

**DECLARATION OF PROTECTIVE COVENANTS AND BUILDING RESTRICTIONS
FOR LOS DIAMANTES SUBDIVISION**

THIS DECLARATION of Protective Covenants and Building Restrictions is made this 24th day of October, 2017, by 98th St., LLC, a New Mexico limited liability company having as its principal address 6300 Jefferson St. NE, Albuquerque, New Mexico 87109 (hereinafter the "Declarant").

WITNESSETH

WHEREAS, the Declarant is the Owner of the following described real property located in Bernalillo County, New Mexico:

A portion of Tract "34D-1-A", Lands of Curb Inc., as the same is shown and designated on the plat thereof, filed in the office of the County Clerk of Bernalillo County, New Mexico, on November 25, 2003, in Plat Book 2003C, Page 357 (the "Property").

WHEREAS, Declarant desires the development of the Property;

WHEREAS, Declarant desires to create and establish certain Protective Covenants and Building Restrictions to help maintain the authenticity, integrity and cohesiveness of the Property for the mutual benefit and enjoyment of purchasers and residents of Lots within the Property;

WHEREAS, Declarant has deemed it desirable to create a non-profit corporation (the "Association") for the purposes of benefiting the Property, the Owners and the Residents by, without limitation: (1) acquiring, constructing, operating, managing and maintaining designated Association Land; (2) enforcing and administering these Declarations on behalf of all Owners; and (3) establishing, levying, collecting and disbursing annual assessments and other charges imposed hereunder; and

WHEREAS, Declarant is preparing the necessary documents for the incorporation and organization of the Association and may, without obligation, seek approval of any governmental agencies or financial institutions whose approval Declarant deems necessary or desirable.

NOW, THEREFORE, BE IT RESOLVED that the Declarant does hereby declare the creation and existence of Protective Covenants and Building Restrictions for the Los Diamantes Subdivision, that all real property within the Property shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, limitations, conditions, and agreements hereinafter set forth. Said Covenants shall be considered as included in any agreements for deed, deeds of conveyance or mortgages, whether or not written therein or referred to by reference. After recordation of this Declaration, Declarant hereby makes all conveyances of property within the Property, whether or not so provided therein, subject to the Covenants herein set forth.

**ARTICLE I
DEFINITIONS**



The following words when used in this Declaration or any Supplemental Declaration shall have the following meanings:

A. **“Additional Properties”** shall mean properties added and subjected to this Declaration in accordance with Article XIV hereof.

B. **“Annual Assessment”** shall mean the charge levied and assessed each year against each Lot or Dwelling Unit.

C. **“Articles”** shall mean the Articles of Incorporation of the Association as the same may be amended from time to time.

D. **“Assessable Property”** shall mean the entire Property, except such part or parts thereof as may from time to time constitute or be deemed Exempt Property.

E. **“Assessment Lien”** shall mean the lien created and imposed by Article III.

F. **“Association”** shall mean the nonprofit corporation to be organized by Declarant to administer and enforce the Covenants and to exercise the rights, powers, and duties set forth in this Declaration. Prior to the incorporation of the Association, Declarant may seek approval from any governmental agencies or financial institutions whose approval Declarant deems necessary or desirable. Declarant, which hereby reserves the exclusive right to cause such Association to be incorporated, intends to name the Association “Los Diamantes Homeowners’ Association, Inc.”, if this name is available for use when the Association is incorporated.

G. **“Association Land”** shall mean such part or parts of the Property, together with the buildings, structures, and improvements thereon, including but not limited to the private streets, entry gates and landscaped areas, as may be owned at any time hereafter by the Association, for as long as the Association is the Owner thereof. Association Land is owned by the Association for the common use and enjoyment of the Owners and is also known as “Common Area”.

H. **“Dwelling Unit”** shall mean the main roofed and walled structure built on a Lot for permanent, residential use, and all projections and extensions thereof.

I. **“Board”** shall mean the Board of Directors of the Association.

J. **“By-Laws”** shall mean the By-Laws of the Association as the same may be amended from time to time.

K. **“Covenants”** shall mean the covenants, conditions, assessments, charges, servitudes, liens, reservations, and assessments set forth herein.

L. **“Declarant”** shall mean 98th St., LLC, a New Mexico limited liability company, and its successors and assigns.

M. **“Declaration”** shall mean this Document.

N. **“Deed”** shall mean a Deed or other instrument conveying the fee simple title to real property within the Property.

O. **“Exempt Property”** shall mean the following portions of the Property:

(1) All land and permanent improvements owned by or dedicated to and accepted by the United States, the State of New Mexico, Bernalillo County, or any political subdivision thereof, for as long as any such entity or political subdivision is the Owner thereof or for so long as said dedication remains effective; and

(2) All Association Land, for as long as the Association is the Owner thereof.

