision that the following restrictions and obligations shall apply to all lots and building sites in said Subdivision, and all conveyances of any lot therein shall likewise be subject to said restrictions and obligations as follows:

**I. ESTABLISHMENT OF COVENANTS**

1) **TERM.** All of the restrictions, conditions, covenants and reservations set forth in this Declaration shall be covenants running with the land and shall continue and remain in full force and effect at all times until January 1, 2026, and shall thereafter be automatically continued without further notice from that time for successive periods of ten (10) years without limitation, unless there shall be recorded a written instrument, approved by the then record owners of seventy-five percent (75%) of the lots in the subdivision and executed by the members of the Design Review Committee provided for hereafter, modifying or extinguishing this Declaration in whole or in part.

2) **ENFORCEMENT.** All persons, firms, associations and corporations who now own, or who may in the future own, property in the Subdivision are specifically given the right to enforce these covenants through any proceeding, at law or in equity, against any person or persons, firms and corporations violating or threatening to violate such covenants, and to recover any damages suffered by them from any violation thereof. Neither TCC, LLC, nor the Design Review Committee shall be obligated to enforce any covenant through legal proceedings, but each shall have the right to do so.

3) **SEVERABILITY.** Invalidation of any one of these covenants by judgment or court order shall not affect any of the other provisions, which at all times shall remain in full force and effect.

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**4) DESIGN REVIEW COMMITTEE.**

A. The Design Review Committee shall initially be composed of three persons to be chosen by TCC, LLC. The Developer has the authority to remove any member of the initial committee, with or without cause. In the event of the death, resignation or removal of any member of the initial committee, the Developer shall have full authority to designate a successor or successors. The Design Review Committee may designate one of its members to take any action or perform any duties for and on behalf of the Design Review Committee. The members of the Design Review Committee shall not be entitled to any compensation for services performed pursuant to these covenants. The initial Design Review Committee shall exist until such time as the Developer states in writing to all individual owners of lots in the Grey Fox Subdivision that control shall pass to whomever the majority of those lot owners shall elect. A majority of the lot owners shall determine the means of the continuation and succession of members of the Design Review Committee after such notice has been sent. Such notice shall be given at the latest after the conveyance by the Developer of the last lot in the Grey Fox Subdivision; however, failure to give such notice shall not extend the term of any member of the Design Review Committee, nor shall TCC, LLC, have any liability in connection therewith.

B. In addition to other powers and authority vested in the Design Review Committee, it shall: rule upon any questions arising with respect to interpretation of these protective covenants; grant variances from these covenants at its discretion, and, if necessary, may, but shall not be required to, take any action necessary to enforce the same on behalf of all parties having an interest. Such shall not preclude any other person authorized by law or hereby from either enforcing or enjoining the enforcement of these protective covenants.

C. The Design Review Committee shall also serve as an architectural review committee. The Design Review Committee shall issue standards and/or rules relating to the procedures, materials to be submitted and additional factors, which will be taken into consideration in connection with the approval of any proposed improvements to any property in the subdivision.

D. The review of any plans submitted to the Design Review Committee, and any approval thereof, is intended and shall be construed solely as review of compliance with these protective covenants, and shall not be deemed or construed in any way to include review and/or approval of compliance with applicable laws, codes or regulations, nor of safety, habitability, stability or any other matter, all of which are the responsibility solely of the architect, builder and/or owner of the improvements for which plans are submitted.

**5) DESIGN REVIEW.** No improvements of any nature, including building, wall or fence, shall be erected, placed or altered on any lot until the construction plans and specifications, and a plan showing the location of the structure have been approved by the Design Review Committee as to materials and compliance with these covenants. No exterior portion of a structure (including doors) may be painted until the Design Review Committee has approved the color. Approval shall be as provided in Paragraph I-6.

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**6) PROCEDURE.** Owners shall submit plans and specifications to the Design Review Committee. Plans for review must include site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, septic tank location, and well location (if any). The Committee's approval or disapproval as required in these covenants shall be in writing, and given within ten (10) working days of the submission of all required information. In the event the Design Review Committee fails to act on submitted plans within the 10-working day review period, then the plans shall be deemed approved.

**7) NON-LIABILITY.** Neither the Developer nor the Design Review Committee shall incur liability to any one submitting plans for approval, or to any owner or owners of land subject to these covenants by reason of mistake in judgment, ordinary negligence or nonfeasance of itself, its agents or employees, arising out of or in connection with the approval, or disapproval, or failure to approve any such plans. Any one submitting plans for approval, by submission of such plans, and by acquiring title to any of the property covered hereby, waives any claim for any such damages.

**8) APPLICABILITY.** The conditions and restrictions imposed herein shall apply to all lots within the Grey Fox Subdivision, unless the Design Review Committee, as provided, herein grants a variance.

## II. GENERAL RESTRICTIONS

**1) ER-3 ZONED LOTS.** The following restrictions as to use shall apply to all single family residential lots within the subdivision:

A. Only one single family dwelling on each lot is permitted. No geodesic dome, cubical, or A-frame structures are permitted as residences or for any other purposes. No mobile homes (single wide or double wide), manufactured housing, prefabricated or modular homes are permitted, whether or not they are permanently attached to the land, and whether or not improvements are added to such mobile home, manufactured housing or modular home. The temporary sales office, if any, of the Developer is not, however, subject to this paragraph.

B. No residence shall be erected, altered, placed or permitted to remain on any lot with fully enclosed living area of less than 1,900 square feet of heated living area, exclusive of garages, open porches, accessory buildings or other covered areas, with the exception of a temporary sales office placed upon a lot by the Developer, which shall remain only until the sale of the last lot in Grey Fox Subdivision.

C. No structure on any lot shall exceed one story above grade, with a maximum height of twenty-three (23) feet above the highest finished grade of the lot, except for chimneys of reasonable size. Each dwelling shall have a two car garage with a minimum size of 400 square feet, and having one 16 feet by 7 feet door or two 8 feet by 7 feet doors at a minimum.

D. No building or any part thereof, including garages, shall be erected on any lot closer to the respective property line than as follows:

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(56)

- Front of garage — 70 feet
- \*\* Front of house — 70 feet
- ("front setback")
- \*\* Side street setback — 70 feet
- Side yard setback — 15 feet
- Rear yard setback — 25 feet
- \*\* Or 50 feet from edge of asphalt roadway whichever is greater
- (see Cul De Sac).

E. All buildings erected, placed or permitted to remain on any lot shall be situated only within that portion of said lot not restricted from use by an easement or right-of-way. At street intersections, lots having frontage on two (2) streets shall have one (1) street declared by the Design Review Committee, on approval of structural plans, as the street where the "front setback" applies. The other street shall have a minimum "side street setback" which shall apply.

F. No variance from the "side yard setback" shall be approved.

G. Should any residence be constructed on more than one lot, the exterior lines of lot ownership shall be used for determining the front, rear and side lot setbacks, subject to existing easements.

H. All buildings constructed in the Subdivision shall be frame and stucco, adobe, rammed earth or other such surfaces and materials as may be authorized by the Design Review Committee. Generally acceptable styles are Spanish Colonial, Mediterranean, Pueblo Revival, Flat Roof Territorial and Contemporary Southwest. Brick and wood siding are not acceptable surfaces. Garages, carports and permissible accessory buildings shall conform in material and design to the dwelling to which they pertain. No metal storage or other metal buildings shall be allowed on any lot. Exterior surface materials in desert tone colors, in the Grey Fox's color palette adopted by TCC, LLC, shall be used for any residence, accessory structure, wall or fence. The colors black and white are expressly prohibited. The construction of each building must comply with the International Building Code or the Building Code enforced by Dona Ana County.

I. No identical front elevations will be allowed side by side — that is to say no structure may be identical to the front elevation of a structure on an adjoining lot. All exterior elevations must be shown on plans for approval by the Design Review Committee.

J. A grading plan showing finished elevations in the retention or detention areas has been approved by the ETZ of Dona Ana County. No grading, land filling, excavating, or other alterations will be done in the retention or detention areas except pursuant to the approved plan or revision approved by Dona Ana County and by the Design Review Committee.

K. No manufacturing or commercial enterprises of any kind shall be maintained on, in front of, or in connection with single family residential lots in the subdivision, except home occupations or professionals in businesses engaged in recognized non-manufacturing occupations/professions may be permitted in accordance with the requirements of Dona Ana County.

L. There shall be no fair, exhibition, festival, show or other activity that attracts or is intended to attract, divert, or collect a large number of persons.

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Such restrictions shall not prevent, however, what is commonly known as "garage sales" or backyard parties conducted by residents or their children living in the subdivision, provided such are only occasional and in any event no more often than two times per year. Open houses for the purpose of selling a home and model home shows for the same purposes may be held. Such events that will require the opening of the gates may only be performed for a limited amount of time with prior approval of the Grey Fox Homeowners Association.

M. No animals, livestock, including horses, donkeys, and mules, or poultry or swine of any kind shall be raised, bred, or kept on any lot. Dogs, cats and other domesticated, household pets may be kept; provided, however, that they are not kept, bred or maintained for any commercial purpose, and further provided they do not disturb other property owners or become a nuisance in any way. Dogs that bark or howl must be kept inside.

N. Use and occupancy of all portions of the Subdivision shall be subject to zoning, building, health, sewage disposal and sanitation laws and regulations and all other applicable laws and regulations of the State of New Mexico and/or all government agencies having jurisdiction. TCC, LLC, its successors or assigns, may also impose rules and covenants regulating such matters from time-to-time.

O. Subdivision lots shall not be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth, nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted upon the surface of any portion of the Subdivision or within 500 feet below the surface of the Subdivision.

P. Each lot owner shall be responsible for removing weeds and other debris located on such owner's lot and for maintaining, repairing and replacing to a good state of repair and in a neat and attractive condition all improvements to such owner's lot.

Q. Outdoor lighting fixtures and their installation shall be done in such a manner as to improve nighttime public safety and security, promote energy efficiency, and to reduce lighting which is detrimental to the environment or to the public use and enjoyment of public and private property. All outdoor lighting fixtures will provide full cutoff giving no direct emission of light above a horizontal plane. Floodlights and spotlights shall not exceed 110 degrees full beam width or beam spread and be directed at least 65 degrees below the horizontal plane. Lighting which produces in excess of 70 lumens per square foot at ground level is not permitted. Exemptions to the foregoing are as follows:

a) Residential fixtures consisting of a single incandescent light having an output of less than 1800 lumens or 100 watts as long as it remains shielded from the horizontal level.

b) Up-lighting for architectural illumination, provided that the total output is less than 5400 lumens per property parcel and less than 1800 initial lumens per fixture. Moreover, no illumination may project beyond the highest point, or the side of the structure or feature.

c) Seasonal decorative lighting consisting of incandescent lamps in a temporary installation.

d) Full cutoff street lighting.

## 2) TEMPORARY USES

A. Any lot or portion thereof may be used temporarily by the Developer as a sales office, model home or homes, or storage and construction yard during the construction and sales period. All other temporary uses defined herein must have the prior written approval of the Design Review Committee.

B. No lot shall be used for the storage of any construction or other materials except for a period of up to thirty (30) days prior to the start of construction and during the construction period.

## 3) CONSTRUCTION.

A. ER-3 Zoned Lots. All construction, whether new construction, alterations, additions or exterior remodeling, shall be completed in accordance with plans approved by the Design Review Committee within eight (8) months from commencement of construction. All construction shall commence upon each lot within eighteen (18) months from the date of purchase of said lot from the Developer or, at the Developer's option, the Developer may re-purchase the lot at the original purchase price. The Developer must exercise this option within 30 days after the 18-month expiration date or it shall lose the right to exercise this option.

B. No building previously used at another location nor any building or structure originally constructed as a mobile dwelling, except when used as a temporary sales office, may be moved onto a lot, except as expressly approved by the Design Review Committee.

