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DECLARATION
OF EASEMENTS, COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR
DOS ARROYOS SUBDIVISION
TAOS, NEW MEXICO

This Declaration, made on the date hereinafter set forth by Dos Arroyos, L.L.C., a New Mexico Limited Liability Company, referred to as "Declarant."

Declarant is the owner of certain real property in Taos, Taos County, State of New Mexico, which is more particularly described on Exhibit "A" attached hereto and hereby made a part hereof (the "Property" and/or "Dos Arroyos Subdivision").

Declarant hereby declares that the Property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the Property and be binding on all parties having any right, title or interest in the described Property or any part thereof, their heirs, successors and assigns, and which are intended to create mutual equitable servitudes and reciprocal rights amongst all of the Owners of the Property.

ARTICLE I.- DEFINITIONS

- 1.1 **Association:** Dos Arroyos Subdivision Homeowners Association, a New Mexico Non-profit corporation, its successors and assigns.
- 1.2 **Owner:** the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract Purchasers, but excluding those having such interest merely as security for the performance of an obligation.
- 1.3 **Property:** that certain real property hereinbefore described.
- 1.4 **Lot:** any plot of land shown upon the recorded Subdivision Plat (and any amendments(s) thereto) of the Property, with the exception of the Easements.
- 1.5 **Declarant:** Dos Arroyos, L.L.C., a New Mexico Limited Liability Company, its successors and assigns.

SCOTT H. SANGER, ATTORNEY-AT-LAW, P.C.
SANTO DOMINGO
630 PASO DEL PERDIDO SUITE 160
TAOS, NEW MEXICO 87571

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1.6 **Subdivision Plat:** Dos Arroyos Subdivision Plat filed in Plat Cabinet D at Page 192B, as amended in Plat Cabinet D at Page 197B, both in the Records of Taos County, New Mexico, as further amended, from time to time.

1.7 **Easements:** Underground utilities, drainage, open space and trails easements, where indicated on the Dos Arroyos Subdivision Plat.

ARTICLE 2 - PROPERTY RIGHTS

Section 2.1 Owners' Easements of Enjoyment.

Every Owner shall have a right and easement of enjoyment in and to the Easements which shall be appurtenant to and shall pass with the title to every Lot.

Section 2.2 Delegation Of Use.

Any Owner may delegate, in accordance with the Bylaws of the Association, his right of enjoyment to the Easements to the members of his family, his tenants, or contract purchasers who reside on a Lot.

Section 2.3 Uses.

Each Lot shall be used for single family residences no smaller than twelve hundred (1200) square feet inside. In addition, an Owner may construct upon such Lot such structures as are customarily incident to single family residential use (including, but not limited to, a storage shed, a guest house, a studio and a garage).

No business or commercial activities shall be conducted upon a Lot, except for Home Occupations as defined by applicable laws and ordinances, and then only upon compliance with such applicable laws and ordinances provided that permission of the Association is first obtained. An Owner shall be allowed to rent out his principal dwelling structure and/or guest house for residential (non-commercial) usage without violating this restriction. An Owner may use his principal dwelling structure and/or appurtenant outbuildings in pursuit of artistic or literary activities without violating this restriction. No Lot may be further Subdivided for sale. No structure of a temporary character, be it tent, shack or other building shall be used on any Lot at any time as a residence, either temporarily or permanently. Temporary buildings, recreational travel trailers, motor homes and the like shall be permitted for uses incidental to construction and work on a

Lot, but may not be used as a permanent residence. No building or structure of any kind shall be moved onto any of the Property without the prior written approval of the Design Review Committee of the Association (referred to in Article 5 hereinafter). No mobile homes, manufactured, modular, panelized or double-wide homes shall be used as a permanent residence on any Lot at any time. No old, used, or second-hand buildings shall be moved onto any Lot at any time. Removal of any buildings which have been placed on a Lot contrary to the provisions of this Declaration shall be at the Lot Owner's expense. Declarant and/or the Association shall have the right, at their discretion, to cause to be removed any building or structure from the Property that does not comply with these restrictions.

No refuse, trash, garbage or other unsightly substance, including but not limited to, non-running vehicles, may be stored openly about the Property. No noxious, offensive or nuisance activities shall be conducted upon the Property, including but not limited to, loud noises, dangerous nuisances, unsightly and/or malodorous nuisances. Only household pets may be kept on the Property. There shall be no commercial pet breeding on the Property. No firearms may be discharged on the Property. No open fires shall be ignited on the Property. No high, free-standing security lights shall be erected on the Property. All exterior lighting must be "dark sky" lighting pursuant to applicable Ordinance and must be shielded so as not to shine directly on any adjacent Lot.

Any new construction on a Lot must be in local "southwest style" with flat roofs (which may be slightly pitched for drainage) and shall otherwise conform to the "Design Guidelines" as determined and approved by the Association, and as may be amended from time to time. All roofing materials shall be non-reflective. No structure shall be taller than twenty-seven (27) feet above average grade level with the exception of chimneys. All exterior walls shall be from earth tones to brown in coloration. All construction must be completed on any Lot within one (1) year of its commencement.

