

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
MELON RIDGE**

WHEREAS, RIO RANCHO HOLDINGS, LLC, an Arizona limited liability company (the "Declarant") is the owner of fee simple title to that certain real property to be known as MELON RIDGE, PHASE 1, a subdivision situated in Sandoval County, in the City of Rio Rancho, New Mexico, hereinafter called the "Property," described in Exhibit A attached hereto and incorporated by reference, which term shall also include the Phase 2 Property (hereinafter defined) and any other adjacent land when and if the Phase 2 Property or such other adjacent land is annexed as provided in Article VI, Section 6 hereof.

WHEREAS, Declarant has established a general plan for the improvement and development of the Property and desires to impose certain covenants and restrictions on the Property in accordance with that plan.

NOW, THEREFORE, the Property is hereby made subject to the following covenants, conditions and restrictions (collectively, "Covenants") which shall run with the land and shall be binding upon all Owners and Residents (as both terms hereinafter defined) until January 1, 2043, after which time said Covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then-Owners has been recorded, agreeing to change, alter, amend or remove said Covenants in whole or in part. If any Owner or Resident shall violate any of the Covenants hereinafter set out, it shall be lawful for any Owner to prosecute any proceeding at law or in equity against the person or persons violating any of the Covenants and either to prevent such person or persons from doing so or to recover damages for such violation, or both, or require removal of the offending structure or injunction to prevent such determined violation. It is the intent of this paragraph to give all Owners standing to enforce these Covenants.

**Article I
Definitions**

"Act" shall mean the New Mexico Homeowner Association Act, Section 47-16-1 NMSA 1978, *et seq.*, as amended from time to time and as applicable to the Association and/or the Property.

"Annual Assessment" shall mean the Assessments imposed for annual expenses pursuant to Article 8 hereof.

"Areas of Association Responsibility" shall mean (a) all Common Areas; (b) all land, and the Improvements situated thereon, located within the boundaries of a Lot, Tract, easement benefiting the Association or a public right-of-way or park which the Association is obligated to maintain, repair, and replace pursuant to the terms of the Declaration or other Recorded document executed by the Declarant or the Association.

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

“Assessment” shall mean the charges levied and assessed each year against each Membership pursuant to Article 8 hereof.

“Assessment Period” shall mean the period set forth in Article V.

“Association” shall mean Melon Ridge Owners Association, a New Mexico nonprofit corporation, organized to exercise the rights, powers and duties set forth in this Declaration.

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

“Builder” shall mean an Owner which is in the business of constructing and selling completed Dwelling Units to third parties and which intends to construct and sell Dwelling Units on the Lots it owns.

“Bylaws” shall mean the Bylaws of the Association as the same may, from time to time, be amended or supplemented.

“Common Area” shall mean (a) any and all real property and land areas described as “Common Area” herein or in any amendments to these Covenants; (b) any Tract (hereinafter defined); (c) all land, together with all Improvements situated thereon, which the Association at any time owns in fee or in which the Association has a leasehold interest for as long as the Association is the owner of the fee or leasehold interest; and (d) land within a recorded or legally granted easement accepted by the Association whereby the Association holds the dominant tenancy allowing for improvements and Maintenance by the Association; except that Common Area shall not include any Lot the Association acquires by the foreclosure of the Assessment Lien or any deed in lieu of foreclosure.

“Common Expenses” shall mean the actual and estimated expenses incurred or anticipated to be incurred by or on behalf of the Association, including any allocations to reserves determined by the Board to be necessary and appropriate, and all other financial liabilities of the Association.

“Community Documents” shall mean collectively, this Declaration, the Bylaws, the Articles and the Rules, as each may be amended or restated from time to time.

“Covenants” shall mean the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements set forth in this Declaration.

“Declarant” shall mean and refer to the above recited Declarant and/or any Person or Persons to whom all or a portion of the declarant’s rights reserved to the Declarant under this Declaration and its amendments are assigned pursuant to a written, recorded instrument expressly assigning such rights.

“Declarant Control Period” shall mean the period commencing upon the Recording of this Declaration and ending on the earliest to occur of the dates set forth below. In no event shall the Declarant Control Period end later than the earliest to occur of the following:

- (a) sixty (60) days after conveyance of seventy-five percent (75%) of the Lots to Owners other than Declarant;
- (b) two (2) years after Declarant has ceased to offer Lots for sale in the ordinary course of business;
- (c) two (2) years after a development right to add new Lots was last exercised; or
- (d) the day that Declarant or Declarant’s designee, after giving written notice to the Association, records an instrument voluntarily terminating all rights to Declarant control.

“Declaration” shall mean this Declaration of Covenants, Conditions and Restrictions, as amended from time to time.

“Deed” shall mean a deed or other instrument conveying the fee simple title in any portion of the Property from one Owner to another Owner.

“Dwelling Unit” shall mean any building or portion of a building situated upon a Lot designed and intended for use and occupancy as a residence by a single family.

“Exempt Property” shall mean the following parts of the Property: (i) all land and Improvements owned by or dedicated to and accepted by the United States of America, the State of New Mexico, Sandoval County or any other political subdivision, for as long as any such entity or political subdivision is the owner thereof or for so long as said dedication remains effective; (ii) all Common Areas, for as long as the Association is the Owner thereof; and (iii) all Tracts.

“First Mortgage” shall mean a deed of trust or mortgage Recorded against a Lot which has priority over all other deeds of trust or mortgages Recorded against the same Lot.

“Improvement” shall mean: (a) any Residence or other building, and any fence or wall; (b) any swimming pool, tennis court, basketball goal, backboard or apparatus, or playground equipment; (c) any road, driveway, or parking area; (d) any trees, plants, shrubs, grass, or other landscaping improvements of any type and kind; (e) any statuary, fountain, artistic work, craft work, figurine or ornamentation of any type or kind; (f) any subsurface communication, irrigation, entrance gate or facility, pipeline or other conduit and apparatus under ownership of the Association; and (g) any other structure of any type, kind or nature.

“Lot” shall mean any part of the Property designated as a distinct premises intended for residential occupancy without requiring further land division on any Recorded Plat with respect to any portion of the Property and, where the context indicates or requires, any Improvements constructed from time to time thereon.

“Maintenance” shall mean care, inspection, maintenance, operation, repair, repainting, remodeling, restoration, improvement, renovation, alteration, replacement, and reconstruction.

“Maximum Annual Assessment” has the meaning set forth in Section 11.

“Member” shall mean the Owner of a Lot, who shall hold a Membership in the Association pursuant to this Declaration.

“Membership” shall mean a membership in the Association and the rights granted to the Owners to participate in the Association.

“Modification” shall mean an addition, alteration, repair, change or other work which in any way alters the exterior appearance of any Improvement located on a Lot that is Visible from Neighboring Property.

“Owner” shall mean (when so capitalized) the Record holder of legal title to the fee simple interest in any Lot; provided that if a Lot is owned by more than one Person, all of the Persons owning such interest shall constitute a single Owner for purposes of this Declaration; and provided further that a Person who holds such title merely as a security for the performance of an obligation shall not constitute an Owner. In the case of any Lot the fee simple title to which is vested of Record in a seller under a valid, recorded and outstanding Real Estate Contract, the Owner shall be deemed to be the purchaser under such Real Estate Contract. In the case of any Lot the fee simple title to which is vested of Record in a trustee, the Owner shall be deemed to be the trustee.

“Person” shall mean a natural person, corporation, partnership, limited liability company, trustee or any other legal entity.