## 4) LANDSCAPING.

Landscaping is required on all lots. TCC, LLC, will install the original landscaping in the common areas within the Subdivision. The Grey Fox Homeowners Association is responsible for the maintenance of the common areas and roadway easements to include mowing, weeding, fertilizing, pruning and replacing plants that are damaged or destroyed. The Homeowners Association, however, may seek reimbursement for costs associated with such maintenance from any homeowner whose negligence has caused the need for it to incur any such maintenance expenses. Each homeowner is to be directly responsible for the upkeep of the landscaped easement area within their property boundaries adjacent to the streets that front their property.

Each lot owner must landscape the backyard of their lot. The landscaping in the backyard must be completed within two (2) years of the closing date of the purchase of the lot by the owner.

A. ER-3 ZONED LOTS. Typical desert or suburban farmland environment using drought resistant plants is encouraged. However, a sufficiently visible amount of foliage must be present on each lot to comply with the landscaping requirements herein established or as subsequently amended. The Design Review Committee shall be the final authority as to acceptability with the following criteria to be used as a guideline for the required landscaping:

1. Four (4) two inch (2") caliper broadleaf or evergreen trees, which when mature will reach a minimum height of 20 feet. (Six required if the side yard



abuts a street.) Should more trees be required by FHA or other governmental regulation, such trees can be a 1 inch caliper broadleaf or evergreen unless it is a side yard tree on an abutting street, then it must be as required above. Examples are: Seedless Locust, Ash, Mesquite, Sycamore, Mondale, Pinion and similar varieties.

2. Four (4) intermediate size shrub-bush plants, which when mature will reach a minimum height and width of 8 feet. (Eight required if the side yard abuts a street.) Examples are: Photinia, Texas Sage, Oleander, India Hawthorne, Pyracantha, Forsythia, Spirea, Sumac and similar varieties.

3. Twenty four (24) lower foundation plantings which when mature will reach a height of 2 to 3 feet (Thirty-eight (38) required if the side yard abuts a street). Examples are: Most of the above shrubs, plus Nandina, Rosemary, Mock Orange, Tam Junipers and similar varieties.

4. An assortment of other hardy, drought-resistant broad leaf plantings, including cacti, yucca, cholla, agave, century plant, ocotillo and similar plantings are acceptable in addition to or instead of the above-required plantings of the preceding paragraph.

5. In no event will the natural surface be left exposed and un-landscaped in the front and side yards facing a street. Examples of materials which can be used for ground cover, are grass, crushed rock, crusher fines, brick and stone. Non-woven water permeable weed barrier shall be used under gravel, crusher fines, or rock landscaping areas. The landscaping material shall cover the barrier in such quantity that the underlying barrier does not show through the surface material.

6. Any variation in use or placement of materials as prescribed above must first be approved by the Design Review Committee.

B. At any time a substantial change, alteration or modification is made to the front yard or side yard of a lot relative to landscaping, the Design Review Committee must approve such change, modification or alteration. Excluded from such advance approval requirement shall be instances where plants, trees, shrubbery or other landscaping materials may die, be destroyed, removed or similarly caused to be reduced in quantity and, as such, require replanting or replacement according to the same rules as apply to the initial planting requirements set forth above. If three (3) or more items and or shrub bushes are grouped together or in a continuous line for screening purposes, their species shall not exceed a height of 15 vertical feet to preserve the surrounding vistas of all homeowners.

#### 5) FENCING AND WALLS.

A. Any fence, wall, building or structure placed on any lot shall be in compliance with the set back and zoning requirements of Dona Ana County and ETZ, and shall not impair the drainage function of the ponding areas, as shown on the plat. All perimeter and/or retaining walls and fences shall be placed on the dividing lines between lots, except lots that are immediately adjacent to and bounded by land not in the Grey Fox Subdivision shall have walls or fences along said perimeter lines completely within the perimeter lot lines, and said perimeter

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wall shall not be a party wall. There is no requirement to have a side yard wall along the street on corner lots. Retaining walls shall be party walls if placed on the common property line between two lots, and shall not be removed by either property owner without the written consent of the other property owner and the Design Review Committee.

All ER-3 zoned lots are required to have perimeter walls or fences constructed. Such required walls must extend along the side lot line in its entirety. Such wall shall be no further forward than the front set back line. A curb of the same construction as the wall no higher than 8" is permissible to delineate property lines to within 35' of edge of asphalt. On lots that face two streets, the side street wall may not be constructed within 35 feet from the edge of the payment.

Other walls and fences are optional. The party walls shall be a minimum of forty two (42) inches in height, except where otherwise physically limited to a lower height. The party walls should be no more than five (5) feet plus cap in height except retaining walls that are party walls.

B. All fences, perimeter walls, and retaining walls in view from at least one side, shall be constructed of rock or stone in conformance with what is known as "Las Cruces Rock Walls" standards, materials and styles, and shall be of a yellow, reddish or tan color, rather than gray in color. However, those walls, forming the "return" from the residence, or courtyard and patio walls tied to the residence, may be of the same material used in the residence construction.

C. Decorative wrought iron and/or river cobble may be used for wall accents, gates and such, subject to approval by the Design Review Committee.

D. Tin or other sheet metal, chain link, wire and barbed wire are specifically prohibited, except wire fences may be constructed for dog runs when located within and enclosed by a permitted exterior fence. The fence height for such runs shall be no taller than the height of the exterior fence.

E. Perimeter fencing along the southern boundary of the Subdivision on Highway 185 and along Thorpe Road shall be six (6) feet in overall height when measured directly from the highest adjacent ground surface, and may be erected on that portion of a lot situated to the rear of the front wall of the main building except retaining walls which may be higher. Perimeter fencing along Leasburg drain and Strange Road shall be five (5) feet in overall height plus a 6 inch cap.

#### **6) BOATS, TRAILERS, CAMPERS, AND RECREATIONAL VEHICLES.**

No boats, campers, other trailers, recreational and commercial type vehicles or equipment may be parked or stored on any lot, street, or common area, except in an enclosed garage or within the perimeters of the "backyard" of a lot. Notwithstanding the foregoing, such vehicles may be temporarily parked on a lot or on the street in front of a lot owner's property solely for the purpose of loading or unloading the vehicle. The vehicle shall remain there for no longer than is reasonably necessary to load or unload, but, in no circumstances, more than 24 hours. If a lot owner's guest is driving a recreational vehicle, that recreational vehicle may be parked on the lot owner's property for a period not to



exceed fourteen (14) days. In addition, personal vehicles, including cars, vans, pick-ups, SUVs, motorcycles, and the like shall not be stored on a regular basis outside the enclosed perimeter of any lot. Should this provision be violated, the Grey Fox Homeowners Association may have any such vehicle towed and placed in storage at the owner's expense.

**7) GARBAGE AND TRASH.**

No refuse, garbage, trash, collection container, lumber, grass, shrub or tree clippings, plant waste, compost, metal, bulk materials, scrap, junk cars, paint cans, oil, flammable objects, concrete tailings, rockwall residue, refuse or debris of any kind shall be kept, stored, or allowed to accumulate on any lot except within an enclosed structure or area appropriately screened from view. Rubbish and garbage must be kept in suitable containers and removed from lots in accordance with ordinances, rules and regulations of Dona Ana County, and all regulations promulgated thereunder. No rubbish or garbage may be burned or dumped on lots or elsewhere in the Subdivision.

**8) ANTENNAE, EQUIPMENT, PIPES, UTILITY LINES & TRANSMITTERS**

A. Pipes for water, gas, sewer, drainage, or other purposes, and wires, poles, aerials, antennae, satellite dishes and other facilities for the transmission or reception of audio or visual signals or electricity, and utility meters or other utility facilities, such as solar equipment, shall be kept and maintained, to the extent reasonably possible, underground or within an enclosed structure and shall not be visible from the street. Ham radio towers are permissible only if they are the retracting variety with the overall retracted height not to exceed 12 feet. These towers shall remain retracted at all times except when actively being used. Any items that cannot meet these requirements shall be subject to the approval of the Design Review Committee. No transmission towers or microwave equipment shall be erected or placed on any lot.

B. No air conditioning equipment, evaporative coolers, heating equipment, cooling or heat ducts, or other equipment that in the opinion of the Design Review Committee is visually obtrusive shall be permitted on any rooftop without proper screening. All such equipment that is ground mounted, including swimming pool pumps, filters and heaters, shall be concealed from the view from the street and from other lots by means of an approved wall, fence, or vegetation screen. Evaporative or refrigerated air coolers, if erected or maintained on the roof of any premises, shall be effectively screened or otherwise hidden from view from any public place or adjoining lot as determined by the Design Review Committee.

**9) PARAPETS.**

Parapets must extend a minimum of 1 foot 6 inches above any point in the adjoining truss system and must fully enclose the roof.



**10) CONDUITS.**

Satellite dishes or other receivers must utilize a conduit (or similar pipe or sleeve) that runs through the roof so that there will be no wire exposed on the exterior of the residence or other structure.

**11) ROOFS.**

Flat roofs are to be finished within the same color range as the house's predominate exterior stucco color. Bright white or reflective roofs will not be permitted on any house in the Subdivision. Pitched roofs shall not be allowed with a pitch of more than 5:12. Pitched roofs must use barrel tile made of clay or concrete in the red, orange, brown or tan selection of colors. Use of metal roof sheets or shingles will not be permitted.

**12) FLUES AND CHIMNEYS**

For the purpose of measuring maximum height, a roof will be measured to the top of the parapets. Flues and chimneys shall not be permitted to extend more than four (4) feet above the maximum height.

**13) SOLAR PANELS.**

No roof mounted solar panels shall be permitted in the Subdivision and ground mounted solar panels shall be permitted only if they are screened in such a way that they are not visible from outside the lot on which they are installed.

**14) SIGNS.**

Each residence must have at its entryway a permanent street number clearly visible. No billboards or advertising signs of any character shall be erected, placed, permitted, or maintained on any residential lot or on any building erected thereon, other than one (1) name plate of the occupant of any residence upon which his or her professional or occupational title may also be added, and no such sign or name plate shall exceed a size of four square feet, and no such sign shall be lighted. Provided, however, that permission is granted for the erection and maintenance of not more than one signboard to each lot, during the course of its resale, which signboard shall not exceed forty-eight (48) square feet. Notwithstanding anything herein contained to the contrary, nothing herein shall be construed to prevent the Developer from erecting, placing, or maintaining sign structures and offices as may be determined necessary by the Developer to promote the sale and development of lots or properties within the Subdivision.

Notwithstanding the foregoing paragraph, until a dwelling has been erected on each lot within the Subdivision, and each such dwelling sold, the only sign which shall be used to advertise that the property is either for sale or for rent shall be a sign approved by the Developer, with an appropriate place to identify either the lot owner or the broker.



**15) FLAGS/PENNANTS.**

No flags or pennants may be used in the Subdivision on homes or lots without approval of the Design Review Committee, except flag poles that display the United States of America and/or State of New Mexico flags are permitted.

**16) SITE TRIANGLE AT INTERSECTIONS.**

There is required an area of unobstructed vision at street intersections, entrances/exits, which permits a vehicle driver to see approaching vehicles to the right or left. Nothing over three (3) feet in height measured from the street at the point where the pavement meets the dirt, shall be permitted to obstruct a sight line which shall be the front street and side street lines of a corner lot and a line connecting points thirty (30) feet distance from the intersection of the property line of such lot.

Trees located within the clear sight triangle will be allowed if all branches are trimmed from a height between three (3) feet and eight (8) feet.

No single post or column within the designated triangle shall exceed twelve (12) inches in thickness at its greatest cross-section dimension.

**III. EASEMENTS, STORM DRAINAGE AND SUPPORT STRUCTURES**

**1) EASEMENTS.**

A. Utility easements and rights-of-way designated on the plat of the Subdivision, as amended from time-to-time, are hereby reserved to TCC, LLC, and Dona Ana County and all public and private utility companies (as specifically shown on such plat or assigned by TCC, LLC) for the construction, installation and maintenance of any and all utilities, such as power, cable, gas lines, drains, roads, water supply lines, telephone and telegraph lines or the like, necessary or desirable for public health, welfare and convenience.