P. **“Front Lot Line”** shall mean the boundary line of a building site which abuts upon any street, public or private.

Q. **“Front Yard”** shall mean the space extending from the concrete curb of the paved street to the front of the Building on any Lot. A corner Lot will have a Front Yard on one street as designated by the Architectural Control Committee pursuant to Article XVI, Section 2 herein below.

R. **“Improvements”** shall mean and include parking areas, loading areas, fences, walls, poles, signs, landscaping and any other structure or facility of any kind or type.

S. **“Lot”** shall mean and refer to any plot of land shown on the Plat of the Property, other than any parcel, tract, easement and Exempt Property as herein defined.

T. **“Member”** shall mean all Owners.

U. **“Owner”** shall mean the record holder of legal title to the fee simple interest in any Lot, including contract sellers, but excluding others who hold such title merely as security. In the case of Lots the fee simple title to which is vested in a trustee pursuant to New Mexico law, legal title shall be deemed to be in the Trustor.

V. **“Permanent Improvements”** shall mean all buildings and structures and other improvements, which, at the time of the annual assessment are taxable by the State of New Mexico or a political subdivision thereof as real property.

W. **“Resident”** shall mean:

(1) Each buyer under a contract of sale of any Lot within the Property and each tenant under a lease, written or oral, of any Lot within the Property; and

(2) Members of the immediate family of each Owner and of each buyer and of each tenant actually living on any Lot within the Property.

X. **“Los Diamantes Plans and Standards”** shall mean the Los Diamantes Site Plan, the Los Diamantes Master Utility Plan, the Los Diamantes Grading and Drainage Plan, as the same may be amended and on file with the City of Albuquerque and in effect from time to time or as hereinafter adopted.

Y. **“Special Assessment”** shall mean any assessment levied and assessed pursuant to Article III, Section 5.

Z. **“Supplemental Declaration”** shall mean any supplement to this Declaration subjecting additional property within the Property to this Declaration as provided in Article XIV.

AA. **“Subdivision”** shall mean the Los Diamantes Subdivision.

BB. **“Voting Owners”** shall mean those Owners who, pursuant to Article VIII, have voting rights.

ARTICLE II
DECLARATION BINDING ON
PROPERTY, OWNERS, AND ASSOCIATION

Section 1. From and after the date this Declaration is recorded each Lot subjected to this Declaration shall be bound hereby. The Declaration and covenants contained herein shall run with, be for the benefit of, bind, and burden all Lots so subjected.

Section 2. From and after the date this Declaration is recorded, the Covenants shall be binding upon and inure to the benefit of each Owner, his/her heirs, executors, administrators, trustees, personal representatives, successors, and assigns, whether or not so provided or mentioned in the Deed. Each Owner expressly agrees to pay, and to be personally liable for, the assessments provided for hereunder, and to be bound by all of the Covenants set forth herein. Each Owner shall be and remain personally liable, regardless of whether he/she has transferred title to his/her Lot, for the amount of unpaid assessments (together with interest thereon, costs of collection and attorney’s fees, if any) which became due while he/she was Owner. No Owner shall be relieved of personal liability for such assessments by non-use of Association Land or by transfer or abandonment of his/her Lot. The Owner’s personal obligation shall not pass to a successor Owner unless expressly assumed by the successor Owner.

Section 3. Upon issuance of a Certificate of Organization by the New Mexico Secretary of State, or its successor entity, the Association will be bound by the Declaration.

ARTICLE III
ANNUAL ASSESSMENTS

Section 1. The Declarant, for each Lot, hereby covenants, and each Owner of any Lot by acceptance of a Deed therefor is deemed to covenant and agree to pay to the Association: (1) Annual Assessments; and (2) Special Assessments. The assessments shall be a charge on the land and shall be a continuing lien on the Lot against which such assessment is made. The assessment shall be a personal obligation of the person who is the Owner of the Lot assessed at the time when the assessment became due. Mortgagees of Lots and improvements thereon are not required to collect assessments. The assessments are subordinate only to the primary mortgage on any Lot. Failure to pay assessments does not constitute a default under an insured mortgage.

Section 2. The Annual Assessment shall be assessed by the Board in June of each year beginning in 201___. Declarant shall pay an amount equivalent to a percentage of the Annual Assessment levied against Dwelling Units deeded by the Declarant as follows:

(A) Ten percent (10%) for all undeveloped Lots.

(B) Fifty percent (50%) for all Lots upon which a Dwelling Unit has been constructed and a temporary or permanent Certificate of Occupancy has been issued by the City of Albuquerque.