“Phase 1” shall mean Melon Ridge Phase 1, concerning the Phase 1 Property.

“Phase 1 Property” shall mean that certain real property located in the County of Sandoval, State of New Mexico, legally described in Exhibit A attached hereto.

“Phase 2” shall mean Melon Ridge Phase 2, concerning the Phase 2 Property, which shall become subject to this Declaration if and when such real property is duly annexed as provided in Article VI, Section 6, of this Declaration.

“Phase 2 Property” shall mean that certain real property located in the County of Sandoval, State of New Mexico, legally described in Exhibit B attached hereto, which shall become subject to this Declaration if and when such real property is duly annexed as provided in Article VI, Section 6, of this Declaration.

“Plat” shall mean (i) the Final Plat for Melon Ridge Phase 1, a Replat of Portions of Blocks 60 Thru 62, Unit 13 within Projected Section 12, T. 12N., R. 2E., N.M.P.M., Town of Alameda Grant, City of Rio Rancho, Sandoval County, New Mexico, filed of record in the Office of the County Clerk of Sandoval County, New Mexico, on December 16, 2022, in Plat Book 3, Page 4983, as

Document No. 2022P01979 (the “Phase 1 Plat”), and (ii) if and when the Phase 2 Property is duly annexed as provided in Article VI, Section 6, of this Declaration and a Final Plat creating single family residential lots, roadways and other parcels with regard to the Phase 2 Property is filed of record in the Office of the County Clerk of Sandoval County, New Mexico, such Final Plat of the Phase 2 Property (the “Phase 2 Plat”), and (iii) if and when any other adjacent land is duly annexed as provided in Article VI, Section 6, of this Declaration and a Final Plat creating single family residential lots, roadways and other parcels with regard to such land is filed of record in the Office of the County Clerk of Sandoval County, New Mexico, such Final Plat of such adjacent land.

“Property” shall mean the Phase 1 Property and, if and when the Phase 2 Property or any other adjacent land is duly annexed as provided in Article VI, Section 6, of this Declaration and a Final Plat thereof is filed of record in the Office of the County Clerk of Sandoval County, New Mexico, the Phase 2 Property and any other adjacent land so annexed.

“Purchaser” shall mean any Person, other than the Declarant, who becomes the Owner of a Lot, except for: (a) a Person, who purchases a lot and then leases it to the Declarant for use as a model in connection with the sale or lease of other Lots; or (b) a Person who, in addition to purchasing a Lot, is assigned any or all of the Declarant’s rights under this Declaration.

“Record,” “Recorded,” “Recording” or “Recordation” shall mean placing an instrument of public record in the office of the County Clerk of Sandoval County, New Mexico, and “Recorded” shall mean having been so placed of public record.

“Regular Assessment” shall mean the Assessments levied pursuant to Article V.

“Reserve Account” has the meaning set forth in Section 14.

“Reserve Contribution” has the meaning set forth in Section 15.

“Residence” shall mean any building situated upon a Lot designed and intended for use and occupancy as a single-family dwelling.

“Resident” shall mean each natural person occupying or residing in a Dwelling Unit.

“Rules” shall mean any rules and regulations regarding the Property adopted by the Board, as they may be amended from time to time.

“Special Assessment” shall mean any Assessment levied and assessed pursuant to this Declaration hereof.

“Tract” shall mean Tracts “B,” “C,” and “D” as shown on the Phase 1 Plat, and any other parcel of land designated to be owned and maintained by the Association on the Phase 2 Plat or any other subdivision plat of land annexed pursuant to Article VI, Section 6 hereof, which parcel of land does not meet the definition of a Lot.

“Visible From Neighboring Property” shall mean, with respect to any given object, that such object is, or would be, visible to a Person six feet (6’) tall, standing on the same plane as the object being viewed at a distance of one hundred feet (100’) or less from the nearest boundary of the property being viewed.

“Working Capital Contribution” has the meaning set forth in Section 13.

Article II Declarations

1. Term. All of the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements 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, 2043, and shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then-Owners has been recorded, agreeing to change, alter, amend or remove said Covenants in whole or in part.
2. Enforcement. All Owners shall have the right to enforce these Covenants through any proceeding, at law or in equity, against any person or entity violating or threatening to violate any provision of these Covenants, and to recover any damages suffered by them from any violation thereof.
3. Severability. Invalidity of any provision of these Covenants by judgment or court order shall not affect any other provisions, which at all times shall remain in full force and effect.
4. Architectural Review. No 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 Board as to quality of workmanship and materials, compliance with this Declaration and location with respect to topography and site selection. Approval shall be as provided in Section 5 below.
5. Procedure. Owners shall submit plans and specifications to the Board. The Board’s approval or disapproval as required in this Declaration shall be in writing and given within ten (10) days of the submission of all required information. If no action is taken on the part of the Board within said ten (10) day period, the plans submitted are deemed to be approved.
6. Non-liability. Neither the Declarant nor the Board shall incur liability to anyone submitting plans for approval, or to any owner or owners of land subject to these covenants by reason of mistake in judgment, negligence or nonfeasance of itself, its agents or employees, arising out of or in connection with the approval or disapproval, or failure to approve such plans, except as may be otherwise provided under the Act. Anyone submitting plans for approval, by the submitting of such plans, and by acquiring title to any of the Property covered hereby, waives his claim for any such damages.

Article III Residential Land Use and Building Type

1. General Restrictions. The following restrictions shall apply to all Lots within the Property.

A. Only one Residence shall be constructed on each Lot. No geodesic dome, cubical, or A-frame structures is permitted as a Residence or for any other purposes. Two story Residences are allowed **ONLY** with the express, written permission of the Board. No mobile home (whether single-wide or double-wide), manufactured housing or modular home is permitted, whether or not same is permanently attached to the land and whether or not improvements are added on-site to a mobile home, manufactured housing or modular home. A Residence with respect to which less than 75% of the components are built on-site constitutes a modular home.

B. No Residence shall be erected, altered, placed or permitted to remain on any Lot with fully enclosed living area of less than 1,200 square feet of heated area, exclusive of garages and open porches. Every Residence constructed on a Lot shall include a garage designed to accommodate at least two cars.

C. Every residence and any other building on a Lot shall be erected in compliance with all applicable laws of the City of Rio Rancho. No Residence or other building shall be erected on any Lot closer to the respective property line as follows:

GARAGE SETBACK	20 FEET
FRONT YARD SETBACK	15 FEET
SIDE STREET SETBACK	10 FEET
SIDE YARD SETBACK	5 FEET
REAR YARD SETBACK	15 FEET

D. All Residences and other buildings constructed on a Lot shall be of frame and stucco or other such materials as may be authorized by the Board. Garages, carports and permitted accessory buildings shall conform in material and design to the Residence to which they pertain. No metal storage buildings shall be allowed under any circumstance. **Only exterior surface materials in desert tone colors, including white and tones of brown, tan and grey shall be used for any Residence, accessory structure, wall or fence.** The Dryvit color chart shall control as to colors allowed. The construction of each Residence and other building must comply with provisions of the New Mexico Uniform Building Code.

E. A grading plan showing finished elevations of areas to be graded, paved areas, building sites, retention or detention areas, retaining walls and other structures must be approved by the City of Rio Rancho. No grading, land filling, excavating or other alteration will be done except pursuant to the approved plan or revision approved by the City of Rio Rancho and by the Board.