B. Within these easements no structure shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or streets. Within each drainage easement, no temporary or permanent structure shall be placed, and no structure or planting, or movement of materials shall be permitted which may interfere with the direction of flow in the drainage channels in the easements, unless approval is first obtained from the Design Review Committee and from the Dona Ana County ETZ.

C. All easements shall be kept free from alteration, and owners of lots containing such easements shall keep them free from permanent structures and shall allow access by maintenance personnel for the installation, upkeep, repair, removal and replacement of such facilities that may be constructed within such easements.

D. Each ER-3 zoned lot in the Subdivision has an area designated on the plat that is a ponding area. Each lot owner is responsible for retaining water on that owner's lot as called for on the plat. The swale, slope or indentation which acts as the ponding area may not be altered unless consent is obtained from the Dona Ana County ETZ and from the Design Review Committee.



E. Sale of any lot shall include all rights of TCC, LLC, in and to the street, road or highway affronting the same, subject however to the rights of all others to use the same as public or private thoroughfares, except as otherwise specifically reserved herein. TCC, LLC, reserves the right to dedicate to the public all streets, roads, and highways within or abutting the Subdivision without the consent of any lot owner within the Subdivision.

F. All public and private rights-of-way, including streets and roads shown on the recorded plats for the Subdivision, shall also be considered an easement. Such easements shall be measured by a perpendicular (or radial on curves) from the front property corners of all lots to the centerline of such street or road.

**2) SECURITY SERVICES.**

TCC, LLC, or the Grey Fox Homeowners Association may, but are not required to, establish security for the Subdivision, including a gatehouse and gates. Such security will be owned and operated by the Grey Fox Home Owners Association, with the expense of the security to be borne as a common expense of the Association itself.

**IV. MISCELLANEOUS PROVISIONS**

1) Each grantee of a lot within Grey Fox Subdivision by the acceptance of a deed or conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights and benefits hereby granted, created, reserved or declared, and all obligations hereby imposed shall be covenants running with the land, and shall bind any person having at any time any interest or estate in the land, and shall inure to the benefit of such owner in like manner as though the provisions of this Declaration were recited and set forth in full in each and every deed or conveyance.

2) The agent for service of process upon the Developer is Mark Hettinga, 645 South Compress Road, Las Cruces, New Mexico.

3) Each grantee of a lot within the Subdivision is hereby placed on notice of the plans of the Developer to develop other lands, including other units or phases of Grey Fox Subdivision. Each grantee accepting a grant of a lot, subject to these Protective Covenants, hereby consents to such development and covenants not to oppose such development, provided such development is not in violation of applicable law.

**V. OWNERS' ASSOCIATION**

The Grey Fox Homeowners Association, Inc., which is an incorporated association made up of all the lot owners in the Grey Fox Subdivision, has as its



purpose the ownership, development, and maintenance of common areas and facilities within the Subdivision.

**1) DEFINITIONS.**

For the purposes of this Declaration, the following terms are defined:

ASSOCIATION: All of the lot owners acting as a group to be known as the Grey Fox Homeowners Association, Inc., in accordance with the By-Laws adopted by them and this Declaration.

MAINTENANCE AREAS: Maintenance areas are those areas which are to be maintained by the Association. They include all areas owned by the Association or owned by TCC, LLC, and within the Subdivision's boundaries, easements dedicated to the Association for the purpose of ground maintenance, tracts designated as roads or rights-of-way, tracts designated as open areas, Leasburg drainage park, landscaping and pedestrian trails, lighting, gates, buildings, structures and improvements and such other areas designated as maintenance areas by the Association.

LOT OWNERS: Person(s) owning a lot within Grey Fox Subdivision in fee simple.

DONA ANA COUNTY The governmental body of Dona Ana County, New Mexico.

**2) NON-PROFIT PURPOSE.**

No director, officer, member or employee of the Association, or any other private individual shall receive at any time any of the earnings or funds of the Association, provided that this shall not prevent payment to any such person of reasonable compensation for services rendered, and no such person shall be entitled to share in the distribution of any of the Association's assets upon the dissolution of the Association. At dissolution, excess assessments may be refunded to the lot owners, and all other assets shall be transferred exclusively to charitable, religious, scientific, or educational institutions, which then qualify under the provisions of Section 501 (c)(3) of the Internal Revenue Code, as it now exists, or as amended hereafter.



**3) ADMINISTRATION OF THE MAINTENANCE AREAS.**

The areas to be maintained shall be administered as follows:

**A. LOT OWNERS, BOARD OF DIRECTORS AND OFFICERS:** The administration of the maintenance shall be vested in the lot owners, the owners of each lot having one vote. The owners shall elect and act through a Board of Directors (hereinafter called the "Board") in the manner set forth in the By-Laws of the Association. Each member of the Board shall be a lot owner except that if a lot owner is a corporation, partnership, trust or other legal entity other than a natural person or persons, then any director of such corporation, partner of such partnership, individual trustee of such trust, or manager of such other legal entity, shall be eligible to serve as a member of the Board. From among them, the Board shall elect a chairman of the Board and officers of the Association, including at a minimum, a president and secretary.

**B. INITIAL BOARD OF DIRECTORS:** The initial Board of Directors shall be composed of three (3) persons to be chosen by TCC, LLC. The Board of Directors shall consist of the above members until either (a) the Developer states in writing to all lot owners that control shall pass to a Board of Directors elected by the lot owners, or (b) the sale of all lots in the Subdivision.

**C. GENERAL POWERS AND DUTIES OF THE BOARD:** The Board shall have the duty and such powers as shall be reasonably required to direct, administer, manage and protect the maintenance areas in accordance with the provisions of this Declaration and the By-Laws of the Association and, without limiting the foregoing, the Board shall have the duty and power to acquire and pay for the following:

1. Water, waste removal, electricity and other necessary utility services for the maintenance areas. The Board will determine the manner in which utility services will be metered and charged.

2. An insurance policy or policies in such amounts determined by the Board, insuring the members of the Board and their agents and employees and the owners against any liability to the public or to the owners and their invitees and tenants.

3. Landscaping, gardening, snow removal, painting, clearing, maintenance, decorating, repair of facilities, including but not limited to walls, roadways, lighting, signage, parks, bridges and walkways.

4. Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance or assessments, water, electricity, and other utility services for the areas and facilities which the Board is required to secure or pay for pursuant to the terms of this Declaration or By-Laws of the Association or which, in the Board's opinion, are necessary or convenient for the benefit of the lot owners or for the enforcement of this Declaration and/or such By-Laws.

5. Any amount necessary to discharge any mechanic's or materialmen's lien or other encumbrance levied against the maintenance areas or any part thereof. Where one or more lot owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of

discharging it and any costs incurred by the Board by reason of such lien or liens, including attorney fees, shall be specially assessed to said owners.

6. The services of any person or firm employed by the Board in furtherance of its general powers and duties herein stated, including but not limited to, accountants, bookkeepers, tax advisors, lawyers, architects, engineers, carpenters, electricians, plumbers, painters, gardeners, managers and others determined by the Board to be necessary or convenient.

7. Any taxes payable by the Association.

D. **LIMITATION OF THE POWERS OF THE BOARD:** The Board's powers herein above enumerated shall be limited in that the Board shall have no authority to acquire and pay for any capital addition or improvement (other than for purposes of replacing or restoring portions of the maintenance areas, subject to all of the provisions of this Declaration) having a total cost in excess of \$10,000.00; nor shall the Board authorize any structural alterations, capital additions to, or capital improvements requiring an expenditure in excess of \$10,000.00, without in each case obtaining the prior approval of a simple majority of the lot owners. If the expenditure in excess of \$100,000.00 is to be expended, then such shall require a two-thirds majority approval of the lot owners. The Board may adopt such reasonable rules and regulations as it may deem advisable for the maintenance, conservation and beautification of the maintenance areas and for the health, comfort, safety and general welfare of the owners. Written notice of such rules and regulations shall be given to all lot owners and the areas shall be at all times maintained subject to such rules and regulations.

#### 4) **ASSESSMENTS AND MAINTENANCE FUND.**

There shall be a maintenance fund and assessments against the lot owners as follows:

A. **CREATION OF MAINTENANCE FUND AND OBLIGATION FOR ASSESSMENTS:** The Board shall establish a maintenance fund for the administration, maintenance, repair, replacement and improvement of the maintenance areas and facilities and for the enforcement of the provisions of this Declaration and the By-Laws of the Association, which maintenance fund shall be financed or funded by assessments as herein provided, paid by all lot owners. Each lot owner, including transferees of lot owners, shall make monthly payments to the maintenance fund of a sum of money determined by the Board to be adequate to pay the share of the maintenance fund of such owner or transferee. If the Board fails to determine the amount of such sum, the amount shall be \$125.00 per month per lot for each lot owner. The fund shall be administered on a fiscal year basis, which fiscal year shall end on December 31<sup>st</sup> of each year.

Each year, on or before November 30<sup>th</sup>, the Board shall estimate the total amount necessary to pay the cost of wages, materials, insurance, services and supplies which will be required for the administration, tax and insurance payments, maintenance, repairs, replacement and improvement of the maintenance areas during the ensuing fiscal year, and for the enforcement of the



provisions of this Declaration and the By-Laws of the Association, together with a reasonable amount considered by the Board to be necessary as a reserve for contingencies and replacements, and shall notify each owner as to the amount of such estimate.

On or before the second day of each month, each lot owner shall be obligated to pay to the Board the assessments due pursuant to these covenants, unless other payment arrangements are made with approval of the Board.

**B. MANAGEMENT OF THE MAINTENANCE FUND AND COLLECTION OF THE ASSESSMENTS:** On or before the date of each annual meeting of the lot owners, the Board shall supply to each owner an itemized accounting of the administrative, maintenance and other expenses for the preceding fiscal year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the estimates provided, and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall be credited to the amount due from the lot owners next year's estimate, until exhausted, and any net shortage shall be added to the next year's estimate after rendering of the accounting. The Board shall build up and maintain a reasonable reserve for contingencies and replacements. Extraordinary expenditures not originally included in the annual estimate that may become necessary during the year shall be charged first against such reserve. If said estimated cash requirement proves inadequate for any reason, including non-payment of any owner's assessment, the Board may serve notice of such further assessment on all owners by a statement in writing, giving the amount and reasons therefor, and such further assessment shall become effective with the next monthly payment due.

All owners shall be obligated to pay the adjusted monthly assessments. The initial Board shall determine the "estimated cash requirement" as above defined. The failure or delay of the Board to prepare or submit the annual adjusted estimate to the owners shall not constitute a waiver or release in any manner of such owner's obligation to pay the assessment, including maintenance costs and necessary reserves. The Board shall keep full and correct detailed books of account and records of the receipts and expenditures affecting the common areas, specifying and itemizing the maintenance and repair expenses of the common areas and any other expenses incurred. The records and the vouchers authorizing the payments shall be available for inspection by any owner or any representative of any owner at reasonable times. All funds collected hereunder shall be held and expended for the purposes designated herein and shall be deemed to be held for the benefit, use and account of all the owners.

If an owner is in default in the monthly payments of the aforesaid charges or assessments for thirty days or longer, the Board may file a notice of lien for such amount due together with accruing amounts and interest thereon with the County Clerk of Dona Ana County, New Mexico, with such evidencing the lien therefor against the lot involved, and may bring suit for and on behalf of themselves and as representatives of all owners to enforce collection thereof or to foreclose the lien therefor as hereinafter provided and there shall be added to

the amount due the costs of such suit, together with legal interest and reasonable attorney's fees to be fixed by the court. To the extent permitted by any court decision, statute or law now or hereafter effective, the amount of any delinquent and unpaid charges or assessments and interest, costs and fees, as above provided, shall be and become a lien or charge against the lot owned by the lot owner involved from when such was payable and may be foreclosed by an action brought in the name of the Board and/or the Association in the same manner as a foreclosure of mortgage against real estate, and the period allowed for redemption shall be one month from and after the date of foreclosure sale. In the event of a voluntary conveyance of ownership, the grantor and grantee shall be jointly and severally liable for all unpaid common expenses and assessments for common expenses related to said ownership to the time of such grant or conveyance. No owner may waive or otherwise avoid liability for the assessments provided for herein by non-use of the maintenance areas or by abandonment of their lot.