Section 3. The Annual Assessment may be paid in monthly, quarterly, semi-annual, or annual installments as determined at the sole discretion of the Board. All assessments shall be paid to the name of Los Diamantes Homeowners' Association, Inc., at 6300 Jefferson NE, Albuquerque, New Mexico 87109 or at such other address designated by the Board.

Section 4. The Annual Assessment may be increased each year by the Board. Notwithstanding any increase, the Declarant shall pay its assessments in accordance with the percentages set forth hereinabove.

Section 5. The Board may levy, in any assessment year, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Association Land, including fixtures and personal property related thereto, with two-thirds (2/3) vote of Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 6. Written notice of any meeting called for the purpose of taking any action authorized under Sections 4 and 5 of this Article shall be sent to all Voting Owners not less than ten (10) days in advance of the meeting. The presence at the meeting of members entitled to cast, or of proxies entitled to cast, one-tenth (1/10) of the votes of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented. If there is not a quorum present at any meeting duly called, the secretary or other person designated by the Board to provide notice shall provide notice of the rescheduled meeting. At such rescheduled meeting, those members present, no matter the number, shall constitute a quorum.

Section 7. The Annual Assessments provided for herein shall commence on June 1, 20___. The Annual Assessment shall be uniform among all Owners, subject to the percentage provision for Declarant contained hereinabove. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors of the Association shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment Period. The Annual Assessment Period shall commence on January 1 and end December 31 of each year. Written notice of the Annual Assessment shall be sent to every Owner subject thereto. The due date shall be established by the Board. The Association shall, upon written demand, and for a reasonable charge, furnish a

certificate signed by an officer setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate is binding upon the Association.

Section 8. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of fifteen percent (15%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or may foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for assessments by non-use of the common area, abandonment or conveyance of his/her Lot. A failure to pay assessments shall not constitute a default under a mortgage.

Section 9. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. The sale or transfer of any Lot shall not affect the Assessment Lien. However, the sale or transfer of any Lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer, but not for assessments accruing thereafter.

ARTICLE IV **EXEMPTIONS: OWNERS' AGREEMENT**

Section 1. Exempt Property shall be exempted from the assessment of the Annual and Special Assessments; provided, however, that in the event any change of ownership of Exempt Property results in all or any part thereof becoming assessable in any year, the Lot shall be subject to the applicable, prorated Assessment and the Assessment Lien.

Section 2. Each Owner, for himself/herself, his/her heirs, executors, administrators, trustees, personal representatives, successors and assigns, covenants and agrees:

- A. To pay to the Association when due the Annual and Special Assessments;
- B. That he/she acquires said Lot subject to the Annual and Special Assessments and Assessment Lien; and
- C. That by accepting a Deed, the Owner shall remain personally liable for any and all unpaid Annual and Special Assessments assessed while he/she is or was Owner.

ARTICLE V **ENFORCEMENT OF DECLARATION BY ASSOCIATION**

Section 1. The Association, through the Board, as the agent and representative of the Owners, shall have the right to enforce the provisions of this Declaration.

Section 2. If the Owner of any Lot fails to pay any assessment when due, the Association may proceed on either of the following remedies:

- A. Bring an action at law and recover judgment against the Owner personally obligated to pay the Assessment; and/or

B. Foreclose the Assessment Lien against the Lot in accordance with New Mexico law relating to foreclosure of realty mortgages.

Section 3. In any action taken by the Board to enforce this Declaration or to collect unpaid Assessments, the Owner against whom enforcement or collection is sought shall be personally liable for costs and attorney's fees incurred by the Association.

ARTICLE VI
USE OF FUNDS BY ASSOCIATION

Section 1. The Association shall apply all Assessments collected and received by it for the common good and benefit of all Residents and Owners, including, without limitation, maintenance of any Association Land, enforcement of the provisions of this Declaration, and operating costs of the Association.

Section 2. The Association shall not be obligated to spend in any year all sums received by it and may carry forward as surplus any balances remaining.

ARTICLE VII
ASSOCIATION RIGHTS AND POWERS

Section 1. In addition to the rights and powers set forth in the Declaration, the Association shall have such rights and powers as are set forth in its Articles and By-Laws; provided that such Articles and By-Laws are not inconsistent with the Declaration. After incorporation of the Association, copies of the Articles and By-Laws shall be available for inspection at the designated office of the Association.

Section 2. The Association, as the agent and representative of the Owners, shall have the right, but not the obligation, to enforce the Declaration and Covenants contained therein in any action at law or equity.

Section 3. Subject to the restrictions and limitations contained herein, the Association may enter into contracts and transactions with others, including the Declarant, its subsidiaries, and affiliated companies for the performance of the Association's duties.