F. No manufacturing or commercial enterprise of any kind shall be maintained on any Lot except home occupations which are permitted pursuant to the zoning code of the City of Rio Rancho. No fair, exhibition, festival, show or other activity which attracts or is intended to attract

a large number of Persons shall be conducted on any Lot; provided, that the foregoing shall not prohibit garage sales or backyard parties conducted by Owners or other Residents of such Lot, so long as such activities are only undertaken on an occasional basis.

G. No commercial kennel for pets is permitted on any Lot. No animals, livestock, including horses, donkeys, mules, poultry or swine of any kind shall be raised, bred or kept on any Lot other than a reasonable number of domestic animals customarily kept as pets, which shall be permitted, provided that the Owner of a Lot upon which pets are kept shall be responsible for the cleaning and removal of excrement on such Lot and shall assure that unreasonable odors caused by pets do not emanate from such Lot. The Owner of a Lot shall comply with the City of Rio Rancho's "Pet Ordinance" and with City of Rio Rancho nuisance and noise ordinances regarding barking dogs.

H. Any fence, wall, Residence or other building or structure placed on a Lot shall be in compliance with the setback and zoning requirements of the City of Rio Rancho and shall not impair the drainage function of the on-lot ponding areas as shown on the Plat. All perimeter walls and fences shall be placed within the boundary line of the Lot to which such wall or fence is appurtenant. A party wall, which is a retaining wall or other wall constructed on the common property line between two Lots, shall not be removed by either Lot Owner without the written consent of the other Owner and the Board, and the Maintenance and repair of any party wall shall be shared by the Owners of the Lots to which it is appurtenant. All Lots with a completed Residence are required to have perimeter walls or fences constructed, which must extend along each side Lot line from the rear most point of the dwelling to the rear Lot line and along the rear Lot line in its entirety. Other walls and fences are optional. Party walls shall be a minimum of forty-eight (48) inches and a maximum of seventy-two (72) inches in height in relation to the adjacent land surfaces of the Lots. All party walls, perimeter walls and retaining walls Visible from Neighboring Property shall be constructed of rock or stone in conformance with local standards, materials and styles and shall be of a yellow, reddish, or tan color, and not gray or any other color. Walls on a Lot that are not adjacent to a Lot line and forming the "return" from the Residence or courtyard or patio walls connected to the Residence may be of the same material used in the Residence construction, however, being subject to approval by the Board. Except for the required retaining walls, the following requirements shall be applied to fences or walls.

(1) No fence or wall may be erected, placed or altered, relocated or removed, other than repair or replacement with a similar fence or wall, without the express written consent of the Board.

(2) In the event any such party wall is damaged or destroyed by some cause, including ordinary wear and tear and deterioration from lapse of time, other than as a result of the act of one of the adjoining Owners or Resident of such Lot or the agent, tenant, licensee, guest or other invitee of such Owner or Resident (in which case such Owner or Resident shall be solely responsible), then in such event both adjoining Owners shall proceed forthwith to rebuild or repair the wall to as good a condition as existed formerly at their shared expense.

(3) In addition to meeting the other requirements of this Declaration and of any building code or similar regulation or ordinance, any Owner proposing to modify, make additions to or rebuild a party wall in any manner which requires the extension or other alteration of any party wall shall first obtain the written consent of the adjoining Owner.

(4) In the event of a dispute between Owners with respect to the repair or rebuilding of a party wall or with respect to the sharing of costs thereof, the matter shall be submitted to three arbitrators, one chosen by each of the Owners and the third by the two arbitrators so chosen. A determination of the matter signed by any two of the three arbitrators shall be binding upon the Owners, who shall share the cost of arbitration equally. In the event that an Owner fails to choose an arbitrator within ten (10) days after receipt of a request in writing for arbitration from the other Owner, then the Owner who requested the arbitration shall have the right and power to choose all three arbitrators.

I. Perimeter Lots, being those Lots having side lot lines and/or rear lots lines which are not dividing lines between Lots, including Lots whose boundaries form in part the perimeter lines of the Property or which abut drainage ways, city streets, or Tracts, shall have walls or fences constructed along said perimeter lines completely within the perimeter lot lines and said perimeter walls shall not be party walls. All the remaining provisions of this Article III regarding setback requirements, requirements of walls to be constructed, height, materials, color and repair of walls shall apply to such perimeter walls and fences.

J. Required perimeter fences and walls on a Lot must be constructed within sixty (60) days after completion of the construction of the Dwelling on such Lot. Required party walls must be constructed within sixty (60) days after completion of the construction of the Dwelling on the Lot which is the first to commence construction of the two Lots sharing such party wall.

K. No billboards or advertising signs of any character shall be erected, placed, permitted or maintained on any Lot or on any Residence or other building erected thereon, other than one (1) nameplate of the occupant of any Residence upon which his or her professional or occupational title may be added, and provided no such sign shall be lighted. Notwithstanding the foregoing, (i) a Builder or other Owner may erect and maintain not more than one sign on each Lot during the course of construction of a Residence on such Lot or in connection with the offering for sale of such Residence, provided that such sign shall be removed upon completion of construction or sale of the Residence, and such sign shall not exceed six (6) square feet in area, and (ii) the Declarant may erect, place and maintain such signs as may be deemed necessary or appropriate by the Declarant to promote sale of Lots within the Property.

L. The exterior design of a Residence or any other building or fence or wall on a Lot shall not be altered unless the plans have been reviewed and approved by the Board. The following, among other things, shall constitute the alteration of exterior design: a material change in color, texture or decoration or appearance of such Residence or other building or wall or fence, other than Maintenance, repair or replacement that does not materially change the color, texture or decoration or appearance of same.

M. No transmission towers or microwave equipment shall be erected or placed on any Lot. Television or radio receiving antennae, satellite dishes, solar equipment or other devices must be located in the rear yard of a Lot or on the roof of the Residence and in either location **must be substantially shielded from view** from the street and other properties in the vicinity and must not interfere with the reception or signal of the neighboring properties.

N. No noxious or offensive activity shall be carried on upon any Lot or other part of the Property, nor shall anything be done on any Lot or other part the Property which may be or may become an unreasonable annoyance or nuisance to the neighborhood. No burning of trash or refuse shall be permitted on any Lot or other part of the Property.

O. No structure of a temporary character, mobile home, trailer (other than a Builder's construction trailer during the course of construction of a Residence), automobile not in use, semi-tractor, tent, shack, garage, barn or other outbuilding shall be placed or used on any Lot or upon streets within the Property at any time as a residence or place of business, either temporarily or permanently. Boats, campers, other trailers, recreational and similar vehicles or equipment shall be located to the rear of the closest front wall of the Residence, must be screened from view from other property Owners and must comply with City of Rio Rancho ordinances.

P. Construction of a Residence on a Lot must commence within twenty-four (24) months after the date of conveyance of same by Declarant (or any affiliate of Declarant) to the Owner of the Lot. All initial construction on a Lot must be completed within twenty-four (24) months after commencement of construction on the Lot.

Q. No Lot or portion thereof shall be used in whole or in part for the storage or dumping of rubbish of any character whatsoever, nor for the storage of any other property or thing that will cause such Lot to appear in an unclean or untidy condition or that will be obnoxious to the eye. Nor shall any substance, thing or material be kept upon any Lot that emits foul or obnoxious odors or causes noise that unreasonably disturbs the peace, quiet, comfort or serenity of the occupants of surrounding property.

R. No oil drilling, oil development operations, oil refining, quarrying or mining of thermal operations of any kind shall be permitted on any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted in, under or upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot or portion of the Property.