**5) INSURANCE AND TAXES.**

The Board of Directors shall purchase such liability and/or casualty insurance as it deems advisable. The Board shall file the Association's annual tax return, and annual election as a tax exempt homeowners association, if applicable; and shall pay property taxes and special assessments which are or could become a lien upon the maintenance areas.

**6) GENERAL PROVISIONS.**

The following general provisions shall govern the administration and management of the maintenance areas:

A. Until the Board of Directors provided for in this Declaration is formed, the Developer shall exercise the powers, rights and functions of the Board.

B. Upon written request to the Board, the holder of any duly recorded mortgage or deed of trust against any lot owner shall be given a copy of any and all notices permitted or required by this Declaration to be given to the owner or lot owners whose ownership is subject to such mortgage or deed of trust.

C. Notices required to be given to the Board or the Association shall be delivered to the Chairman of the Board and the President of the Association, either personally or by certified mail, return receipt requested, addressed to such individuals at their address as maintained by the Association.

D. Notices required to be given any devisees or personal representative of a deceased owner may be delivered either personally or by mail to such personal representative at his/her or its address appearing in the records of the court wherein the estate of such deceased owner is being administered.

E. No covenants, restrictions, conditions, obligations or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches, which may occur.

F. The agent for service of process upon the Association is Mark Hettinga, 645 South Compress Road, Las Cruces, New Mexico, until such time as the President of the Association is elected, who shall thereafter serve as agent for service of process.

**7) BREACH OF COVENANTS.**

It is further stipulated that breach of any of the foregoing conditions and covenants shall not affect any mortgage or other lien which in good faith may be existing at the time upon said property or any improvements thereon.

**8) AMENDMENT.**

Any provision hereof may be changed, amended or rescinded by a written instrument setting forth such change, amendment or rescission, which has been approved by ninety (90) percent of lot owners in attendance or by proxy at a meeting called for that purpose, and executed by the President of the Association, except that this provision (V, Paragraph 8) may be changed only by unanimous vote of the lot owners.

Any amendment, change, modification or rescission of this Declaration shall be effective only when filed for record in the office of the County Clerk of Dona Ana County, New Mexico. No amendment, change, modification or rescission shall be valid or effective if such violates or conflicts with any applicable statute of the State of New Mexico and/or other governmental authority having jurisdiction thereof.

**VI. EFFECTIVE DATE**

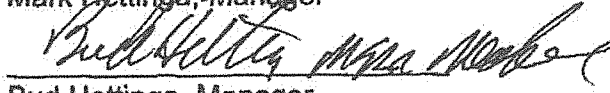
These restrictions, covenants and reservations, and any amendments or exceptions thereto shall be effective as of the date of their filing with the County Clerk of Dona Ana County, New Mexico.

DATED at Las Cruces, New Mexico, this 17<sup>th</sup> day of October, 2006.

TCC, LLC

By:

  
Mark Hettinga, Manager

  
Bud Hettinga, Manager





STATE OF NEW MEXICO )  
 )  
COUNTY OF DONA ANA )

The foregoing instrument was acknowledged before me this 17th day of October, 2006, by Mark Hettinga and Bud Hettinga, Managers of TCC, LLC, a New Mexico Limited Liability Company.

*[Handwritten Signature]*  
\_\_\_\_\_  
Notary Public

MICHAEL L. WINDLE  
NO. My Commission Expires:  
December 20, 2009  
PUBLIC  
STATE OF NEW MEXICO

Corrected Declaration of Protective Covenants - Grey Fox Subdivision - Phases 2-4(rev- 09-07-06).wpd

STATE OF NEW MEXICO  
COUNTY CLERK  
DONA ANA COUNTY

State of New Mexico  
County of Dona Ana  
RECEPTION NO. 36408  
I hereby certify that this instrument was filed for recording and duly recorded on OCT 17 2006 at 4:38 o'clock PM Book 755 Page 761-779 of the Records of said County. Rita Torres, County Clerk  
*[Handwritten Signature]*

*[Handwritten Mark]*  
3 P

ARTICLES OF INCORPORATION  
OF  
GREY FOX HOMEOWNERS ASSOCIATION, INC.

(A Nonprofit Corporation)

I, the undersigned, being a citizen of the United States of America and a citizen and resident of the State of New Mexico, in order to form a corporation for the purposes hereinafter stated, under the laws of the State of New Mexico, do hereby make, execute and adopt the following Articles of Incorporation.

ARTICLE I

The name of this corporation shall be Grey Fox Homeowners Association, Inc..

ARTICLE II

The initial registered office of the corporation shall be 645 South Compress Road, Las Cruces, New Mexico, and the initial registered agent at such address upon whom service of process against the corporation may be served is Mark Hettinga.

ARTICLE III

The nature of the business or objects or purposes proposed to be transacted, promoted or carried on are as follows:

- A. To carry on and engage in a homeowner's association in connection with a subdivision known as Grey Fox Subdivision, located in Dona Ana County, New Mexico, and the doing and performing of any and all acts or things necessary, proper or convenient for or incidental to the furtherance of or the carrying out of the powers or purposes herein mentioned.
- B. To apply for, purchase or otherwise acquire, hold, own, use, operate, sell, assign, grant or conduct licenses in respect to any and all inventions, improvements or other processes used in connection with or secured under letters patent of the United States of America or elsewhere; and to acquire and undertake all or any part of the business assets and liabilities of any person, firm, association or corporation in association therewith.
- C. To take, apply, purchase, own, rent, lease, sell, exchange, mortgage, employ, develop and otherwise deal in and dispose of any and all property, real and personal, of every description, incidental to or capable of being used in connection with any endeavor owned or operated by the corporation.
- D. To make, perform and carry out contracts of every kind and description pertaining to the purposes of this corporation and for any lawful purpose necessary and expedient thereto with any person, firm, association or corporation.
- E. To borrow or raise money without limit as to amounts, by the issue of or upon warrants, bonds, debentures and other negotiable or transferable instruments or otherwise, and to secure the same by execution of mortgages, security instruments or instruments of pledge.
- F. To draw, make, accept, endorse, discount, execute and issue promissory notes, drafts, bills of exchange, warrants, debentures and other negotiable or transferable instruments.
- G. To issue bonds, debentures or obligations of this corporation, and to secure the same by mortgage, pledge, deed of trust or otherwise.
- H. To carry out all or any part of the foregoing objects as principal, factor, agent, contractor or otherwise, either alone or in conjunction with any person, firm, association or any other corporation, and in carrying on the activities of the corporation and for the purpose of attaining or furthering any of its objects, to make and perform such contracts of any kind and description and to do such acts and things and to exercise any and all of such powers as a natural person could lawfully make, perform or do otherwise, including the holding of such licenses from the State of

New Mexico, the government of the United States of America or any other state or territory as may be necessary to conduct any of the businesses herein mentioned; to do everything necessary, suitable or proper for the accomplishment of any of the purposes, the attainment of any of the objects or the furtherance of any of the powers herein set forth, either alone or in connection with any other corporation, association, firm or individual and either as principal or agent; and to do every other act or thing incidental or appurtenant to or growing out of or connected with the foregoing objects, purposes or powers, or any of them.

I. To exercise any rights or powers granted to domestic, nonprofit corporations by the State of New Mexico as the same exist now or as may exist in the future during the lifetime and existence of this corporation.

#### ARTICLE IV

The corporation shall not engage in any business, trade, avocation or profession for gain or profit. The corporation shall have no power to carry on propaganda, attempt to influence legislation or to take part in a political campaign.

#### ARTICLE V

The corporation is not organized for pecuniary gain or profit nor shall it have any power to issue certificates of stock or declare dividends, and no part of its net earnings shall inure to the benefit of any member, director or individual. The balance, if any, of all money received by the corporation from its operations, after the payment in full of all debts and obligations of the corporation of whatsoever kind and nature, shall be used and distributed exclusively for the purposes herein provided. The corporation may pay compensation in a reasonable amount to its members, directors or officers for services or reimburse them for expenses incurred on behalf of the corporation, and may confer benefits upon its member in conformity with the purposes of the corporation.

#### ARTICLE VI

The corporation formed hereby shall have no capital stock and shall be composed of members rather than shareholders. The conditions and regulations of membership and the rights or other privileges of the classes of members shall be determined and fixed by the By-Laws of the corporation.

#### ARTICLE VII

In the event of dissolution of the corporation, the assets of the corporation shall be applied and distributed as follows:

- A. All liabilities and obligations of the corporation shall be paid and discharged, or adequate provision shall be made therefor;
- B. Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred or conveyed in accordance with such requirements;
- C. Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more nonprofit domestic or foreign corporations, nonprofit societies or nonprofit organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in the Non-Profit Corporation Act of the State of New Mexico;

D. Other assets, if any, shall be distributed in accordance with the provisions of the By-Laws, but in no event may any member, former member, director, former director, officer or former officer receive directly or indirectly any distribution or portion of a distribution of any assets; and

E. Any remaining assets may be distributed to such persons, nonprofit societies, nonprofit organizations or nonprofit domestic or foreign corporations whether for profit or nonprofit as may be specified in a plan of distribution adopted as provided in the Nonprofit Corporation Act of the State of New Mexico.

#### ARTICLE VIII

The corporation shall have the power to carry on and engage in any of the activities herein enumerated in the State of New Mexico or in any other state of the United States of America or elsewhere, and may have one or more offices in this state, any other state or elsewhere and may hold, purchase, mortgage and convey real and personal property out of the State of New Mexico, as well as within the State of New Mexico.

#### ARTICLE IX

The name of the incorporator and his address is as follows:

<i>Name</i>	<i>Address</i>
Mark Hettinga	645 South Compress Road Las Cruces, New Mexico

#### ARTICLE X

This corporation shall have perpetual succession by its corporate name.

#### ARTICLE XI

The number of directors of this corporation shall not number less than one (1), and their duties and functions shall be fixed by the By-Laws of the corporation. The names and addresses of the directors who are to act as such until the first annual meeting of the members or until their successors are elected and qualify are as follows:

<i>Name</i>	<i>Address</i>
Mark Hettinga	645 South Compress Road Las Cruces, New Mexico

#### ARTICLE XII

The power to alter, amend or repeal the By-Laws of the corporation or adopt new By-Laws is reserved to the members and the Board of Directors of the corporation, as may be set forth in said By-Laws.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this 28<sup>th</sup> day of November, 2005.







**DECLARATION OF PROTECTIVE COVENANTS  
GREY FOX SUBDIVISION  
DONA ANA COUNTY, NEW MEXICO**

KNOW ALL BY THESE PRESENTS: That TCC, LLC, a New Mexico limited liability company, developer and owner of Grey Fox Subdivision in Dona Ana County, New Mexico (hereinafter sometimes referred to as the Developer), according to the plats thereof on file in Plat Records Book 21, pages 449-451, and Plat Records Book \_\_\_\_\_, pages \_\_\_\_\_, of the County Clerk's office of <sup>Dec 12, 2003</sup> Dona Ana County, New Mexico, in consideration of the mutual interest of the owners of real estate in the Grey Fox Subdivision covenants and agrees with all future purchasers of lots or building sites in said Subdivision that the following restrictions and obligations shall apply to all lots and building sites in said Subdivision, and all conveyances of any lot therein shall likewise be subject to said restrictions and obligations as follows:

**I. ESTABLISHMENT OF COVENANTS**

**1) TERM.** All of the restrictions, conditions, covenants and reservations set forth in this Declaration shall be covenants running with the land and shall continue and remain in full force and effect at all times until January 1, 2026, and shall thereafter be automatically continued without further notice from that time for successive periods of ten (10) years without limitation, unless there shall be recorded a written instrument, approved by the then record owners of seventy-five percent (75%) of the lots in the subdivision and executed by the members of the Design Review Committee provided for hereafter, modifying or extinguishing this Declaration in whole or in part.