Section 4. The Association shall obtain and maintain at all times a policy insuring the Association, its employees and the Board against all liability to the public or to the Owners for a limit of liability of not less than One million (\$ 1,000,000 -) combined single limit covering all claims for personal injury liability and property damage liability arising out of one occurrence, such limit to be reviewed at least annually by the Board and increased at its discretion.

ARTICLE VIII
MEMBERSHIP AND VOTING RIGHTS

Section 1. Every person or entity who is a record owner of any Lot in the Property shall automatically be a Member of the Association. There shall be one class of membership, as set forth in the Declaration and in Section 2 below.

Section 2. The Association shall have one (1) class of voting membership who shall be all the Owners and shall be entitled to one (1) vote for each Lot owned. When more than one person holds interest in the same Lot, all such persons shall be Members, but shall be entitled to only one (1) vote, collectively.

Section 3. The Articles of the Association will provide that the affairs of this Association shall be initially managed by a Board of four (4) directors, each of whom and each of whose replacement, shall be an employee, representative, or designee of Declarant, and who shall be appointed and subject to removal by Declarant until the earlier of:

- (1) Sixty (60) days after conveyance of seventy five percent (75%) of the Lots to Owners other than Declarant;
- (2) Two (2) years after Declarant has ceased to offer Lots for sale in the ordinary course of business;
- (3) Two (2) years after any development right to add new Lots was last exercised; or
- (4) The day the Declarant or the Declarant's designee, after giving written notice to Members, records an instrument voluntarily surrendering all rights to control activities of the association.

This time period shall be referred to as the “Declarant Control Period.”

Provided, however, with respect to the appointment/election of the Board:

(A) Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots to Owners other than Declarant, at least one (1) Member and not less than twenty-five percent (25%) of the Members of the Board shall be elected by Members other than the Declarant.

(B) Not later than sixty (60) days after conveyance of fifty percent (50%) of Lots to Owners other than the Declarant, no less than thirty-three percent (33%) of the Members of the Board shall be elected by Members other than the Declarant.

(C) Not later than the termination the Declarant Control Period the Owners shall elect a board of at least three (3) members, at least a majority of whom shall be Members. The Board shall elect the officers. The board members and officers shall take office upon election. In no event shall the Board consist of fewer than three (3) directors.

ARTICLE IX
EASEMENTS AND RIGHTS OF ENJOYMENT
IN ASSOCIATION LAND

Section 1. Subject to the limitations contained in this Declaration, every Owner shall have the right and easement of enjoyment in and to all Association Land for its intended purpose, if any, and such easement shall be appurtenant to and shall pass with title to every Lot upon transfer. All Residents shall have a nontransferable privilege to use and enjoy all Association Land, if any, for as long as they remain Residents.

Section 2. All rights granted and conferred by Section 1 of this Article shall be subject to the exclusive right of the Association to adopt reasonable rules and regulations pertaining to the use of Association Land and to charge Owners and Residents for the use thereof. In establishing or adjusting the amounts of such fees from time to time, the Board in its absolute discretion may establish reasonable classifications as or among Owners, Residents and other persons. Such fees must be uniform within each such class but need not be uniform from class to class.

Section 3. The Association shall have the right to suspend the aforesaid rights of enjoyment of any Owner (and the privilege of each Resident or other person claiming through such owner) for (i) any period during which the Annual and Special Assessments or Maintenance Charges assessed to such Owner under Article III hereof remains delinquent and unpaid, or (ii) any reasonable period up to but not in excess of 90 days in connection with the enforcement of any of the Association's rules or regulations relating to Association Land.

Section 4. If ingress and egress to any residence is through the Association Land, any conveyance or encumbrance of the Association Land shall be subject to a Lot Owner's easement of access.

ARTICLE X

ARCHITECTURAL CONTROL COMMITTEE

Section 1. There is hereby created an Architectural Control Committee (the "Committee") to carry out the functions assigned to it in this Declaration. The Committee shall be designated by the Declarant until the expiration of the Declarant Control Period. Thereafter, the members of the Committee shall be designated from time to time by the Board. No committee member shall be entitled to compensation for services performed pursuant to this covenant at any time.

The initial Members of the Committee are: *Jimmy Oaskalos*
Nick Kaprisou

The address of the Committee is 6300 Jefferson NE, Albuquerque, New Mexico 87109, or such other address as may be designated in the future.

Section 2. Prior to the commencement of new construction on any Lot, or the alteration, modification, or addition to the exterior of an existing Dwelling Unit, or the construction of any other structure on any Lot, or the alteration, addition, or modification to the existing front yard landscaping, the plans or proposed changes shall be submitted to and approved by the Committee. The Committee shall review to reasonably determine that the proposed construction or improvements are in accordance with the requirements of this Declaration. Any decision by the Committee, either approving or disapproving any plans submitted, shall be made in writing. In the event the Committee fails to take any action within thirty (30) days of its receipt of any plans, Committee approval shall be deemed granted. Committee approval shall not be construed as professional expertise and no warranty or liability for construction according to such approved plans shall be placed on the Committee or

Declarant. Notwithstanding the foregoing, the Committee may employ professional expertise for such review, such as consultant architects, planners, engineers, or surveyors and the cost for such review shall be borne entirely by the Owner submitting the plans.