S. Tin or other sheet metal, chain link, wire or barbed wire fences are specifically prohibited, except chain link or wire fences may be constructed for dog runs or other purposes to the rear of the front wall of the Residence when located within a permitted exterior wall or fence. The fence for such dog run shall be a minimum of one (1) foot lower in height than the exterior perimeter wall or fence. All exterior clothes lines shall be placed within fenced or walled areas and shall not be Visible from Neighboring Property.

T. No elevated tanks of any kind shall be erected, placed or permitted on any Lot. Any tanks for use in connection with any residence constructed on said Property, including tanks for

the storage of gas, fuel oil, gasoline or oil must be buried or walled in sufficiently so as to prevent them being Visible from Neighboring Property. Vehicles under extensive repair, storage files and construction materials shall be stored only in a garage or within walls or fences so as to prevent them being Visible from Neighboring Property.

U. Further subdividing Lots is not allowed.

V. All utility connections shall be placed underground.

W. Unless a more restrictive provision is imposed by this Declaration, the restrictions of the City of Rio Rancho shall limit the use and development of each Lot or property.

2. Landscaping.

A. The Board shall review and approve all landscaping plans for all front yards and side yards facing streets on corner Lots and same must be landscaped within ninety (90) days of completion of a Residence on the Lot whether, by the Builder or non-Builder Owner. Rear yards shall be landscaped by the Owner within ninety (90) days after the conveyance of a completed Residence to a non-Builder Owner.

B. Typical desert environment and drought resistant landscaping is encouraged. The Board shall be the final authority as to the acceptability of landscaping, in its sole and absolute discretion. The following criteria shall be used as a guideline:

One (1) broadleaf tree. Examples of typical trees are: Seedless locust, ash and similar varieties. Fruit bearing or fruitless mulberry trees are prohibited on any Lot or Tract.

One (1) intermediate size shrub or bush. Examples are: Photinia, Texas sage, oleander, Indian hawthorne, pyracantha, forsythia, spirea, flowering quince, honeysuckle, sumac, pomegranate and similar varieties.

Four (4) lower foundation plantings or shrubs. Examples are dwarf variety Nandina, rosemary, mock orange, blue chip and tam junipers and similar varieties.

An assortment of other hardy drought resistant broadleaf plantings, cacti, yucca, cholla, agave, century plant, ocotillo and similar plantings are acceptable and encouraged in addition to the above plantings.

C. Any time a substantial change, alteration or modification is made to the front yard or side yard of a Lot relative to landscaping, the Board must approve such change, modification or alteration. Excluded shall be the instance where plants, trees, shrubs or other landscaping 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 applied to the initial planting requirements above set forth.

D. **In no instance shall a Builder or Owner of a Lot deposit or permit to be deposited construction materials, landscaping materials, rocks and/or any other debris on another Lot or any other portion of the Property.** If the Board determines that such deposition has occurred, the Board will give the Builder or Owner who deposited or permitted the deposit of same twenty-four (24) hours to remove the debris, failing which the Board or the Board's agent may cause such debris to be removed and the cost will be charged to the offending Builder or non-Builder Owner at the rate of \$100 per hour labor charges plus any other expenses associated with the cleanup.

Article IV Easements, Storm Drainage and Support Structures

Easements for installation and Maintenance of utilities, drainage and streets are reserved as shown on the recorded Plat. Within these easements no structure, planting or other material 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 material 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 City of Rio Rancho.

Article V Homeowners Association

1. **Formation.** The Association has been formed for the purpose of benefiting the Property, the Owners, and the Residents. The Association may (a) acquire, operate, manage and maintain any Common Areas, (b) establish, levy, collect and disburse the Assessments and other charges imposed hereunder, and (c) as the agent and representative of the Members of the Association and of the Owners and Residents of the Property, administer and enforce this Declaration. The Association is a New Mexico nonprofit corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. The Association shall have all the common law and statutory power conferred upon nonprofit corporations under New Mexico law and all power necessary and desirable to perform the Association's duties and obligations. Neither the Articles nor the Bylaws shall, for any reason, be amended or otherwise changed or interpreted to be inconsistent with this Declaration. The Association shall not be dissolved unless another entity has agreed to assume the obligations of the Association under this Declaration with respect to the operation and Maintenance of the Areas of Association Responsibility.

2. **Board of Directors.** The affairs of the Association shall be conducted by the Board, elected in accordance with this Declaration and the Articles and Bylaws, and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws, as the same may be amended from time to time. The members of the initial Board shall be appointed by the Declarant. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots, and any additional Lots that may be added to the Melon Ridge Subdivision, 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 Owners. Not later than sixty (60) days after conveyance of fifty percent (50%) of the

Lots and any additional Lots that may be added to the Melon Ridge Subdivision, to Owners other than Declarant, no less than thirty-three percent (33%) of the members of the Board shall be elected by Owners other than Declarant. Not later than the termination of the Declarant Control Period, the Owners shall elect a board of at least three members, at least a majority of whom shall be Owners. The Board may appoint various committees and may appoint a manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the manager or any other employee of the Association. Notwithstanding anything contained in the foregoing or elsewhere in this Declaration to the contrary, the Declarant shall have the right to designate and to determine the compensation to be paid to the initial manager for the Association. Unless the Community Documents or the Act specifically require the vote or consent of the Members, the Board may do or cause to be done any act on behalf of the Association.

3. Personal Liability. No member of the Board or of any committee of the Association, no officer of this Association, no Declarant, and no manager or other employee of the Association shall be personally liable to any Member or any other Person, including the Association, for any damages, costs, fees (including, without limitation, attorney fees), loss, or prejudice suffered or claimed on account of any act, omission error, or negligence of the Association, the Board, the manager, any representative or employee of the Association or any committee, committee member, or officer of the Association, except as may otherwise be provided under the Act.

4. Membership. Each Owner of a Lot shall automatically be a Member of the Association, and shall remain a Member of the Association until such time as such Owner no longer owns such Lot, at which time membership in the Association shall automatically cease. Each such Membership shall be appurtenant to and may not be separated from ownership of the Lot to which the Membership is attributable, and joint ownership or ownership of undivided interests in any Lot shall not cause there to be more than one Membership attributable to such Lot. There shall be one (1) Membership attributed to each Lot. The vote for each Member must be cast as a single unit, and fractional votes shall not be allowed. Cumulative voting is not permitted. Notwithstanding the fact that the Person owning a Tract shall be subject to the Covenants contained in this Declaration which are applicable to the Tracts, a Person who owns a Tract shall not be a Member of the Association.