No billboards or other advertising signs may be erected or maintained on any Lot in the Subdivision, except for signs advertising an Owner's Home Occupation as permitted by applicable Ordinance. Any sign erected on a Lot must comply with applicable Town of Taos Ordinances and Regulations. No more than one (1) "For Sale," "For Lease," or "For Rent," sign shall be displayed upon any Lot, and such sign shall be no larger than eighteen (18) inches by twenty-four (24) inches.

Section 2.4 Reserved Declarant Use Rights. During development of the Subdivision until the sale of the last Lot, Declarant, and/or its successors, agents and/or assigns, may:

- a) display one or more larger advertising signs as they may determine, as permitted by applicable Ordinance;
- b) erect and maintain temporary construction trailers until the completion of construction of the last home; and/or,
- c) erect and maintain a sales office and/or maintain a model home or homes until the last lot is sold and a home is built thereupon.

Section 2.5 Grant of Easements. The underground utility easements, open space, drainage, and trails corridor access easements indicated on the Subdivision Plat, are hereby granted to the Association by the Declarant to be used as perpetual easements for the benefit of each Lot in Dos Arroyos Subdivision.

Section 2.6 Repair and Maintenance of Easements. The costs of maintenance and repair of the Easements created pursuant to Section 2.5 shall be allocated amongst the Lot Owners, and shall be billed and collected via the assessment process, as provided in Article 4 hereinafter.

ARTICLE 3 - MEMBERSHIP AND VOTING RIGHTS

Section 3.1 Formation of the Association.

Within thirty (30) working days after the sale of the fourth (4th) Lot in Dos Arroyos Subdivision, the Dos Arroyos Subdivision Homeowners Association shall be formed by Declarant.

Section 3.2 Assessment.

Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from the ownership of any Lot.

Section 3.3 Voting Rights.

The Association shall have two (2) classes of voting Membership:

Class A - Members shall be all owners of Lots within the Subdivision and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be

exercised as they amongst themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B - The Class B Member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned by the Declarant. The Class B Membership shall cease and be converted to Class A Membership when the total votes outstanding in Class A equals at least eighty (80%) percent of the total votes.

ARTICLE 4 - COVENANT FOR MAINTENANCE ASSESSMENT

Section 4.1 Creation Of Assessments.

The Association is hereby authorized to levy assessments against each Lot for Association expenses as the Board may specifically authorize from time to time. There shall be three types of assessments for Association expenses: (a) Base Assessments to fund Common Expenses for the general benefit of all Lots as described in §4.2.; (b) Special Assessments as described in §4.4; and (d) Specific Assessments as described in §4.5. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Property is deemed to covenant and agree to pay these assessments.

All assessments, together with interest from the due date of such assessment at a rate determined by the Board (not to exceed the highest rate allowed by New Mexico law), late charges, costs, and reasonable attorney's fees, shall be a charge and continuing lien upon each Lot against which the assessment is made until paid, as more particularly provided in §4.7. Each such assessment, together with interest, late charges, costs, and reasonable attorney's fees, also shall be the personal obligation of the Person who was the Owner of such Lot at the time the assessment arose. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Lot by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

Assessments shall be paid in such manner and on such dates as the Board may establish. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Lot, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

The Association shall, within ten (10) business days, upon written request, furnish to any

Owner liable for any type of assessment a certificate in writing signed by an officer of the Association setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

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

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses.

Section 4.2 Computation of Base Assessment.

At least ninety (90) days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year, including a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in §4.3.

The Base Assessment shall be levied equally against all Lots and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Lots subject to assessment under §4.6 on the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to assessment during the fiscal year.

The Board shall send a copy of the budget and notice of the amount of the Base Assessment for the following year to each Owner at least sixty (60) days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by Voting Members representing at least seventy-five percent (75%) of the total Class A votes in the Association and by the Class B Member, if such exists. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Owners as provided for special meetings

in the Bylaws, which petition must be presented to the Board within ten (10) days after delivery of the notice of assessments.

If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

Section 4.3 Reserve Budget.

The Board shall annually prepare reserve budgets for general purposes which take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. As part of establishing a reserve budget, the Board shall create a maintenance and repair plan for the roads, which shall require periodic maintenance designed to assure the quality of travel and integrity of the roadways. The Board shall set the assessments in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual Assessments over the budget period.

Section 4.4 Special Assessments.

In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of Owners representing at least fifty-one percent (51%) of the votes allocated to Lots, and the affirmative vote or written consent of the Class B Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

Section 4.5 Specific Assessments.

The Board shall have the power to levy Specific Assessments against a particular Lot or Lots constituting less than all Lots within the Property:

- a. To cover costs, including overhead and administrative costs.
- b. To cover costs incurred in bringing the Lot into compliance with this Declaration and/or the Design Guidelines for Dos Arroyos Subdivision with the terms of this Declaration, any applicable Supplemental Declaration, the Homeowners Association Bylaws or Rules and Regulations, or costs incurred as a consequence of the conduct of the

Owner or occupants of the Lot, their licensees, invitees, or guests; provided, the Board shall give the Lot Owner prior written notice and an opportunity for a hearing before levying a Specific Assessment under this subsection 4.5.