Section 3. For good cause shown, a majority of the Committee may waive any provision of any Article of this Declaration, provided such waiver is in keeping with the intent of the requirements recited herein and that such waiver does not create any threat to the safety, orderliness, appearance, drainage, utilities or general nature of the Property. To be effective, such waiver must be given in writing and a true copy thereof filed for public record with the Bernalillo County Clerk.

Section 4. Neither the Committee nor the Developer nor their respective successors or assigns shall be liable in damages to anyone submitting plans to them for approval, or to any Owner affected by this Declaration, by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval, disapproval, or failure to approve any such plans and specifications. Every person who submits plans to the Committee for approval agrees, by submission of such plans and specifications, that he/she will not bring any action or suit against the Committee or Declarant to recover any such damages.

Section 5. The written approval required by this Article X shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state, or local law, statute, ordinance, rule, or regulation. The approval by the Committee of any construction, installation, addition, alteration, repair, change, or other work pursuant to this Article X shall not be deemed a warranty or representation by the Committee as to the quality of such construction, installation, addition, alteration, repair, change, or other work or a representation that it conforms to any applicable building codes or other federal, state, or local law, statute, ordinance, rule, or regulation.

Section 6. The Committee and/or its designated representative, is authorized to access any Lot to determine the feasibility of any requested modification, alteration, or addition and/or the compliance with approved modifications, alterations, or additions.

ARTICLE XI

MAINTENANCE OF LAND BY ASSOCIATION

Section 1. The Association, or its duly delegated representative(s), shall maintain and otherwise manage all Association Land deeded to the Association by the Declarant. The Board shall use a reasonable standard of care in providing for the repair, management and maintenance of Association Land.

Section 2. In the event that the need for maintenance or repair of Association Land is caused through the willful or negligent act of any Owner, his family, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Owner's Lot is subject and shall be secured by the Assessment Lien.

Section 3. In the event any portion of the Property, other than Association Land, is so maintained as to present a public or private nuisance or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Property which are

substantially affected thereby or related thereto, the Board may by Resolution make a finding to this effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within thirty (30) days, the Board will cause such action to be taken at said Owner's cost. If at the expiration of said 30-day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be added to and become a part of the Assessment to which the offending Owner's Lot is subject and shall be secured by the Assessment Lien.

ARTICLE XII
TRANSFER OF ASSOCIATION LAND
AND CHANGES IN USE

Section 1. The Association and/or Board shall transfer all or a portion of the Association Land only in accordance with the Bylaws of the Association.

Section 2. Upon adoption of a resolution by the Board stating that in the Board's opinion the then present use of a designated part of the Association Land is no longer in the best interests of the Owners and Residents, the Association shall have the power and right to change the use thereof (and in connection therewith, construct, reconstruct, alter or change the buildings, structures and improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided such new use (i) shall be for the benefit of the Owners and Residents, and (ii) shall be consistent with any deed restrictions (or zoning regulations) restricting or limiting the use of the Association Land.

ARTICLE XIII
TERM; AMENDMENTS; TERMINATION

Section 1. This Declaration shall be effective upon the date of recordation hereof and, as amended from time to time, shall continue in full force and effect for a term of twenty (20) years unless earlier terminated as provided herein. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each.

Section 2. This Declaration, or any provision hereof, or any covenant, condition, or standard contained herein, may be terminated, extended, modified, or amended, at any time and from time to time, as to the whole of the Property or any portion thereof, by seventy-five percent (75%) vote of all Members who are voting in person, by absentee ballot, or by proxy at a meeting duly called for this purpose and, during the Declarant Control Period, the approval of Declarant; except that the Federal Housing Administration or the Veteran's Administration shall have the right, if required by regulations, to veto amendments during the Declarant Control Period. Provided, however, no amendment to this Declaration that would limit, prohibit, or eliminate the exercise of a development right shall be effective without the concurrence of the Declarant. No such modification, amendment, or termination shall be effective until a proper written instrument has been executed, acknowledged and recorded in the office of the Clerk of Bernalillo County, New Mexico. Notwithstanding anything to the contrary contained herein, provided the terms and conditions of this Section 2 are complied with, nothing herein shall

prevent or prohibit the amendment of this Declaration at any time during the term, including, without limitation, at any time during the initial twenty (20) year term.