5. Creation of Assessment Right and Personal Obligation of Assessments. To provide funds to enable the Association to meet its obligations, there is hereby created a right of assessment exercisable on behalf of the Association by the Board. Assessments shall be imposed for the purpose of paying Common Expenses and to establish reserves as hereinafter provided and shall be allocated equally among all Lots. The Association shall have the right to impose Assessments for the purpose of paying all Common Expenses of the Association, which shall include without limitation, all costs incurred in connection with the acquisition, ownership, Maintenance, provision, and operation of Areas of Association Responsibility. The Assessments, together with interest, late charges and all costs (including but not limited to reasonable attorneys' fees and collection costs) incurred by the Association in collecting or attempting to collect delinquent Assessments with respect to a Lot, whether or not suit is filed, shall be a charge upon and shall be a continuing lien upon such Lot against which such Assessment is made. No Regular Assessment or Special Assessment shall be levied against any Lot owned by the Declarant. The initial Regular

Assessment shall be \$240.00 per year, until the Board votes to change it. Each Owner, by acceptance of the deed conveying the Lot to such Owner, is deemed to covenanted and agreed to pay the Assessments with respect to such Owner's Lot. Each Owner failing to pay an Assessment within fifteen (15) days of the date that the Assessment is due shall also pay a late charge as set by the Board from time to time. The initial late charge shall be greater of Ten Dollars (\$10.00) per month or ten percent (10%) of the unpaid Assessment. Late charges shall be subject to any limitations imposed by the Act or other applicable law. An Owner failing to pay an Assessment when due shall also pay all costs and attorneys' fees incurred by the Association in the collection of such Assessments. No Owner shall be relieved of the obligation to pay any of the Assessments by such Owner abandoning or not using a Lot or the Common Areas, or by leasing or otherwise transferring occupancy rights with respect to such Owner's Lot. An Owner who conveys fee title to a Lot provides written notice to the Board of such conveyance, shall not be liable for any Assessments thereafter levied against such Lot. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed by reason of the alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration, the Articles or the Bylaws.

6. Lien for Assessments. There is hereby created and established a lien in favor of the Association against each Lot which shall secure payment of all present and future Assessments assessed or levied against such Lot or the Owner thereof (together with any other amounts levied against such Lot or the Owner thereof pursuant to this Declaration or the Articles, the Bylaws or the Rules, an "Assessment Lien"). It shall be the duty of every Owner to pay all Assessments with respect to the Owner's Lot in the manner provided herein. Such Assessments, together with interest and costs of collection as provided for herein and in this Declaration, shall, until paid, be a charge and continuing servitude and lien upon the Lot against which such Assessments are made; provided, however, that the lien for such Assessments shall be subordinate to only those matters identified in this Declaration. An Assessment Lien shall be prior and superior to all other liens affecting the Lot in question, except: (a) taxes, bonds, assessments and other levies, which by law, are superior thereto and (b) the lien or charge of any First Mortgage made in good faith and for value. The Recording of this Declaration constitutes record notice and perfection of the Assessment Lien. Such Assessment Liens may be foreclosed in the manner provided by law for the foreclosure of mortgages. The Association and the Board shall have the authority to exercise and enforce any and all rights and remedies provided for in this Declaration or the Bylaws, or otherwise available at law or in equity for the collection of all unpaid Assessments, interest thereon, costs of collection thereof, and reasonable collection agency fees and attorneys' fees and costs. The sale or transfer of any Lot shall not affect the Assessment Lien; provided however, that the sale or transfer of any Lot pursuant to foreclosure of a First Mortgage or any proceeding in lieu thereof shall extinguish the lien of the Assessments as to payments which became due prior to such sale or transfer, but shall not relieve such Lot from liability for any Assessments becoming due after such sale or transfer, or from the lien thereof. The Association shall have the power to bid for any Lot at any sale to foreclose the Association's lien on the Lot, and to acquire and hold, lease, mortgage, and convey the same. During the period the Lot is owned by the Association, no right to vote shall be exercised with respect to that Lot and no Assessment shall be assessed or levied on or with respect to that Lot; provided, however, that the Association's acquisition and ownership of a Lot under such circumstances shall not be deemed to convert the same into Common Areas.

Recording of this Declaration constitutes record notice and perfection of the liens established hereby, and further Recordation of any claim of a lien for Assessments or other amounts hereunder shall not be required, whether to establish or perfect such lien or to fix the priority thereof, or otherwise (although the Board shall have the option to Record written notices of claims of lien in such circumstances as the Board may deem appropriate).

7. Effect of Nonpayment of Assessments; Remedies of the Association. In addition to the rights and remedies of the Association set forth in Section 6 above, the Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, lien Recording fees, reasonable attorneys' fees and any other sums due to the Association (all such amounts are collectively referred to herein as the "Delinquent Amount") in any manner allowed by law including, but not limited to, exercise of the following:

(a) Suspension of Rights. The Board may suspend for the entire period during which a Delinquent Amount remains unpaid the obligated Owner's voting rights and rights to use and enjoy the Common Areas, to the extent permitted by the Act.

(b) Collection of Delinquent Amount. The Board may institute an action at law for a money judgment or any other proceeding to recover the Delinquent Amount.

(c) Recording of Notice. The Board may Record a notice of lien setting forth the name of the delinquent Owner as shown in the records of the Association, the legal description or street address of the Lot against which the Notice of Lien is Recorded and the Delinquent Amount, including accrued interest, accrued collection costs, lien recording fees, and attorneys' fees as provided in this Declaration. The Board may establish a fixed fee to reimburse the Association or its representative for the cost of Recording the notice, processing the delinquency, and Recording a notice of satisfaction of the lien. Before Recording a notice of lien against a Lot, the Association shall make a written demand to the defaulting Owner for payment of the Delinquent Amount and all other amounts secured by the Assessment Lien. Each default shall constitute a separate basis for a demand, but any number of defaults may be included within the single demand. The Association shall not be obligated to release the Assessment Lien until the entire Delinquent Amount payable by the Owner of the Lot has been paid in full.

8. Judgments. The Association shall be entitled to maintain suit to recover a money judgment for unpaid Assessments without a foreclosure of the lien for such Assessments, and the same shall not constitute a waiver of the lien for such Assessments.

9. Computation of Regular Assessments; Annual Budget. Regular Assessments shall commence as to each Lot on the date of the initial conveyance of a Lot to an Owner by Declarant. The initial Regular Assessment shall be prorated according to the number of months remaining in the calendar year within which the Regular Assessment actually commences. At least sixty (60) days prior to the commencement of the Assessment Period, which shall be determined by the Board, the Board shall prepare and adopt a budget of the estimated Common Expenses for the next Assessment Period, including any contribution to be made to a reserve fund. The budget shall also reflect the sources and estimated amounts of funds to cover Common Expenses, which may include any surplus to be applied from prior years, any income expected from sources other than

Assessments, or other amounts to be generated through Assessments against the Lots. The Regular Assessments shall include contributions to the Reserve Account described below. Based on the budget adopted by the Board, the Board shall assess against each assessable Lot a Regular Assessment. The Regular Assessment shall be the same for each assessable Lot. The amount of increase, if any, in the Regular Assessment from one Assessment Period to the next Assessment Period shall be subject to such limitations as may be imposed by New Mexico law. When adopted by the Board, the Board shall make the annual budget available to the Members of the Association as required under the Act. The Board shall give notice of the Regular Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Regular Assessment established by the Board and shall not relieve any Owner from its obligation to pay the Regular Assessment. If the Board fails to adopt a budget for any Assessment Period at least sixty (60) days in advance of the first day of the applicable Assessment Period, then the current Regular Assessment amount shall apply until the Board establishes the Regular Assessment for each subsequent Assessment Period. Except as provided in this Declaration, neither the budget nor any Annual Assessment levied pursuant thereto shall be required to be approved by the Members.

If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are, or will become, inadequate to meet all Common Expenses for any reason, including without limitation, nonpayment of Assessments by Members, the Board may amend the budget and increase the Regular Assessment for that Assessment Period (subject to such limitations as may be imposed by New Mexico law) and the revised Regular Assessment shall commence on the date designated by the Board.