**2) ENFORCEMENT.** All persons, firms, associations and corporations who now own, or who may in the future own, property in the Subdivision are specifically given the right to enforce these covenants through any proceeding, at law or in equity, against any person or persons, firms and corporations violating or threatening to violate such covenants, and to recover any damages suffered by them from any violation thereof. Neither TCC, LLC, nor the Design Review Committee shall be obligated to enforce any covenant through legal proceedings, but each shall have the right to do so.

**3) SEVERABILITY.** Invalidation of any one of these covenants by judgment or court order shall not affect any of the other provisions, which at all times shall remain in full force and effect.

**4) DESIGN REVIEW COMMITTEE.**

A. The Design Review Committee shall initially be composed of three persons to be chosen by TCC, LLC. The Developer has the authority to remove any member of the initial committee, with or without cause. In the event of the death, resignation or removal of any member of the initial committee, the Developer shall have full authority to designate a successor or successors. The Design Review Committee may designate one of its members to take any action or perform any duties for and on behalf of the Design Review Committee. The members of the Design Review Committee shall not be entitled to any compensation for services performed pursuant to these covenants. The initial Design Review Committee shall exist until such time as the Developer states in writing to all individual owners of lots in the Grey Fox Subdivision that control shall pass to whomever the majority of those lot owners shall elect. A majority of the lot owners shall determine the means of the continuation and succession of members of the Design Review Committee after such notice has been sent. Such notice shall be given at the latest after the conveyance by the Developer of the last lot in the Grey Fox Subdivision; however, failure to give such notice shall not extend the term of any member of the Design Review Committee, nor shall TCC, LLC, have any liability in connection therewith.

B. In addition to other powers and authority vested in the Design Review Committee, it shall: rule upon any questions arising with respect to interpretation of these protective covenants; grant variances from these covenants at its discretion, and, if necessary, may, but shall not be required to, take any action necessary to enforce the same on behalf of all parties having an interest. Such shall not preclude any other person authorized by law or hereby from either enforcing or enjoining the enforcement of these protective covenants.

C. The Design Review Committee shall also serve as an architectural review committee. The Design Review Committee shall issue standards and/or rules relating to the procedures, materials to be submitted and additional factors, which will be taken into consideration in connection with the approval of any proposed improvements to any property in the subdivision.

D. The review of any plans submitted to the Design Review Committee, and any approval thereof, is intended and shall be construed solely as review of compliance with these protective covenants, and shall not be deemed or construed in any way to include review and/or approval of compliance with applicable laws, codes or regulations, nor of safety, habitability, stability or any other matter, all of which are the responsibility solely of the architect, builder and/or owner of the improvements for which plans are submitted.

**5) DESIGN REVIEW.** No improvements of any nature, including building, wall or fence, shall be erected, placed or altered on any lot until the construction plans and specifications, and a plan showing the location of the structure have been approved by the Design Review Committee as to materials and compliance with these covenants. No exterior portion of a structure (including doors) may be painted until the Design Review Committee has approved the color. Approval shall be as provided in Paragraph I-6.

**6) PROCEDURE.** Owners shall submit plans and specifications to the Design Review Committee. Plans for review must include site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, septic tank location, and well location (if any). The Committee's approval or disapproval as required in these covenants shall be in writing, and given within ten (10) working days of the submission of all required information. In the event the Design Review Committee fails to act on submitted plans within the 10-working day review period, then the plans shall be deemed approved.

**7) NON-LIABILITY.** Neither the Developer nor the Design Review Committee shall incur liability to any one submitting plans for approval, or to any owner or owners of land subject to these covenants by reason of mistake in judgment, ordinary negligence or nonfeasance of itself, its agents or employees, arising out of or in connection with the approval, or disapproval, or failure to approve any such plans. Any one submitting plans for approval, by submission of such plans, and by acquiring title to any of the property covered hereby, waives any claim for any such damages.

**8) APPLICABILITY.** The conditions and restrictions imposed herein shall apply to all lots within the Grey Fox Subdivision, unless the Design Review Committee, as provided, herein grants a variance.

## II. GENERAL RESTRICTIONS

**1) ER-3 ZONED LOTS.** The following restrictions as to use shall apply to all single family residential lots within the subdivision:

A. Only one single family dwelling on each lot is permitted. No geodesic dome, cubical, or A-frame structures are permitted as residences or for any other purposes. No mobile homes (single wide or double wide), manufactured housing, prefabricated or modular homes are permitted, whether or not they are permanently attached to the land, and whether or not improvements are added to such mobile home, manufactured housing or modular home. The temporary sales office, if any, of the Developer is not, however, subject to this paragraph.

B. No residence shall be erected, altered, placed or permitted to remain on any lot with fully enclosed living area of less than 1,900 square feet of heated living area, exclusive of garages, open porches, accessory buildings or other covered areas, with the exception of a temporary sales office placed upon a lot by the Developer, which shall remain only until the sale of the last lot in Grey Fox Subdivision.

C. No structure on any lot shall exceed one story above grade, with a maximum height of twenty-three (23) feet above the highest finished grade of the lot, except for chimneys of reasonable size. Each dwelling shall have a two car garage with a minimum size of 400 square feet, and having one 16 feet by 7 feet door or two 8 feet by 7 feet doors at a minimum.

D. No building or any part thereof, including garages, shall be erected on any lot closer to the respective property line than as follows:

Front of garage — 70 feet  
\*\* Front of house — 70 feet

("front setback")

\*\* Side street setback — 70 feet

Side yard setback — 15 feet

Rear yard setback — 25 feet

\*\* Or 50 feet from edge of asphalt roadway whichever is greater  
(see Cul De Sac).

E. All buildings erected, placed or permitted to remain on any lot shall be situated only within that portion of said lot not restricted from use by an easement or right-of-way. At street intersections, lots having frontage on two (2) streets shall have one (1) street declared by the Design Review Committee, on approval of structural plans, as the street where the "front setback" applies. The other street shall have a minimum "side street setback" which shall apply.

F. No variance from the "side yard setback" shall be approved.

G. Should any residence be constructed on more than one lot, the exterior lines of lot ownership shall be used for determining the front, rear and side lot setbacks, subject to existing easements.

H. All buildings constructed in the Subdivision shall be frame and stucco, adobe, rammed earth or other such surfaces and materials as may be authorized by the Design Review Committee. Generally acceptable styles are Spanish Colonial, Mediterranean, Pueblo Revival, Flat Roof Territorial and Contemporary Southwest. Brick and wood siding are not acceptable surfaces. Garages, carports and permissible accessory buildings shall conform in material and design to the dwelling to which they pertain. No metal storage or other metal buildings shall be allowed on any lot. Exterior surface materials in desert tone colors, in the Grey Fox's color palette adopted by TCC, LLC, shall be used for any residence, accessory structure, wall or fence. The colors black and white are expressly prohibited. The construction of each building must comply with the International Building Code or the Building Code enforced by Dona Ana County.

I. No identical front elevations will be allowed side by side — that is to say no structure may be identical to the front elevation of a structure on an adjoining lot. All exterior elevations must be shown on plans for approval by the Design Review Committee.

J. A grading plan showing finished elevations in the retention or detention areas has been approved by the ETZ of Dona Ana County. No grading, land filling, excavating, or other alterations will be done in the retention or detention areas except pursuant to the approved plan or revision approved by Dona Ana County and by the Design Review Committee.

K. No manufacturing or commercial enterprises of any kind shall be maintained on, in front of, or in connection with single family residential lots in the subdivision, except home occupations or professionals in businesses engaged in recognized non-manufacturing occupations/professions may be permitted in accordance with the requirements of Dona Ana County.

L. There shall be no fair, exhibition, festival, show or other activity that attracts or is intended to attract, divert, or collect a large number of persons.

Such restrictions shall not prevent, however, what is commonly known as "garage sales" or backyard parties conducted by residents or their children living in the subdivision, provided such are only occasional and in any event no more often than two times per year. Open houses for the purpose of selling a home and model home shows for the same purposes may be held. Such events that will require the opening of the gates may only be performed for a limited amount of time with prior approval of the Grey Fox Homeowners Association.

M. No animals, livestock, including horses, donkeys, and mules, or poultry or swine of any kind shall be raised, bred, or kept on any lot. Dogs, cats and other domesticated, household pets may be kept; provided, however, that they are not kept, bred or maintained for any commercial purpose, and further provided they do not disturb other property owners or become a nuisance in any way. Dogs that bark or howl must be kept inside.

N. Use and occupancy of all portions of the Subdivision shall be subject to zoning, building, health, sewage disposal and sanitation laws and regulations and all other applicable laws and regulations of the State of New Mexico and/or all government agencies having jurisdiction. TCC, LLC, its successors or assigns, may also impose rules and covenants regulating such matters from time-to-time.

O. Subdivision lots shall not be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth, nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted upon the surface of any portion of the Subdivision or within 500 feet below the surface of the Subdivision.

P. Each lot owner shall be responsible for removing weeds and other debris located on such owner's lot and for maintaining, repairing and replacing to a good state of repair and in a neat and attractive condition all improvements to such owner's lot.

Q. Outdoor lighting fixtures and their installation shall be done in such a manner as to improve nighttime public safety and security, promote energy efficiency, and to reduce lighting which is detrimental to the environment or to the public use and enjoyment of public and private property. All outdoor lighting fixtures will provide full cutoff giving no direct emission of light above a horizontal plane. Floodlights and spotlights shall not exceed 110 degrees full beam width or beam spread and be directed at least 65 degrees below the horizontal plane. Lighting which produces in excess of 70 lumens per square foot at ground level is not permitted. Exemptions to the foregoing are as follows:

- a) Residential fixtures consisting of a single incandescent light having an output of less than 1800 lumens or 100 watts as long as it remains shielded from the horizontal level.
- b) Up-lighting for architectural illumination, provided that the total output is less than 5400 lumens per property parcel and less than 1800 lumens per fixture. Moreover, no illumination may project beyond the highest point, or the side of the structure or feature.
- c) Seasonal decorative lighting consisting of incandescent lamps in a temporary installation.
- d) Full cutoff street lighting.

## 2) TEMPORARY USES

A. Any lot or portion thereof may be used temporarily by the Developer as a sales office, model home or homes, or storage and construction yard during the construction and sales period. All other temporary uses defined herein must have the prior written approval of the Design Review Committee.

B. No lot shall be used for the storage of any construction or other materials except for a period of up to thirty (30) days prior to the start of construction and during the construction period.

## 3) CONSTRUCTION.

A. ER-3 Zoned Lots. All construction, whether new construction, alterations, additions or exterior remodeling, shall be completed in accordance with plans approved by the Design Review Committee within eight (8) months from commencement of construction. All construction shall commence upon each lot within eighteen (18) months from the date of purchase of said lot from the Developer or, at the Developer's option, the Developer may re-purchase the lot at the original purchase price. The Developer must exercise this option within 30 days after the 18-month expiration date or it shall lose the right to exercise this option.

B. No building previously used at another location nor any building or structure originally constructed as a mobile dwelling, except when used as a temporary sales office, may be moved onto a lot, except as expressly approved by the Design Review Committee.

## 4) LANDSCAPING.

Landscaping is required on all lots. TCC, LLC, will install the original landscaping in the common areas within the Subdivision. The Grey Fox Homeowners Association is responsible for the maintenance of the common areas and roadway easements to include mowing, weeding, fertilizing, pruning and replacing plants that are damaged or destroyed. The Homeowners Association, however, may seek reimbursement for costs associated with such maintenance from any homeowner whose negligence has caused the need for it to incur any such maintenance expenses. Each homeowner is to be directly responsible for the upkeep of the landscaped easement area within their property boundaries adjacent to the streets that front their property.

Each lot owner must landscape the backyard of their lot. The landscaping in the backyard must be completed within two (2) years of the closing date of the purchase of the lot by the owner.