Section 4.6 Date of Commencement of Assessments.

The obligation to pay assessments shall commence as to each Lot on the first day of the month following: (a) the month in which the Lot is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual Base Assessment levied on each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot.

Section 4.7 Lien for Assessments.

All assessments authorized in this Article shall constitute a lien against the Lot against which they are levied until paid. The lien shall also secure payment of interest, late charges (subject to the limitations of New Mexico law), and costs of collection (including attorney's fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. The Association may enforce such lien, when delinquent, by suit, judgment, and foreclosure.

The Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. While a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its equal *pro rata* share of the assessment that would have been charged such Lot had it not been acquired by the Association. The Association may sue for unpaid Common Expenses and costs without foreclosing or waiving the lien securing the same.

The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, the sale or transfer of any Lot pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Lot who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Lot due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Lots subject to assessment under this Article 4, including such acquirer, its successors and assigns.

Section 4.8 Failure to Assess.

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

Section 4.9 Capitalization of Association.

Upon acquisition of record title to a Lot by the fourth (4th) Owner thereof other than the Declarant, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to one-sixth (1/6) the annual Base Assessment per Lot for that year, or \$100.00, whichever is greater. This amount shall be in addition to, not in lieu of, the annual Base Assessment and shall not be considered an advance payment of such assessment. This amount shall be paid to the Association from the closing, for use in covering operating expenses and other expenses incurred by the Association pursuant to the terms of this Declaration and the Bylaws.

Section 4.10 Subordination Of The Lien To Mortgages.

The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage against a Lot.

ARTICLE 5 - ARCHITECTURAL CONTROL

There shall be a Design Review Committee (the "DRC") consisting of the three (3) members of the Board of Directors of the Association. The DRC shall have the responsibility of reviewing and approving or denying, in writing, all plans for improvements to any Lot in the Subdivision in accordance with the Design Guidelines, as adopted by the Declarant, and as amended from time to time. Plans and Specifications must be submitted to the DRC for approval as being in compliance with the provisions of Section 2.3 hereof prior to the commencement of any construction activities. The approval or denial of any plans submitted to the DRC shall be based upon the plan's harmony of exterior design and location in relation to the existing structures in Dos Arroyos Subdivision.

No building, fence, wall or other structure shall be commenced, constructed, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration

therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to existing structures in the Dos Arroyos Subdivision by the DRC.

ARTICLE 6 - WATER AND LIQUID WASTE DISPOSAL

Section 6.1 Water Use and Conservation.

- a) Each home on a Lot in Dos Arroyos Subdivision shall be connected to the Town of Taos Water System.
- b) All water fixtures and piping shall be low-flow to conserve water use. All indoor plumbing fixtures shall conform to the requirements of the National Energy Policy Act of 1992. The use of water efficient appliances is recommended.
- c) All vegetation on a Lot shall be of a low water use requirement and drought resistant. Landscaping, other than turf areas, shall be irrigated using drip or similar systems. Application of xeriscaping principles is recommended. The maximum irrigated area is limited to 800 feet per Lot.
- d) Lot Owners are encouraged to contact the Office of the State Engineer, Water Use and Conservation Bureau for information and advice on methods of water conservation and waste water prevention.

Section 6.2 Liquid Waste Disposal.

Each home on a Lot in the Dos Arroyos Subdivision shall be connected to the Town of Taos Sewer System.

ARTICLE 7 - GENERAL PROVISIONS

Section 7.1 Enforcement.

The Association, and/or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration (specifically including but not limited to the right to require the removal of any improvement which does not conform to the provisions of Section 2.3 hereof, and/or is disapproved by the DRC). Failure by the Association and/or by any Owner to enforce any covenant, condition, or restriction herein

contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 7.2 Severability.

Invalidation of any one of these covenants, conditions, or restrictions by judgement or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 7.3 Amendment.

The covenants, conditions, and restrictions of this Declaration, as amended, shall run with and bind the land, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years upon agreement of a majority of the Members of the Association. All Easements shall be perpetual. Other than the foregoing sentence related to the duration of Easements, the provisions of this Declaration may be amended by the Declarant for forty (40) months following the sale of the first Lot, provided that no such amendment shall materially negatively affect the value of the Dos Arroyos Subdivision thereafter. Any amendment must be signed by all necessary parties and filed for record with the Taos County, New Mexico, Clerk and Recorder.

IN WITNESS WHEREOF the undersigned, being the Declarant herein, has hereunto set its hand and seal this 6th day of January, 2004.

**DOS ARROYOS, L.L.C.,
A NEW MEXICO LIMITED LIABILITY COMPANY**

By Mark P. Yafavitz
Mark P. Yafavitz, Managing Member

STATE OF NEW MEXICO)
)SS:
COUNTY OF TAOS)

On this 6th day of January, 2004, before me personally appeared Mark P. Yaravitz, Managing Member of Dos Arroyos, L.L.C., a New Mexico Limited Liability Company, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his own free act and deed on behalf of said Limited Liability Company.

Carlene W. Lottak

Notary Public

My Commission Expires: 4-26-2005