10. Maximum Annual Assessment. The Assessments provided for in this Declaration shall not at any time exceed the "Maximum Annual Assessment," as determined in accordance with this Section. For the fiscal year ending December 31 of the year in which the Common Areas are conveyed to the Association, the Maximum Annual Assessment applicable to the Lots shall be \$360.00 per year. Thereafter, except as provided below, unless a greater increase is approved by a vote of at least fifty-one percent (51%) of the votes of Members represented in Person or by proxy at a meeting of Members called for such purpose at which a quorum is present, the Maximum Annual Assessment for any fiscal year shall be equal to the Maximum Annual Assessment for the immediately preceding fiscal year increased at a rate equal to or less than twenty percent (20%) of the previous Annual Assessment. Notwithstanding the foregoing, the Board may, without the approval of the Members, increase the Maximum Annual Assessment for any fiscal year by an amount sufficient to permit the Board to meet any increases over the preceding fiscal year in: (a) premiums for any insurance coverage required by this Declaration to be maintained by the Association, (b) charges for Maintenance of Common Areas, and (c) charges for utility services necessary to the Association's performance of its obligations under this Declaration, notwithstanding the fact that the resulting increase in the Maximum Annual Assessment is greater than otherwise permitted under the third sentence of this Section.

11. Special Assessments. The Association may, in addition to the Annual Assessments, levy a Special Assessment but only for the purpose of defraying, in whole or part, the cost of any construction, reconstruction, repair, or replacement of Improvements owned by the Association or for defraying other extraordinary expenses, provided, however, that such Special Assessment must

be approved by at least two-thirds (2/3) of the votes entitled to be cast by the Members voting in Person or by proxy at a meeting of the Association duly called for such purpose at which a quorum is present. Special Assessments shall be assessed uniformly among the Owners.

12. Working Capital Contribution. To ensure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each Person who acquires a Lot together with a completed Dwelling Unit constructed thereon shall pay to the Association immediately upon becoming the Owner of such Lot a sum equal to one-sixth (1/6th) of the current Annual Assessment for such Lot (the "Working Capital Contribution"). Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or any other purpose permitted under this Declaration. Payments made pursuant to this Section shall be nonrefundable and shall not be offset or credited against or considered as advance payment of the Annual Assessment or any other Assessments levied by the Association pursuant to this Declaration. Payments made pursuant to this Section shall not be used in calculating the Maximum Annual Assessment pursuant to this Declaration hereof. Payment of Working Capital Contribution pursuant to this Section are secured by the Assessment Lien and are in addition to any other fees payable pursuant to the Community Documents and any other fees payable at the close of escrow.

No Working Capital Contribution shall be payable with respect to: (a) the transfer or conveyance of a Lot by devise or intestate succession; (b) a transfer or conveyance of a Lot to a family trust, family limited partnership, or other Person for bona fide estate planning purposes; (c) a transfer or conveyance of a Lot to a corporation, partnership, or other entity in which the grantor owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of the Working Capital Contribution in which event a Working Capital Contribution shall be payable with respect to such transfer or conveyance; (d) the conveyance of a Lot by a trustee's deed following a trustee's sale under a deed of trust; or (e) a conveyance of a Lot as a result of the foreclosure of a realty mortgage or the forfeiture or foreclosure of a purchaser's interest under a Recorded real estate contract.

13. Reserves; Reserve Account. The Board may establish reserves for the future periodic Maintenance, repair, or replacement of the major components of the Areas of Association Responsibility. The reserves may be funded from Annual Assessments, the Working Capital Contributions paid pursuant to this Declaration, the Reserve Contributions paid pursuant to this Declaration or any other revenue of the Association. All amounts designated as reserves shall be deposited by the Board in a separate bank account (the "Reserve Account") to be held for the purpose for which they are collected and are to be segregated from and not commingled with any other funds of the Association. Unless the Association is exempt from federal or State taxes, all reserves shall be accounted for as contributions to the capital of the Association and segregated from the regular income of the Association or in any other manner authorized by law or regulation of the Internal Revenue Service that will prevent such funds from being taxed as income of the Association. Funds in the Reserve Account may only be used to pay costs and expenses related to the periodic Maintenance, repair, and replacement of the Areas of Association Responsibility, unless the expenditure of any or all of the funds in the Reserve Account for other purposes is approved by the vote of Owners holding at least two-thirds (2/3) of the votes in the Association. Notwithstanding any other provision of this Section to the contrary, upon an express finding of the

Board in its reasonable discretion that funds held in the Reserve Account are in excess of the funds reasonably necessary for the future repair and replacement of the major components of the Areas of Association Responsibility or Common Areas, any such excess funds may be allocated by the Board to be used for any purpose permitted by this Declaration.

14. Reserve Contribution. Except as otherwise provided in the Section, each Purchaser (other than the Declarant or a Builder) shall pay to the Association, immediately upon becoming the Owner of the Lot, a contribution to the reserves of the Association for the periodic Maintenance, repair, and replacement of the major components of the Areas of Association Responsibility or Common Areas (the "Reserve Contribution"). The amount of the initial Reserve Contribution shall be a sum equal to one-sixth ($1/6^{\text{th}}$) of the current Annual Assessment for such Lot. The Board may from time to time increase or decrease the amount of the Reserve Contribution, but the amount of the Reserve Contribution may not be increased by the Board by more than twenty percent (20%) during any year without the approval of Members holding more than fifty percent (50%) of the votes in the Association.

No Reserve Contribution shall be payable with respect to: (a) the transfer or conveyance of a/or a Lot by devise or intestate succession; (b) a transfer or conveyance of a Lot to a family trust, family limited partnership, or other Person for bona fide estate planning purposes; (c) a transfer or conveyance of a Lot to a corporation, partnership, or other entity in which the grantor owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of the Reserve Contribution in which event a Reserve Contribution shall be payable with respect to such transfer or conveyance; (d) the conveyance of a Lot by a trustee's deed following a trustee's sale under a deed of trust, or (3) the foreclosure of a realty mortgage or the forfeiture or foreclosure of a purchaser's interest under a Recorded Real Estate Contract.

All Reserve Contributions shall be deposited in the Reserve Account established pursuant to this Declaration. Reserve Contributions shall be non-refundable and shall not be considered as an advance payment of Assessments. Reserve Contributions payable pursuant to this Section are secured by the Assessment Lien and are in addition to any other fees provided for in the Community Documents and any other fees to be paid at the close of escrow.

15. Use of Funds. The Association shall apply all funds and property collected and received by it (including the Annual Assessments, Special Assessments, Reserve Contributions, fees, loan proceeds, surplus funds, and all funds and property received by it from any other source) for the common good and benefit of the Property and the Members and Residents by devoting said funds and property, among other things, to the payment of all Common Expenses.

16. Borrowing Power. The Association may borrow money in such amounts, at such rates, upon such terms and security, and for such period of time as is necessary or appropriate; provided, however, that no portion of the Common Areas shall be mortgaged or otherwise encumbered without the approval of at least two-thirds ($2/3$) of the Members (and the Declarant during the Declarant Control Period).

17. Surplus Funds. The Association shall not be obligated to spend in any year all the sums received by it in such year (whether by way of Assessments, Special Assessments, Reserve Contributions, fees or otherwise), and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

18. Insurance Coverage. The Association shall maintain insurance against liability incurred as a result of death or injury to natural persons or damage to property on the Areas of Association Responsibility, directors' and officers' liability insurance, and/or such other insurance as the Board determines appropriate with the amount and type of coverage to be determined by the Board. The premiums payable by the Association for such insurance shall be part of the Common Expenses. Such insurance may include, without limitation, any of the following:

(a) Comprehensive general liability insurance, including medical payments insurance, in amounts determined by the Board, but not less than \$1,000,000, which shall cover all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, and Maintenance of the Areas of Association Responsibility including the Common Areas.