A. ER-3 ZONED LOTS. Typical desert or suburban farmland environment using drought resistant plants is encouraged. However, a sufficiently visible amount of foliage must be present on each lot to comply with the landscaping requirements herein established or as subsequently amended. The Design Review Committee shall be the final authority as to acceptability with the following criteria to be used as a guideline for the required landscaping:

1. Four (4) two inch (2") caliper broadleaf or evergreen trees, which when mature will reach a minimum height of 20 feet. (Six required if the side yard



abuts a street.) Should more trees be required by FHA or other governmental regulation, such trees can be a 1 inch caliper broadleaf or evergreen unless it is a side yard tree on an abutting street, then it must be as required above. Examples are: Seedless Locust, Ash, Mesquite, Sycamore, Mondale, Pinion and similar varieties.

2. Four (4) intermediate size shrub-bush plants, which when mature will reach a minimum height and width of 8 feet. (Eight required if the side yard abuts a street.) Examples are: Photinia, Texas Sage, Oleander, India Hawthorne, Pyracantha, Forsythia, Spirea, Sumac and similar varieties.

3. Twenty four (24) lower foundation plantings which when mature will reach a height of 2 to 3 feet (Thirty-eight (38) required if the side yard abuts a street). Examples are: Most of the above shrubs, plus Nandina, Rosemary, Mock Orange, Tam Junipers and similar varieties.

4. An assortment of other hardy, drought-resistant broad leaf plantings, including cacti, yucca, cholla, agave, century plant, ocotillo and similar plantings are acceptable in addition to or instead of the above-required plantings of the preceding paragraph.

5. In no event will the natural surface be left exposed and un-landscaped in the front and side yards facing a street. Examples of materials which can be used for ground cover, are grass, crushed rock, crusher fines, brick and stone. Non-woven water permeable weed barrier shall be used under gravel, crusher fines, or rock landscaping areas. The landscaping material shall cover the barrier in such quantity that the underlying barrier does not show through the surface material.

6. Any variation in use or placement of materials as prescribed above must first be approved by the Design Review Committee.

B. At any time a substantial change, alteration or modification is made to the front yard or side yard of a lot relative to landscaping, the Design Review Committee must approve such change, modification or alteration. Excluded from such advance approval requirement shall be instances where plants, trees, shrubbery or other landscaping materials may die, be destroyed, removed or similarly caused to be reduced in quantity and, as such, require replanting or replacement according to the same rules as apply to the initial planting requirements set forth above.

## **5) FENCING AND WALLS.**

A. Any fence, wall, building or structure placed on any lot shall be in compliance with the set back and zoning requirements of Dona Ana County and ETZ, and shall not impair the drainage function of the ponding areas, as shown on the plat. All perimeter and/or retaining walls and fences shall be placed on the dividing lines between lots, except lots that are immediately adjacent to and bounded by land not in the Grey Fox Subdivision shall have walls or fences along said perimeter lines completely within the perimeter lot lines, and said perimeter wall shall not be a party wall. There is no requirement to have a side yard wall along the street on corner lots. Retaining walls shall be party walls if placed on the common property line between two lots, and shall not be removed by either

property owner without the written consent of the other property owner and the Design Review Committee.

All ER-3 zoned lots are required to have perimeter walls or fences constructed. Such required walls must extend along the side lot lines from the rear most point of the dwelling to the rear lot line, and along the rear lot line in its entirety. Such wall shall be no further forward than the front of the house. Walls on sides of lots cannot be constructed within 35 feet from the edge of the pavement. Other walls and fences are optional. The party walls shall be a minimum of forty-two (42) inches in height, except where otherwise physically limited to a lower height. The party walls shall be no more than five (5) feet plus cap in height except retaining walls that are party walls.

B. All fences, perimeter walls, and retaining walls in view from at least one side, shall be constructed of rock or stone in conformance with what is known as "Las Cruces Rock Walls" standards, materials and styles, and shall be of a yellow, reddish or tan color, rather than gray in color. However, those walls, forming the "return" from the residence, or courtyard and patio walls tied to the residence, may be of the same material used in the residence construction.

C. Decorative wrought iron and/or river cobble may be used for wall accents, gates and such, subject to approval by the Design Review Committee.

D. Tin or other sheet metal, chain link, wire and barbed wire are specifically prohibited, except wire fences may be constructed for dog runs when located within and enclosed by a permitted exterior fence. The fence height for such runs shall be no taller than the height of the exterior fence.

E. Perimeter fencing along the southern boundary of the Subdivision on Highway 185 and along Thorpe Road shall be six (6) feet in overall height when measured directly from the highest adjacent ground surface, and may be erected on that portion of a lot situated to the rear of the front wall of the main building except retaining walls which may be higher. Perimeter fencing along Leasburg drain and Strange Road shall be five (5) feet in overall height plus a 6 inch cap.

#### **6) BOATS, TRAILERS, CAMPERS, AND RECREATIONAL VEHICLES.**

No boats, campers, other trailers, recreational and commercial type vehicles or equipment may be parked or stored on any lot, street, or common area, except in an enclosed garage or within the perimeters of the "backyard" of a lot. Notwithstanding the foregoing, such vehicles may be temporarily parked on a lot or on the street in front of a lot owner's property solely for the purpose of loading or unloading the vehicle. The vehicle shall remain there for no longer than is reasonably necessary to load or unload, but, in no circumstances, more than 24 hours. If a lot owner's guest is driving a recreational vehicle, that recreational vehicle may be parked on the lot owner's property for a period not to exceed fourteen (14) days. In addition, personal vehicles, including cars, vans, pick-ups, SUVs, motorcycles, and the like shall not be stored on a regular basis outside the enclosed perimeter of any lot. Should this provision be violated, the Grey Fox Homeowners Association may have any such vehicle towed and placed in storage at the owner's expense.

**7) GARBAGE AND TRASH.**

No refuse, garbage, trash, collection container, lumber, grass, shrub or tree clippings, plant waste, compost, metal, bulk materials, scrap, junk cars, paint cans, oil, flammable objects, concrete tailings, rockwall residue, refuse or debris of any kind shall be kept, stored, or allowed to accumulate on any lot except within an enclosed structure or area appropriately screened from view. Rubbish and garbage must be kept in suitable containers and removed from lots in accordance with ordinances, rules and regulations of Dona Ana County, and all regulations promulgated thereunder. No rubbish or garbage may be burned or dumped on lots or elsewhere in the Subdivision.

**8) ANTENNAE, EQUIPMENT, PIPES, UTILITY LINES & TRANSMITTERS**

A. Pipes for water, gas, sewer, drainage, or other purposes, and wires, poles, aerials, antennae, satellite dishes and other facilities for the transmission or reception of audio or visual signals or electricity, and utility meters or other utility facilities, such as solar equipment, shall be kept and maintained, to the extent reasonably possible, underground or within an enclosed structure and shall not be visible from the street. Ham radio towers are permissible only if they are the retracting variety with the overall retracted height not to exceed 12 feet. These towers shall remain retracted at all times except when actively being used. Any items that cannot meet these requirements shall be subject to the approval of the Design Review Committee. No transmission towers or microwave equipment shall be erected or placed on any lot.

B. No air conditioning equipment, evaporative coolers, heating equipment, cooling or heat ducts, or other equipment that in the opinion of the Design Review Committee is visually obtrusive shall be permitted on any rooftop without proper screening. All such equipment that is ground mounted, including swimming pool pumps, filters and heaters, shall be concealed from the view from the street and from other lots by means of an approved wall, fence, or vegetation screen. Evaporative or refrigerated air coolers, if erected or maintained on the roof of any premises, shall be effectively screened or otherwise hidden from view from any public place or adjoining lot as determined by the Design Review Committee.

**9) PARAPETS.**

Parapets must extend a minimum of 1 foot 6 inches above any point in the adjoining truss system and must fully enclose the roof.

**10) CONDUITS.**

Satellite dishes or other receivers must utilize a conduit (or similar pipe or sleeve) that runs through the roof so that there will be no wire exposed on the exterior of the residence or other structure.

#### **11) ROOFS.**

Flat roofs are to be finished within the same color range as the house's predominate exterior stucco color. Bright white or reflective roofs will not be permitted on any house in the Subdivision. Pitched roofs shall not be allowed with a pitch of more than 5:12. Pitched roofs must use barrel tile made of clay or concrete in the red, orange, brown or tan selection of colors. Use of metal roof sheets or shingles will not be permitted.

#### **12) FLUES AND CHIMNEYS**

For the purpose of measuring maximum height, a roof will be measured to the top of the parapets. Flues and chimneys shall not be permitted to extend more than four (4) feet above the maximum height.

#### **13) SOLAR PANELS.**

No roof mounted solar panels shall be permitted in the Subdivision and ground mounted solar panels shall be permitted only if they are screened in such a way that they are not visible from outside the lot on which they are installed.

#### **14) SIGNS.**

Each residence must have at its entryway a permanent street number clearly visible. No billboards or advertising signs of any character shall be erected, placed, permitted, or maintained on any residential lot or on any building erected thereon, other than one (1) name plate of the occupant of any residence upon which his or her professional or occupational title may also be added, and no such sign or name plate shall exceed a size of four square feet, and no such sign shall be lighted. Provided, however, that permission is granted for the erection and maintenance of not more than one signboard to each lot, during the course of its resale, which signboard shall not exceed forty-eight (48) square feet. Notwithstanding anything herein contained to the contrary, nothing herein shall be construed to prevent the Developer from erecting, placing, or maintaining sign structures and offices as may be determined necessary by the Developer to promote the sale and development of lots or properties within the Subdivision.

Notwithstanding the foregoing paragraph, until a dwelling has been erected on each lot within the Subdivision, and each such dwelling sold, the only sign which shall be used to advertise that the property is either for sale or for rent shall be a sign approved by the Developer, with an appropriate place to identify either the lot owner or the broker.

#### **15) FLAGS/PENNANTS.**

No flags or pennants may be used in the Subdivision on homes or lots without approval of the Design Review Committee, except flag poles that display the United States of America and/or State of New Mexico flags are permitted.

**16) SITE TRIANGLE AT INTERSECTIONS.**

There is required an area of unobstructed vision at street intersections, entrances/exits, which permits a vehicle driver to see approaching vehicles to the right or left. Nothing over three (3) feet in height measured from the street at the point where the pavement meets the dirt, shall be permitted to obstruct a sight line which shall be the front street and side street lines of a corner lot and a line connecting points thirty (30) feet distance from the intersection of the property line of such lot.

Trees located within the clear sight triangle will be allowed if all branches are trimmed from a height between three (3) feet and eight (8) feet.

No single post or column within the designated triangle shall exceed twelve (12) inches in thickness at its greatest cross-section dimension.

**III. EASEMENTS, STORM DRAINAGE AND SUPPORT STRUCTURES**

**1) EASEMENTS.**

A. Utility easements and rights-of-way designated on the plat of the Subdivision, as amended from time-to-time, are hereby reserved to TCC, LLC, and Dona Ana County and all public and private utility companies (as specifically shown on such plat or assigned by TCC, LLC) for the construction, installation and maintenance of any and all utilities, such as power, cable, gas lines, drains, roads, water supply lines, telephone and telegraph lines or the like, necessary or desirable for public health, welfare and convenience.

B. Within these easements no structure shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or streets. Within each drainage easement, no temporary or permanent structure shall be placed, and no structure or planting, or movement of materials shall be permitted which may interfere with the direction of flow in the drainage channels in the easements, unless approval is first obtained from the Design Review Committee and from the Dona Ana County ETZ.

C. All easements shall be kept free from alteration, and owners of lots containing such easements shall keep them free from permanent structures and shall allow access by maintenance personnel for the installation, upkeep, repair, removal and replacement of such facilities that may be constructed within such easements.

D. Each ER-3 zoned lot in the Subdivision has an area designated on the plat that is a ponding area. Each lot owner is responsible for retaining water on that owner's lot as called for on the plat. The swale, slope or indentation which acts as the ponding area may not be altered unless consent is obtained from the Dona Ana County ETZ and from the Design Review Committee.