Section 3. Anything in this Declaration to the contrary notwithstanding, during the Declarant Control Period and subject to Article XIII, Declarant's four representatives or designees on the Board of Directors of the Association shall have the right, subject to approval of Declarant, at any time while they are members of the Board, to resign from the Board, whereupon Declarant may elect their replacements or permit their positions to be filled by such persons as the Voting Owners may elect at an election held in the manner provided for electing directors specified in the Articles of the Association. In the event Declarant declines or fails to elect replacements within ninety (90) days, then at any time thereafter the Voting Owners casting seventy-five percent (75%) of the votes cast at a duly called election, shall have the right to elect replacements.

ARTICLE XIV **SUBJECTING ADDITIONAL** **PROPERTIES TO THE DECLARATION**

Section 1. Additional Properties may become subject to this Declaration upon approval of the Association and/or Board. Subject to any governmental approvals required, the Declarant, its successors and assigns, shall have the right to bring within the scheme of this Declaration Additional Properties, provided that such additions are part of a general plan of development. Such a general plan of development shall not bind the Declarant, its successors and assigns, to make the proposed additions. The additions authorized under this subsection shall be made by filing of record a Supplemental Declaration of Covenants and Restrictions with respect to the additional property which shall extend the scheme of the Covenants and Restrictions of this Declaration to such additional property. Such Supplemental Declaration may contain such complimentary additions and modifications of the Covenants and Restrictions contained in this Declaration as may be necessary to reflect the different nature, if any, of the added properties and as are not inconsistent with the scheme of this Declaration.

ARTICLE XV **USE OF THE LAND**

Section 1. No structure shall be erected, altered, placed, or permitted to remain on any Lot other than single family residences and accessory buildings such as garages, garden houses, and the like. No trailer, mobile home, tent, shack, garage, barn or other outbuilding or any temporary structure erected on any Lot shall be used at any time as a residence, either temporarily or permanently. No structure on any Lot shall exceed two (2) stories. Private garage space for a minimum of two (2) vehicle shall be provided for each Dwelling Unit.

Section 2. No Lot shall be further subdivided.

Section 3. No chain link, wood, horse or wire fencing shall be erected on any Lots.

Section 4. No dwelling containing less than 1200 square feet of heated living area, exclusive of screened or open porches, garages, carports, decks, accessory buildings, or other covered areas, shall be permitted on any Lots.

Section 5. Use and occupancy of Lots shall be subject to zoning, building, health, sewage disposal, and sanitation regulations of the City of Bernalillo, New Mexico and/or all government agencies having jurisdiction.

Section 6. No manufacturing, commercial or business operation (except professionals in businesses engaged in recognized non-manufacturing professions) is allowed on any Lot. No Lot shall be used in whole or in part for the storage of any property or object that will cause such Lot to appear in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any activity be carried on, or substance kept on any Lot that will emit foul or obnoxious odors, or that will cause unreasonable noise or which may be or become a nuisance to the neighborhood.

Section 7. Exteriors of all Dwelling Units shall be finished in accordance with the plans, approved by the Committee, within nine (9) months from commencement of construction. All other additions, alterations, modifications to the exterior of an existing Dwelling Unit, or the construction of any other structure on a Lot shall be completed in accordance with the plans approved the Committee within three (3) months from commencement of construction.

Section 8. The City of Albuquerque has approved the Los Diamantes Plans and Standards. Each Owner and the Committee shall comply with the Los Diamantes Plans and Standards as reasonably amended, from time-to-time, by the Committee or Declarant.

Section 9. No animals, livestock, or poultry of any kind shall be raised, bred, kept, or maintained in any dwelling or on any Lot, except that dogs, cats, or other domesticated household pets may be kept, provided they are not kept, bred, or maintained for any commercial purpose, and provided they do not disturb other Owners or become a nuisance in any way. Such pets shall be kept within suitable shelter and fencing for proper care. No pets shall be allowed to roam free.

Section 10. No radio, television, or similar tower shall be erected on any Lot or be attached to any building, except that a radio or television antenna may be attached to any dwelling provided it does not project more than ten (10) feet above the roof of the Building as originally erected and is connected to the roof only by a single tubular support. All Dwelling Unit shall be constructed with media boxes for the connection of cable, satellite and similar connections. In the event that it is reasonably necessary to run exposed wires on the exterior of any Dwelling Unit to or from any antenna, satellite dish, control box or other similar facility, such exterior wires shall be placed in a manner so that such are painted the same color as the exterior, run in a location that is least visible from surrounding properties and otherwise approved by the Committee.

Section 11. No alteration, modification, or addition to any structure on a Lot is allowed without the prior approval of the Committee.

Section 12. Outside laundry poles and lines are prohibited.