(b) Property/Casualty loss insurance on all Improvements in Areas of Association Responsibility, insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of such Improvements, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations, and other items normally excluded from a property policy.

(c) Worker's compensation insurance to the extent necessary to meet the requirements of the laws of the State of New Mexico.

(d) Such other insurance as the Board shall determine from time to time to be appropriate to protect the Association and its Members.

The insurance policies obtained by the Association shall to the extent reasonably available, contain the following provisions:

(i) There shall be no subrogation with respect to the Association, its agents, servants or employees with respect to any Owner or Resident;

(ii) No act or omission of any Member, unless acting within the scope of such Member's authority on behalf of the Association, will void the policy or be a condition of recovery on the policy;

(iii) The coverage afforded by any such policy shall not be brought into contribution or proration with any insurance which may be purchased by any Member or their mortgagees or beneficiaries under deeds of trust;

(iv) A severability-of-interest endorsement which shall preclude the insurer from denying the claim of any Member because of the negligent acts of the Association or other Members; and

(v) A statement of the name of the insured as the Association.

19. Certificates of Insurance. An insurer that has issued an insurance policy under this Article shall issue a certificate or a memorandum of insurance to the Association and, upon request of the Board, to any mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this Article may not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each mortgagee or beneficiary under a deed of trust to who certificates of insurance have been issued.

20. Payment of Insurance Proceeds. With respect to any loss to any Areas of Association Responsibility covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Board, and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility. The Board is irrevocably appointed and authorized by the Owner to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The Board shall have full and complete power to act for the Association in this regard and may, in its discretion, appoint an authorized representative or committee, or enter into an insurance trust agreement wherein the Trustee shall have authority to negotiate losses under any policy purchased by the Association.

21. Repair and Replacement of Damaged or Destroyed Property. Any portion of the any Area of Association Responsibility which is damaged or destroyed shall be repaired or replaced promptly by the Association unless repair or replacement would be illegal under any state or local health or safety statute or ordinance, or the Owners representing at least eighty percent (80%) of the total authorized votes in the Association vote not to repair or replace the damaged or destroyed Improvements. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association.

If the Areas of Association Responsibility are not repaired or replaced, insurance proceeds attributable to the damaged Areas of Association Responsibility shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall be retained by the Association as an additional capital reserve.

22. Individual Responsibility; Disclaimer or Liability. It shall be the responsibility of each Owner and Resident to provide insurance for such Owner's or Resident's real or personal property

interests on or within the Property, including, but not limited to, additions and improvements thereto, furnishings and personal property thereon, and for personal liability. No Person shall maintain any insurance which would limit or reduce in any manner the insurance proceeds payable under the insurance maintained by the Association in the event of damage to the Improvements or fixtures on the Areas of Association Responsibility. The Association, any Board member, and Declarant shall not be liable to any Person or mortgagee if any risks or hazards are not covered by the insurance obtained by the Association or the amount of such insurance is not adequate.

23. Maintenance of Areas of Association Responsibility. The Association shall be responsible for the management and Maintenance of the Areas of Association Responsibility, and all Improvements located thereon, except for any part of the Areas of Association Responsibility which any governmental entity is maintaining or is obligated to maintain. The Association shall use commercially reasonable efforts in providing for the repair, management, and Maintenance of the Areas of Association Responsibility. The Board, however, shall be the sole judge as to the appropriate level of Maintenance of all Areas of Association Responsibility by the Association. Any cooperative action necessary or appropriate to the proper Maintenance of the Areas of Association Responsibility shall be taken by the Board or by its duly delegated representative. Notwithstanding any duty the Association may have to maintain and repair the Areas of Association Responsibility, neither the Association nor Declarant shall be liable for injury or damage caused by any latent condition or by any Member, Owner, Resident, or other Person. Neither the Association nor the Declarant shall be liable to any Person for any claim, injury, or damage arising from the use of the Areas of Association Responsibility, which shall be used at the risk of the user. Declarant has no duty or obligation to maintain, operate, manage, or repair the Areas of Association Responsibility.

No Owner, Resident, or other Person shall construct or install any Improvements on the Areas of Association Responsibility or alter, modify, or remove any Improvements situated on the Areas of Association responsibility without the prior written approval of the Board. No Owner, Resident or other Person shall obstruct or interfere with the Association in the performance of the Association's management or Maintenance of the Areas of Association Responsibility, and the improvements located thereon.

The Board may cause the Association to contract with others for the performance of the Maintenance and other obligations of the Association under this Article.

24. Assessment of Certain Costs of Maintenance and Repair of Common Areas and Public Areas. In the event that the need for maintenance or repair of Areas of Association Responsibility is caused through the act of any Owner or Resident or an Owner's or Resident's family, guests, tenants, or invitees, the cost of such maintenance or repairs shall be due within thirty (30) days of notice from the Board and shall be added to, and become a part of, the Assessment to which such Owner's or Resident's Lot is subject, and shall be secured by the Assessment Lien, provided that prior to submitting a bill for such costs, the Board shall cause a notice to be sent to the Owner of the Lot specifying the maintenance or repairs and Owner shall have the right to object to such Owner's responsibility. Following the Board's consideration of such objection, the Board may absolve the Owner or demand that the Owner pay the bill within the thirty (30) day period provided above. The decision of the Board shall be final and binding. Any charges or fees to be paid by the

Owner of the Lot in connection with a contract entered into by the Association with an Owner for the performance of an Owner's maintenance responsibilities shall also become a part of such Assessment and shall be secured by the Assessment Lien.

25. Improper Maintenance and Use of Lots and Tracts. In the event any portion of any Lot or Tract 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, Tracts, or other areas of the Property, or in the event any portion of a Lot or Tract is being used in a manner which violates this Declaration, or in the event the Owner of any Lot or Tract is failing to perform any of its obligations under this Declaration or the Rules, the Board may by resolution make a finding to such 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 fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If, at the expiration of said fourteen (14) 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 (either by undertaking such corrective action) and the cost thereof, together with any attorneys' fees expended by the Association in connection therewith, shall be added to and become a part of the Assessment to which the offending Owner's Lot or Tract is subject, if any, and shall be secured by the Assessment Lien.

26. Association's Rights of Enforcement. The Declarant, for so long as it owns any real property within the Property, and the Association as the agent and representative of the Members, shall each have the right to enforce the provisions of this Declaration. Any Member may enforce the provisions of this Declaration at any time by any appropriate action and whether Declarant and/or the Association takes any action to enforce the provisions of this Declaration. The Board may, in its business judgment, decline to take action on behalf of the Association to enforce the provisions of this Declaration, and no Member may bring an action against the Board or Declarant for failure to enforce the Community Documents.