E. Sale of any lot shall include all rights of TCC, LLC, in and to the street, road or highway affronting the same, subject however to the rights of all others to use the same as public or private thoroughfares, except as otherwise specifically reserved herein. TCC, LLC, reserves the right to dedicate to the public all streets, roads, and highways within or abutting the Subdivision without the consent of any lot owner within the Subdivision.

F. All public and private rights-of-way, including streets and roads shown on the recorded plats for the Subdivision, shall also be considered an easement. Such easements shall be measured by a perpendicular (or radial on curves) from the front property corners of all lots to the centerline of such street or road.

**2) SECURITY SERVICES.**

TCC, LLC, or the Grey Fox Homeowners Association may, but are not required to, establish security for the Subdivision, including a gatehouse and gates. Such security will be owned and operated by the Grey Fox Home Owners Association, with the expense of the security to be borne as a common expense of the Association itself.

**IV. MISCELLANEOUS PROVISIONS**

1) Each grantee of a lot within Grey Fox Subdivision by the acceptance of a deed or conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights and benefits hereby granted, created, reserved or declared, and all obligations hereby imposed shall be covenants running with the land, and shall bind any person having at any time any interest or estate in the land, and shall inure to the benefit of such owner in like manner as though the provisions of this Declaration were recited and set forth in full in each and every deed or conveyance.

2) The agent for service of process upon the Developer is Mark Hettinga, 645 South Compress Road, Las Cruces, New Mexico.

3) Each grantee of a lot within the Subdivision is hereby placed on notice of the plans of the Developer to develop other lands, including other units or phases of Grey Fox Subdivision. Each grantee accepting a grant of a lot, subject to these Protective Covenants, hereby consents to such development and covenants not to oppose such development, provided such development is not in violation of applicable law.

**V. OWNERS' ASSOCIATION**

The Grey Fox Homeowners Association, Inc., which is an incorporated association made up of all the lot owners in the Grey Fox Subdivision, has as its purpose the ownership, development, and maintenance of common areas and facilities within the Subdivision.

**1) DEFINITIONS.**

For the purposes of this Declaration, the following terms are defined:

ASSOCIATION:

All of the lot owners acting as a group to be known as the Grey Fox Homeowners Association, Inc., in accordance with the By-Laws adopted by them and this Declaration.

MAINTENANCE AREAS:

Maintenance areas are those areas which are to be maintained by the Association. They include all areas owned by the Association or owned by TCC, LLC, and within the Subdivision's boundaries, easements dedicated to the Association for the purpose of ground maintenance, tracts designated as roads or rights-of-way, tracts designated as open areas, Leasburg drainage park, landscaping and pedestrian trails, lighting, gates, buildings, structures and improvements and such other areas designated as maintenance areas by the Association.

LOT OWNERS:

Person(s) owning a lot within Grey Fox Subdivision in fee simple.

DONA ANA COUNTY

The governmental body of Dona Ana County, New Mexico.

**2) NON-PROFIT PURPOSE.**

No director, officer, member or employee of the Association, or any other private individual shall receive at any time any of the earnings or funds of the Association, provided that this shall not prevent payment to any such person of reasonable compensation for services rendered, and no such person shall be entitled to share in the distribution of any of the Association's assets upon the dissolution of the Association. At dissolution, excess assessments may be refunded to the lot owners, and all other assets shall be transferred exclusively to charitable, religious, scientific, or educational institutions, which then qualify under the provisions of Section 501 (c)(3) of the Internal Revenue Code, as it now exists, or as amended hereafter.

**3) ADMINISTRATION OF THE MAINTENANCE AREAS.**

The areas to be maintained shall be administered as follows:

A. **LOT OWNERS, BOARD OF DIRECTORS AND OFFICERS:** The administration of the maintenance shall be vested in the lot owners, the owners of each lot having one vote. The owners shall elect and act through a Board of Directors (hereinafter called the "Board") in the manner set forth in the By-Laws



of the Association. Each member of the Board shall be a lot owner except that if a lot owner is a corporation, partnership, trust or other legal entity other than a natural person or persons, then any director of such corporation, partner of such partnership, individual trustee of such trust, or manager of such other legal entity, shall be eligible to serve as a member of the Board. From among them, the Board shall elect a chairman of the Board and officers of the Association, including at a minimum, a president and secretary.

B. INITIAL BOARD OF DIRECTORS: The initial Board of Directors shall be composed of three (3) persons to be chosen by TCC, LLC. The Board of Directors shall consist of the above members until either (a) the Developer states in writing to all lot owners that control shall pass to a Board of Directors elected by the lot owners, or (b) the sale of all lots in the Subdivision.

C. GENERAL POWERS AND DUTIES OF THE BOARD: The Board shall have the duty and such powers as shall be reasonably required to direct, administer, manage and protect the maintenance areas in accordance with the provisions of this Declaration and the By-Laws of the Association and, without limiting the foregoing, the Board shall have the duty and power to acquire and pay for the following:

1. Water, waste removal, electricity and other necessary utility services for the maintenance areas. The Board will determine the manner in which utility services will be metered and charged.

2. An insurance policy or policies in such amounts determined by the Board, insuring the members of the Board and their agents and employees and the owners against any liability to the public or to the owners and their invitees and tenants.

3. Landscaping, gardening, snow removal, painting, clearing, maintenance, decorating, repair of facilities, including but not limited to walls, roadways, lighting, signage, parks, bridges and walkways.

4. Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance or assessments, water, electricity, and other utility services for the areas and facilities which the Board is required to secure or pay for pursuant to the terms of this Declaration or By-Laws of the Association or which, in the Board's opinion, are necessary or convenient for the benefit of the lot owners or for the enforcement of this Declaration and/or such By-Laws.

5. Any amount necessary to discharge any mechanic's or materialmen's lien or other encumbrance levied against the maintenance areas or any part thereof. Where one or more lot owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it and any costs incurred by the Board by reason of such lien or liens, including attorney fees, shall be specially assessed to said owners.

6. The services of any person or firm employed by the Board in furtherance of its general powers and duties herein stated, including but not limited to, accountants, bookkeepers, tax advisors, lawyers, architects, engineers, carpenters, electricians, plumbers, painters, gardeners, managers and others determined by the Board to be necessary or convenient.

7. Any taxes payable by the Association.

D. **LIMITATION OF THE POWERS OF THE BOARD:** The Board's powers herein above enumerated shall be limited in that the Board shall have no authority to acquire and pay for any capital addition or improvement (other than for purposes of replacing or restoring portions of the maintenance areas, subject to all of the provisions of this Declaration) having a total cost in excess of \$10,000.00; nor shall the Board authorize any structural alterations, capital additions to, or capital improvements requiring an expenditure in excess of \$10,000.00, without in each case obtaining the prior approval of a simple majority of the lot owners. If the expenditure in excess of \$100,000.00 is to be expended, then such shall require a two-thirds majority approval of the lot owners. The Board may adopt such reasonable rules and regulations as it may deem advisable for the maintenance, conservation and beautification of the maintenance areas and for the health, comfort, safety and general welfare of the owners. Written notice of such rules and regulations shall be given to all lot owners and the areas shall be at all times maintained subject to such rules and regulations.

**4) ASSESSMENTS AND MAINTENANCE FUND.**

There shall be a maintenance fund and assessments against the lot owners as follows:

A. **CREATION OF MAINTENANCE FUND AND OBLIGATION FOR ASSESSMENTS:** The Board shall establish a maintenance fund for the administration, maintenance, repair, replacement and improvement of the maintenance areas and facilities and for the enforcement of the provisions of this Declaration and the By-Laws of the Association, which maintenance fund shall be financed or funded by assessments as herein provided, paid by all lot owners. Each lot owner, including transferees of lot owners, shall make monthly payments to the maintenance fund of a sum of money determined by the Board to be adequate to pay the share of the maintenance fund of such owner or transferee. If the Board fails to determine the amount of such sum, the amount shall be \$125.00 per month per lot for each lot owner. The fund shall be administered on a fiscal year basis, which fiscal year shall end on December 31<sup>st</sup> of each year.

Each year, on or before November 30<sup>th</sup>, the Board shall estimate the total amount necessary to pay the cost of wages, materials, insurance, services and supplies which will be required for the administration, tax and insurance payments, maintenance, repairs, replacement and improvement of the maintenance areas during the ensuing fiscal year, and for the enforcement of the provisions of this Declaration and the By-Laws of the Association, together with a reasonable amount considered by the Board to be necessary as a reserve for contingencies and replacements, and shall notify each owner as to the amount of such estimate.

On or before the second day of each month, each lot owner shall be obligated to pay to the Board the assessments due pursuant to these covenants, unless other payment arrangements are made with approval of the Board.

**B. MANAGEMENT OF THE MAINTENANCE FUND AND COLLECTION OF THE ASSESSMENTS:** On or before the date of each annual meeting of the lot owners, the Board shall supply to each owner an itemized accounting of the administrative, maintenance and other expenses for the preceding fiscal year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the estimates provided, and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall be credited to the amount due from the lot owners next year's estimate, until exhausted, and any net shortage shall be added to the next year's estimate after rendering of the accounting. The Board shall build up and maintain a reasonable reserve for contingencies and replacements. Extraordinary expenditures not originally included in the annual estimate that may become necessary during the year shall be charged first against such reserve. If said estimated cash requirement proves inadequate for any reason, including non-payment of any owner's assessment, the Board may serve notice of such further assessment on all owners by a statement in writing, giving the amount and reasons therefor, and such further assessment shall become effective with the next monthly payment due.

All owners shall be obligated to pay the adjusted monthly assessments. The initial Board shall determine the "estimated cash requirement" as above defined. The failure or delay of the Board to prepare or submit the annual adjusted estimate to the owners shall not constitute a waiver or release in any manner of such owner's obligation to pay the assessment, including maintenance costs and necessary reserves. The Board shall keep full and correct detailed books of account and records of the receipts and expenditures affecting the common areas, specifying and itemizing the maintenance and repair expenses of the common areas and any other expenses incurred. The records and the vouchers authorizing the payments shall be available for inspection by any owner or any representative of any owner at reasonable times. All funds collected hereunder shall be held and expended for the purposes designated herein and shall be deemed to be held for the benefit, use and account of all the owners.

If an owner is in default in the monthly payments of the aforesaid charges or assessments for thirty days or longer, the Board may file a notice of lien for such amount due together with accruing amounts and interest thereon with the County Clerk of Dona Ana County, New Mexico, with such evidencing the lien therefor against the lot involved, and may bring suit for and on behalf of themselves and as representatives of all owners to enforce collection thereof or to foreclose the lien therefor as hereinafter provided and there shall be added to the amount due the costs of such suit, together with legal interest and reasonable attorney's fees to be fixed by the court. To the extent permitted by any court decision, statute or law now or hereafter effective, the amount of any delinquent and unpaid charges or assessments and interest, costs and fees, as above provided, shall be and become a lien or charge against the lot owned by the lot owner involved from when such was payable and may be foreclosed by an action brought in the name of the Board and/or the Association in the same manner as

a foreclosure of mortgage against real estate, and the period allowed for redemption shall be one month from and after the date of foreclosure sale. In the event of a voluntary conveyance of ownership, the grantor and grantee shall be jointly and severally liable for all unpaid common expenses and assessments for common expenses related to said ownership to the time of such grant or conveyance. No owner may waive or otherwise avoid liability for the assessments provided for herein by non-use of the maintenance areas or by abandonment of their lot.

**5) INSURANCE AND TAXES.**

The Board of Directors shall purchase such liability and/or casualty insurance as it deems advisable. The Board shall file the Association's annual tax return, and annual election as a tax exempt homeowners association, if applicable; and shall pay property taxes and special assessments which are or could become a lien upon the maintenance areas.

**6) GENERAL PROVISIONS.**

The following general provisions shall govern the administration and management of the maintenance areas:

A. Until the Board of Directors provided for in this Declaration is formed, the Developer shall exercise the powers, rights and functions of the Board.