Section 13. Intentionally Omitted

Section 14. No sign or advertisement of any kind other than name plates or professional signs not exceeding one (1) square foot in surface area shall be erected or maintained on the Lot without written approval of the Committee, except for signs erected by Declarant, which may remain during the construction of dwelling units and “For Sale”, “For Rent” or “For Lease” signs of the customary size.

Section 15. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between three (3) and eight (8) feet above the gutter line of the street shall be placed or permitted to remain on any corner Lot within the triangular areas at the street corner, which area is bounded by the street property lines of the corner Lot and a line connecting points twenty-five (25) feet distant from the intersection of the property lines. No trees shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

Section 16. No swimming pool shall be constructed on any residential Lot without prior written approval by the City of Albuquerque and the Committee.

Section 17. Rubbish and garbage must be kept in suitable containers and removed from Lots in accordance with sanitation regulations. No rubbish or garbage may be burned or dumped on Lots within the Property, except in such places as may be specifically designated and approved for such purposes by the county or municipal authorities. No open fires shall be permitted.

Section 18. The exterior of the Dwelling Units must be predominantly stucco with only stone, wood, adobe, metal, brick or simulated wood used for accent detailing.

Section 19. Roofs may be flat, pitched, or a combination of both. When pitched, the slope shall be not more than forty-five degrees (45°). Allowable roofing materials for homes with pitched roofs are clay or concrete barrel tiles in subdued earth tone colors, flat slate, clay or concrete tile in subdued earth tone colors and composite shingles in subdued earth tone colors. No metal roofs are allowed. Asphalt shingles are prohibited

Section 20. Each Owner shall reasonably maintain the exterior of the Dwelling Unit and all Improvements located thereon.

Section 21. All refuse containers shall be stored in such a manner as not to be visible from the street or any other Dwelling Unit, such as inside of a garage or behind a fence.

Section 22. No exterior security bars or shutters shall be permitted on any windows. A security door may be permitted upon approval from the Committee.

Section 23. Notwithstanding anything herein to the contrary, in the event any zoning designation or other government authorization affecting the use of any Lot conflicts with this Declaration, then such zoning designation or other government authorization shall control; provided, however, that to the extent possible, this Declaration shall be interpreted so that they do not conflict therewith.

Section 24. Notwithstanding anything herein to the contrary, Declarant or its designees shall be permitted to place a temporary sales trailer, storage trailer and/or signage on any Lot owned by Declarant during any period Declarant is actively marketing and/or selling lots within the Property. Further, a builder whose business is the construction of Dwelling Units upon the Property (“Builder”) shall be permitted to place a temporary sales trailer and/or a construction trailer on any Lot owned by it or pursuant to written approval from Declarant during any period Builder is actively marketing, building and selling Lots within the Property.

The Association, through the Board and/or the ACC, may adopt design guidelines which are consistent with or expand upon the provisions of this Declaration. However, any conflict between such design guidelines and this Declaration shall be resolved in favor of this Declaration.

ARTICLE XVI **SETBACK REQUIREMENTS**

Section 1. All Buildings erected on any Lot shall be situate only within that portion of said Lot not restricted from use by easements or rights-of-way, and all shall comply with the Los Diamantes Plans and Standards.

Section 2. All setbacks shall be in accordance with and shall comply with the Los Diamantes Plans and Standards. A four (4) inch tolerance by reason of mechanical variance of construction is allowed for the minimum distance requirements.

Section 3. Roof overhangs, fireplaces, decorative walls, and the like shall not be considered part of the permanent structure for measurement purposes in determining conformance to these setback requirements. However, in the event of roof overhang, the overhang may extend no more than twenty-four (24) inches into the five (5) foot sideline setback area, except as otherwise approved by the Committee.

Section 4. All waivers by the Committee from the above recited minimums must be in writing and a true copy thereof filed for public record with the County Clerk of Bernalillo County, New Mexico.

ARTICLE XVII **EASEMENTS**

Section 1. Easements and rights-of-way designated on the plat are hereby reserved unto Declarant, its successors and assigns. Such easements may be assigned to the County of Bernalillo, City of Albuquerque and all public and private utility companies, for the construction, installation and maintenance of any and all utilities, such as power cable, cable television, gas lines, drains, sewers, roads, water supply lines, telephone and telegraph lines or the like that are necessary or desirable for public health and welfare. Such easements and rights-of-way shall be confined to a ten (10) foot width adjacent to the road rights-of-way of every Lot, unless otherwise designated on the plat. Lines, wires, and other devices for the transmission of electric current or power, telephone, telegraph or cable television shall be placed underground.

Section 2. All easements shall be kept free from alteration and permanent structures, except for landscaping, driveways, landscaping walls and sidewalks. Owners shall provide access to all easements to maintenance personnel, without trespass, for the upkeep of such utilities which may be constructed within said easements.