The Association may enforce the Community Documents in any manner provided for in the Community Documents or by law or in equity, including, but not limited to:

- (a) Imposing reasonable monetary fines after notice and opportunity to be heard is given to the Owner or another violator. An Owner shall be responsible for payment of any fine levied or imposed against a Lessee or Resident or the Owner's Lot or by any guest or invitee of the Owner or any Lessee or Resident;
- (b) suspending an Owner's right to vote;
- (c) suspending any Person's right to use any recreational facilities within the Common Area; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from the Lot;
- (d) exercising self-help or taking action to abate any violation of the Community Documents in a non-emergency situation;

(e) requiring an Owner, at the Owner's expense, to remove any structure or Improvement on such Owner's Lot in violation of this Declaration and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the Lot, remove the violation, and restore the Lot to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

(f) without liability to any Person, prohibiting any contractor, subcontractor, agent employee or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration or the Rules from continuing or performing any further activities in the Property;

(g) towing vehicles which are parked in violation of this Declaration or the Rules;

(h) filing a suit at law or in equity to enjoin a violation of the Community Documents, to compel compliance with the Community Documents to recover fines or money damages or to obtain such other relief as to which the Association may be entitled;

(i) recording a written notice of violation to any Owner or Resident of any restriction or other provision of the Community Documents. The notice shall be executed by an officer of the Association and shall contain substantially the same following information; the name of the Owner or Resident violating or responsible for the violation of the Community Documents; the legal description of the Lot against which the notice is being Recorded; a brief description of the nature of the violation; a statement that the notice is being Recorded by the Association pursuant to this Declaration; and a statement of the specific steps which must be taken by the Owner or Resident to cure the violation. Recordation of a notice of violation shall serve as notice to the Owner and Resident, and any subsequent purchaser of the Lot, that there is such a violation. Failure by the Association to Record a notice of violation shall not constitute any evidence that no violation exists with response to a particular Lot or constitute a waiver of any right of the Association to enforce the Community Documents.

The Association shall not be obligated to take any enforcement action if the Board determines, in its sole discretion, that because of the strength of the Association's possible defenses, the time and expense of litigation or other enforcement action, the likelihood of a result favorable to the Association, or other facts deemed relevant by the Board enforcement action would not be appropriate or in the best interest of the Association.

27. Contracts with Others for Performance of Association's Duties. Subject to the restrictions and limitations contained herein, the Association may enter into contracts and transactions with others, including Declarant and its affiliated companies, and such contracts or transactions shall not be invalidated or in any way affected by the fact that one (1) or more directors or officers of the Association, or members of any committee, is employed by, or otherwise connected with Declarant or its affiliates, provided that the fact of such interest shall be disclosed or known to the other directors acting upon such contract or transaction, and provided further that the transaction or contract is on terms and conditions which would be available to the Association in an arms-length transaction with an unaffiliated provider. Any such director, officer, or committee member may be counted in determining the existence of a quorum at any meeting of the Board or committee of which he is a member which shall authorize any contract or transaction described above, or

grant or deny any approval sought by the Declarant or its affiliated companies or any competitor thereof and may vote thereat to authorize any such contract transaction, or approval with like force and effect as if he were not so interested.

28. Fines. The Association, acting through the Board, shall have the right to adopt a schedule of fines for the violation of any provision of the Community Documents, including the Rules, by any Owner or Resident. No fine shall be imposed, however, without first providing a written warning to the Owner or Resident in question describing the violation and stating that the failure to stop such violation within no less than ten (10) days, or in the event of a recurrence of the same violation within six (6) months of the original violation within no less than five (5) days, shall make the Owner or Resident, as applicable, subject to the imposition of a fine. An Owner shall have the right to object in writing regarding the imposition of a fine within fifteen (15) days after the Owner receives notice of the levying of a fine. All fines imposed by the Association shall be paid within thirty (30) days following imposition and shall accrue interest if not timely paid at the rate of twelve percent (12%) per-annum, and shall be secured by the Assessment Lien.

29. Board of Directors Power to Enforce. The Board shall have the authority to enforce all uses and restrictions contained in this Declaration or the Rules. Nothing contained in this Section shall limit the Association's right to file legal actions for the collection of Assessments, or to enjoin violations.

Article VI

Miscellaneous Provisions

1. The Declarant by signing this Declaration, and each other Owner the acceptance of a deed of conveyance to a Lot, 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 Person in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

2. Breach of any of the provisions of this Declaration by any Owner or Resident shall not affect any mortgage or other lien which in good faith may be existing at the time upon such Owner's or Resident's Lot or any Improvements thereon.

3. 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.

4. Any provision hereof may be changed, amended or rescinded by written instrument setting forth such amendment which has been approved by (a) the Declarant (for so long as Declarant owns any Lot or Tract within the Property) and (b) by owners (other than Declarant) of seventy-five (75%) percent of the Lots and executed by a duly authorized officer of the Association.

5. 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 Sandoval County, New Mexico. No amendment, change, modification or rescission of any provision of this Declaration shall be valid or effective if such amendment, change, modification or rescission violates or conflicts with any applicable law of the State of New Mexico.

6. Notwithstanding anything to the contrary set forth herein, for 30 years after the recording of this Declaration in the Office of the County Clerk of Sandoval County, New Mexico, Declarant may unilaterally annex all or any portion of the Phase 2 Property and any other land adjacent to the real property described in Exhibit A or Exhibit B attached hereto, thereby subjecting any such real property to the provisions of this Declaration, when a the Final Plat creating single family residential lots, roadways and other parcels on the Phase 2 Property or such other adjacent land is filed of record in the Office of the County Clerk of Sandoval County, New Mexico. For purposes hereof, the term "adjacent" shall include land adjacent to a public right of way that is adjacent to the real property described in Exhibit A or Exhibit B attached hereto. Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the developer of at least a portion of the real property described in Exhibit A or Exhibit B attached hereto, and that such transfer is memorialized in a written instrument executed by Declarant and recorded in the Office of the County Clerk of Sandoval County, New Mexico. Such annexation shall be accomplished by Declarant (or its transferee or assignee) executing and causing to be recorded in the Office of the County Clerk of Sandoval County, New Mexico, a Supplemental Declaration, describing the property to be annexed and expressly subjecting such property to the terms of this Declaration. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise expressly provided therein.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed on the date set forth below.

RIO RANCHO HOLDINGS, LLC,
an Arizona limited liability company

By: 
Patrick Smith, Authorized Representative

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of Santa Barbara)

On Jan. 18, 2023, before me, A. Henderson, a Notary Public, personally appeared Patrick Smith, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



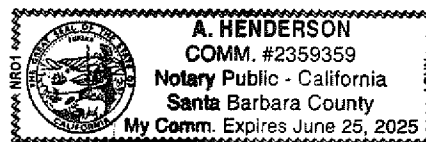


Exhibit AThe Phase 1 Property

Lots 1 through 17 of Block 1, Lots 1 through 27 of Block 2, Lots 1 through 7 of Block 4, Lots 1 through 4 of Block 5, Lots 1 through 28 of Block 6, and Tracts "B," "C" and "D," all as shown and depicted on the Final Plat for Melon Ridge Phase 1, a Replat of Portions of Blocks 60 Thru 62, Unit 13 within Projected Section 12, T. 12N., R. 2E., N.M.P.M., Town of Alameda Grant, City of Rio Rancho, Sandoval County, New Mexico, filed of record in the Office of the County Clerk of Sandoval County, New Mexico, on December 16, 2022, in Plat Book 3, Page 4983, as Document No. 2022P01979

Exhibit B

The Phase 2 Property

Tract "A-1," as shown and depicted on the Final Plat for Melon Ridge Phase 1, a Replat of Portions of Blocks 60 Thru 62, Unit 13 within Projected Section 12, T. 12N., R. 2E., N.M.P.M., Town of Alameda Grant, City of Rio Rancho, Sandoval County, New Mexico, filed of record in the Office of the County Clerk of Sandoval County, New Mexico, on December 16, 2022, in Plat Book 3, Page 4983, as Document No. 2022P01979