B. Upon written request to the Board, the holder of any duly recorded mortgage or deed of trust against any lot owner shall be given a copy of any and all notices permitted or required by this Declaration to be given to the owner or lot owners whose ownership is subject to such mortgage or deed of trust.

C. Notices required to be given to the Board or the Association shall be delivered to the Chairman of the Board and the President of the Association, either personally or by certified mail, return receipt requested, addressed to such individuals at their address as maintained by the Association.

D. Notices required to be given any devisees or personal representative of a deceased owner may be delivered either personally or by mail to such personal representative at his/her or its address appearing in the records of the court wherein the estate of such deceased owner is being administered.

E. No covenants, restrictions, conditions, obligations or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches, which may occur.

F. The agent for service of process upon the Association is Mark Hettinga, 645 South Compress Road, Las Cruces, New Mexico, until such time as the President of the Association is elected, who shall thereafter serve as agent for service of process.

**7) BREACH OF COVENANTS.**

It is further stipulated that breach of any of the foregoing conditions and covenants shall not affect any mortgage or other lien which in good faith may be existing at the time upon said property or any improvements thereon.

**8) AMENDMENT.**

Any provision hereof may be changed, amended or rescinded by a written instrument setting forth such change, amendment or rescission, which has been approved by ninety (90) percent of lot owners in attendance or by proxy at a meeting called for that purpose, and executed by the President of the Association, except that this provision (V, Paragraph 8) may be changed only by unanimous vote of the lot owners.

Any amendment, change, modification or rescission of this Declaration shall be effective only when filed for record in the office of the County Clerk of Dona Ana County, New Mexico. No amendment, change, modification or rescission shall be valid or effective if such violates or conflicts with any applicable statute of the State of New Mexico and/or other governmental authority having jurisdiction thereof.

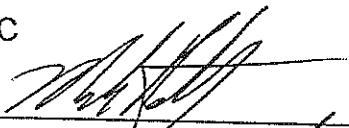
**VI. EFFECTIVE DATE**

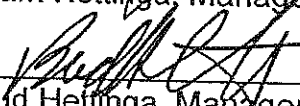
These restrictions, covenants and reservations, and any amendments or exceptions thereto shall be effective as of the date of their filing with the County Clerk of Dona Ana County, New Mexico.

DATED at Las Cruces, New Mexico, this 8<sup>th</sup> day of December, 2005.

TCC, LLC

By:

  
\_\_\_\_\_  
Mark Hettinga, Manager

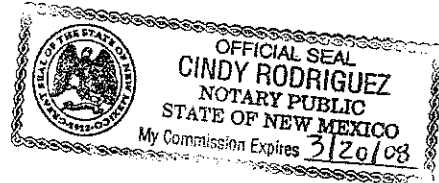
  
\_\_\_\_\_  
Bud Hettinga, Manager

STATE OF NEW MEXICO )  
 )  
COUNTY OF DONA ANA )

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of December, 2005, by Mark Hettinga and Bud Hettinga, Managers of TCC, LLC, a New Mexico Limited Liability Company.

Cindy Rodriguez  
Notary Public

My Commission Expires:  
3/20/08



Declaration of Protective Covenants - Grey Fox Subdivision (rev).wpd

State of New Mexico  
County of Dona Ana, ss. 43189  
RECEPTION NO. 43189  
I hereby certify that this  
instrument was filed for  
recording and duly recorded on  
**DEC 13 2005**  
at 4:48 o'clock PM  
Book 669 Page 525-43  
of the Records of said County.  
Rita Torres, County Clerk  
BY: Shelton DEPUTY



Acc/gum

**AMENDMENT TO  
DECLARATION OF PROTECTIVE COVENANTS  
GREY FOX SUBDIVISION  
(PHASE I)  
DONA ANA COUNTY, NEW MEXICO**

KNOW ALL BY THESE PRESENTS: That TCC, LLC, a New Mexico limited liability company, developer and owner of Grey Fox Subdivision in Dona Ana County, New Mexico (hereinafter sometimes referred to as the Developer), according to the plat thereof on file in Plat Book 21, Plat 4282, Page(s) 449, filed on December 13, 2005, of the records of the County Clerk of Dona Ana County, New Mexico, in consideration of the mutual interest of the owners of real estate in the Grey Fox Subdivision (Phase I), has heretofore filed a Declaration of Protective Covenants of Grey Fox Subdivision, Dona Ana County, New Mexico, which were recorded in Book 669, Pages 525 - 543, on December 13, 2005, of the records of the County Clerk of Dona Ana County, New Mexico. In accordance with the applicable provisions thereof, such are amended as is hereafter set forth with the provisions hereof to be that such real property be subject to the following restrictions and obligations with such to apply to all lots and building sites in said Subdivision, and all conveyances of any lot therein shall likewise be subject to said restrictions and obligations as follows:

Article II. General Restrictions, 4) Landscaping, Paragraph B, there is added thereto at the end of such paragraph, the following:

"If three (3) or more items and or shrub bushes are grouped together or in a continuous line for screening purposes, their species shall not exceed a height of 15 vertical feet to preserve the surrounding vistas of all homeowners."

Article II. General Restrictions, 5) Fencing and Walls, Paragraph A, which currently provides as follows:

"A. Any fence, wall, building or structure placed on any lot shall be in compliance with the set back and zoning requirements of Dona Ana County and ETZ, and shall not impair the drainage function of the ponding areas, as shown on the plat. All perimeter and/or retaining walls and fences shall be placed on the dividing lines between lots, except lots that are immediately adjacent to and bounded by land not in the Grey Fox Subdivision shall have walls or fences along said perimeter lines completely within the perimeter lot lines, and said perimeter wall shall not be a party wall. There is no requirement to have a side yard wall along the street on corner lots. Retaining walls shall be party walls if placed on the common property line between two lots, and shall not be removed by either property owner without the written consent of the other property owner and the Design Review Committee.

All ER-3 zoned lots are required to have perimeter walls or fences constructed. Such required walls must extend along the side lot lines from the rear most point of the dwelling to the rear lot line, and along the rear lot line in its entirety. Such wall



shall be no further forward than the front of the house. Walls on sides of lots cannot be constructed within 35 feet from the edge of the pavement. Other walls and fences are optional. The party walls shall be a minimum of forty-two (42) inches in height, except where otherwise physically limited to a lower height. The party walls shall be no more than five (5) feet plus cap in height except retaining walls that are party walls."

is hereby deleted in its entirety and there is substituted therefor the following:

"A. Any fence, wall, building or structure placed on any lot shall be in compliance with the set back and zoning requirements of Dona Ana County and ETZ, and shall not impair the drainage function of the ponding areas, as shown on the plat. All perimeter and/or retaining walls and fences shall be placed on the dividing lines between lots, except lots that are immediately adjacent to and bounded by land not in the Grey Fox Subdivision shall have walls or fences along said perimeter lines completely within the perimeter lot lines, and said perimeter wall shall not be a party wall. There is no requirement to have a side yard wall along the street on corner lots. Retaining walls shall be party walls if placed on the common property line between two lots, and shall not be removed by either property owner without the written consent of the other property owner and the Design Review Committee.

All ER-3 zoned lots are required to have perimeter walls or fences constructed. Such required walls must extend along the side lot line in its entirety. Such wall shall be no further forward than the front set back line. A curb of the same construction as the wall no higher than 8" is permissible to delineate property lines to within 35' of edge of asphalt. On lots that face two streets, the side street wall may not be constructed within 35 feet from the edge of the payment.

Other walls and fences are optional. The party walls shall be a minimum of forty two (42) inches in height, except where otherwise physically limited to a lower height. The party walls should be no more than five (5) feet plus cap in height except retaining walls that are party walls."

Except as specifically modified hereby, the above-described Protective Covenants of Grey Fox Subdivision (Phase I), remain in full force and effect.

Effective Date of Amendment — These amendments shall be effective as of the date of their filing with the County Clerk of Dona Ana County, New Mexico.

DATED at Las Cruces, New Mexico, this 17th day of October, 2006.

TCC, LLC

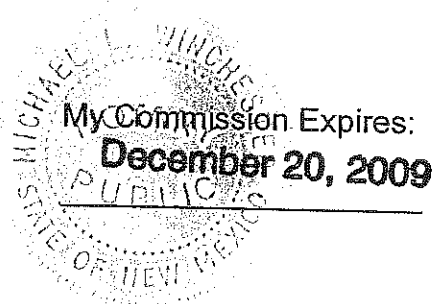
By:   
Mark Hettinga, Manager

*Bud Hettinga*  
Bud Hettinga, Manager

STATE OF NEW MEXICO     )  
  ) **ss**  
COUNTY OF DONA ANA     )

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of October, 2006, by Mark Hettinga and Bud Hettinga, Managers of TCC, LLC, a New Mexico Limited Liability Company.

*[Signature]*  
Notary Public



Grey Fox Subdivision - Phase I Amendment.wpd

State of New Mexico  
County of Dona Ana  
RECORDATION No. 36409  
I hereby certify that this  
instrument was filed for  
recording and duly recorded on  
OCT 17 2006  
at 4:39 o'clock P. M.  
By 755 Page 780-782  
of the Records of said County.  
Notary Public, County of Dona Ana  
*[Signature]*

**AMENDMENT TO THE  
DECLARATION OF PROTECTIVE COVENANTS  
GREYFOX SUBDIVISION PHASES I, II, III, & IV**

KNOW ALL BY THESE PRESENTS: That TCC, LLC, a New Mexico limited liability company, developer and owner of Grey Fox Subdivision (Phases I,II,III, & IV) in Dona Ana County, New Mexico (herein after sometimes referred to as the Developer), according to plats on file in Plat Records Book 21, Plat 4282, pages 449-451 filed on December 13, 2005 and in Plat Book 21, Plat 4423, Pages 706-709, filed on July 21, 2006, of the records of the County Clerk of Dona Ana County, New Mexico, in consideration of the mutual interest of the owners of real estate in the Grey Fox Subdivision ( Phases I, II, III, & IV), has heretofore filed a Declaration of Protective Covenants of Grey fox Subdivision, Dona Ana county, New Mexico, Which were recorded in Book 669, Pages 525-543, on December 13, 2005, and Book 755 Pages 761-779, on October 17 2006 and Book 755 Pages 780-782, on October 17 2006, of the records of the County Clerk of Dona Ana County, New Mexico. In accordance with the applicable provisions thereof, such are amended as is hereafter set forth with the provisions hereof to be that such real property be subject to the following restrictions and obligations with such to apply to all lots and building sites in said Subdivision, and all conveyances of any lot therein shall likewise be subject to said restrictions and obligations as follows::

KNOW ALL BY THESE PRESENTS: That the Grey Fox Homeowners Association, Inc., in accordance with the By-Laws adopted by them approve the above amendment to Grey Fox Subdivision including Phases I, II, III, IV.

Article II. General Restrictions,

**7) BOATS, TRAILERS, CAMPERS, AND RECREATIONAL VEHICLES.**

*“No boats, campers, other trailers, recreational and commercial type vehicles or equipment may be parked or stored on any lot, street, or common area, except in an enclosed garage or within the perimeters of the “ backyard” of a lot.” existing language to be modified as follows:*

**No boats, campers, other trailers, recreational and commercial type vehicles or equipment may be parked or stored on any lot, street, or common area, except in an enclosed garage. Exceptions to this are boats, trailers, lawn care equipment that are stored within the perimeter of the “backyard” wall and are no more then 1 foot shorter then the shortest height of the perimeter “backyard” wall. Not withstanding the foregoing, such vehicles may be temporarily parked on a lot or on the street in front of a lot owner’s property solely for the purpose of loading or unloading the vehicle. The vehicle shall remain there for no longer than is reasonably necessary to load or unload, but, in no circumstances, more then 24 hours. If a lot owner’s guest is driving a recreational vehicle, that recreational vehicle may be parked on the lot owner’s property for a period not to exceed (14) days. In addition, personal vehicles, including cars, vans,**