Section 3. Right of access across any Lot is hereby reserved unto the Declarant for general improvements of other properties, but such right of access shall terminate upon commencement of construction of a Building on such Lot.

ARTICLE XVIII

Intentionally Omitted

ARTICLE XIX REPLATTING

The Declarant reserves the right to change any streets or roads or to file a replat of the plat hereinabove described, provided such change or replat shall conform to the regulations of the City of Albuquerque, the County of Bernalillo and the State of New Mexico, and provided that no such changes or replat shall interfere with ingress and egress of any or change the size and location of any Lot not owned by the Declarant.

ARTICLE XX ENFORCEMENT OF DECLARATION BY OWNERS

If the Association shall fail or refuse to enforce this Declaration, after written request to do so, any Owner may enforce this Declaration on his/her own behalf and at his/her own expense, subject to reimbursement of attorneys' fees pursuant to Article XXI, Section 12.

ARTICLE XXI MISCELLANEOUS

Section 1. Except for judicial construction, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by the Covenants and provisions hereof.

Section 2. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

Section 3. If any interest purported to be created by this Declaration is challenged under the Rule against Perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest; the "lives in being" for computing the period of perpetuities shall be (i) those which would be used in

determining the validity of the challenged interest, plus (ii) those of the issue of the Board who are living at the time the period of perpetuities starts to run on the challenged interest.

Section 4. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

Section 5. In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Association shall have the right to adopt design guidelines, and rules and regulations with respect to all other aspects of the Association's rights, activities and duties, provided said design guidelines, rules and regulations are not inconsistent with the provisions of this Declaration.

Section 6. Anything to the contrary in this Declaration notwithstanding, and except as otherwise may be expressly set forth on a recorded plat or other instrument recorded in the office of the County Clerk of Bernalillo County, New Mexico, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of the community can or will be carried out, or that any land now owned or hereafter acquired by it is or will be subjected to this Declaration, or that any such land (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such land is once used for a particular use, such use will continue in effect.

Section 7. Deeds to and instruments affecting any Lot or any part of the Property may contain the Covenants herein set forth by reference to this Declaration; but regardless of whether any such references is made in any Deed or instrument, each and all of the Covenants shall be binding upon the grantee-Owner or other person claiming through any instrument and his/her heirs, executors, administrators, successors and assigns.

Section 8. Within ten (10) business days after receipt of a written request from an Owner, the Association shall furnish a recordable statement setting forth the amount of unpaid assessments against the Owner's Lot. Such amount shall be binding on the Association and Board.

Section 9. A person selling a Lot shall provide in writing a disclosure certificate that states that the Lot is located within a development that is subject to an association. A seller or the seller's agent shall obtain a disclosure certificate from the Association and provide it to the purchaser no later than seven days before closing; and a purchaser or the purchaser's agent has the right to cancel the purchase contract within seven days after receiving the disclosure certificate.

Prior to closing, a Lot owner shall furnish to a purchaser copies of:

- (1) The declaration of the association, other than the plats and plans;
- (2) The bylaws of the association;
- (3) Any covenants, conditions and restrictions applicable to the lot;
- (4) The rules of the association; and
- (5) A disclosure certificate from the Association.

Within ten business days after receipt of a written request from a Lot owner, the Association shall furnish a disclosure certificate containing the information necessary to enable the lot owner to comply with the provisions of this section. The Association may impose reasonable charges for preparation of a disclosure certificate.

A Lot owner providing a disclosure certificate pursuant to this Section shall not be liable to the purchaser for any erroneous information provided by the Association and included in the disclosure certificate.

A purchaser shall not be liable for any unpaid assessment or fee greater than the amount, prorated to the date of closing, set forth in the disclosure certificate prepared by the Association.

A lot owner shall not be liable to a purchaser for the failure or delay of the Association to provide the disclosure certificate in a timely manner.

The information contained in the disclosure certificate shall be current as of the date on which the disclosure certificate is furnished to the lot owner by the Association.

A disclosure certificate shall not be required in the case of a disposition:

- (1) Pursuant to court order;
- (2) By a government or governmental agency;
- (3) By foreclosure or deed in lieu of foreclosure; or
- (4) That may be canceled at any time and for any reason by the purchaser without penalty.

Section 10. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

Section 11. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only, and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof, or to be used in determining the intent or context hereof.

Section 12. In any action to enforce the provisions of this Declaration by any party, the party seeking to enforce the provisions of this Declaration is shall be entitled to its reasonable attorneys' fees if such party prevails in its action to enforce the provisions of this Declaration in a Court of law.

IN WITNESS WHEREOF, Declarant has hereunto caused its name to be signed the day and year first above written.

98th St., LLC
a New Mexico limited liability company

By: 



