

THE LA MESA HOMEOWNERS ASSOCIATION, INC.

**COMPREHENSIVE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS (CC&Rs)**

In accordance with CC&Rs Section 9.5 and the vote by the Members, held June-July 2011 to change the fiscal year to a calendar year, with votes representing more than two-thirds (2/3) of the Lots being cast in favor of making the fiscal year January 1 – December 31, the Board of Directors hereby adopts the following Amendment to the CC&Rs:


AMENDMENT 1

Replace Section 8.2, paragraph (a) in its entirety with the following:

Section 8.2 Covenant for Assessments.

(a) Annual Assessment. Each and every Lot in the Property is severally subjected to and impressed with a regular annual operating assessment or charge referred to as the "annual operating assessment", which assessment under these revised CC&Rs shall commence on January 1, 2012, and shall be due and payable on said date and on the first day of January each year thereafter, and which shall run with the land. The annual operating assessment shall be determined in accordance with Section 8.3 of this Article and shall apply to each and every improved Lot, defined as a Lot upon which a certificate of occupancy has been issued for a residence. The annual operating assessment for an unimproved Lot, defined as a Lot for which a certificate of occupancy has not yet been issued, shall be at a rate equal to one half of that for an improved Lot. The Board shall prorate the assessment for the year in which the certificate of occupancy is issued for each Lot, and shall include the additional charges on the next annual assessment.

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COVENANT RESTRICTION Pg. 1 of 3
Sally G. Padilla, Sandoval County Clerk




Replace Section 8.3 in its entirety with the following:

Section 8.3. Duties of the Board of Directors.

(a) Annual Budgets. The Board of Directors of the Association shall, not later than September 15 of each year, prepare a nondiscretionary budget in accordance with Section 8.1.(a) of this Article, and a proposed discretionary budget in accordance with Section 8.1.(b). The budget shall include maintenance of an operating surplus not greater than one hundred fifty percent (150%) of the average annual nondiscretionary expenditures over the prior three fiscal years. The purpose of such operating surplus shall be to meet any unanticipated, nondiscretionary expenses incurred by the Association, without resorting to a special assessment. Based on the nondiscretionary budget, the Board shall then establish the nondiscretionary operating assessment for the next fiscal year beginning on January 1. The discretionary budget shall be mailed in the form of a ballot to each property owner no later than October 15 of each year, along with a copy of the nondiscretionary budget and the amount of the nondiscretionary operating assessment. The written ballot shall include each proposed discretionary expenditure for the next fiscal year and the estimated cost per Lot such expenditure would incur if passed. The ballot shall authorize absentee voting by mail in accordance with the Bylaws.

(b) Annual Operating Assessment. Following the vote of the Association, the Board shall compute the discretionary operating assessment based on the expenditures approved by the membership, and the total operating assessment to be levied against each Lot or Property Owner. Finally, the Board shall prepare a roster of the properties and applicable assessments which shall be kept in the office of the Association and shall be open to inspection by any Property Owner. Written notice of the assessment shall be sent no later than December 1 of each year to every Property Owner subject to such assessment. The Association shall furnish to every Property Owner liable for said assessment a receipt in writing setting forth that said assessment has been paid. Such receipt shall be conclusive evidence of payment of any assessment shown on the receipt to have been paid.


George Franzen, President, La Mesa Homeowners Association, Inc.


Jock Embry, Secretary, La Mesa Homeowners Association, Inc.

[illegible]

Notary Public

My Commission Expires _____

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COMPREHENSIVE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
(1998 REPLACEMENT)

THESE COVENANTS, CONDITIONS AND RESTRICTIONS (CC&Rs, 1997 Replacement), made on the date and year below written by the La Mesa Homeowners Association, Inc., a New Mexico Nonprofit Corporation, and effective upon the recording hereof with the County Clerk for Sandoval County, New Mexico, supersede and replace the Comprehensive Declaration of Covenants, Conditions and Restrictions recorded by KGA Development Corporation in the Volume Misc. 221, Folio pg. 68-100 of the County of Sandoval, State of New Mexico, on July 18, 1988. Where used in this document, the terms "CC&Rs" and "Association" mean "Covenants, Conditions and Restrictions" and the "La Mesa Homeowners Association" respectively.

RECITALS

1. The Association is a nonprofit organization of Property Owners who individually and collectively hold title to certain real estate located within the La Mesa Subdivision, Sandoval County, New Mexico.
2. The purpose of these CC&Rs is to carry out and maintain a uniform plan for the improvement, maintenance and use of the Property; to preserve the natural beauty of the Property; to guard against the erection of poorly designed or proportioned Improvements, or the use of unsuitable materials; to encourage and secure the erection and maintenance of well designed, attractive Improvements that are harmonious with their sites and consistent with existing Improvements; and in general, to protect and enhance the environmental quality and economic value of the Property, while protecting the rights of each Association Member to the enjoyment and beneficial use of his or her individually owned property.

NOW, THEREFORE, the Association hereby declares that the Property shall be developed, held, used, occupied, conveyed and leased subject to provisions of the reservations, easements, covenants, conditions and restrictions set forth in these CC&Rs. These CC&Rs shall run with the Property and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part of the Property, their heirs, successors and assigns, and shall inure to the benefit of each Member of the Association.

ARTICLE I

DEFINITIONS

Section 1.1. "Architectural Control Committee" means the committee created pursuant to Section 6.1 of Article VI of these CC&Rs. Where used in this

document, the term "ACC" or the "Committee" means the Architectural Control Committee.

Section 1.2. "Architectural Control Committee Supplemental Rules" means the rules adopted by the ACC with the approval of the Board of Directors as set forth in Section 6.6, Article VI, to supplement these CC&Rs. Where used in this document, the term "Supplemental Rules" means the Architectural Control Committee Supplemental Rules.

Section 1.3. "Association" or "Homeowners Association" means the La Mesa Homeowners Association, Inc., a New Mexico nonprofit corporation.

Section 1.4. "Builder" or "Contractor" means any person or organization acting as the general, prime or lead contractor to construct for the Property Owner a residence on a Lot located within the Subdivision.

Section 1.5. "CC&Rs" means the covenants, conditions and restrictions as set forth in this entire document including any amendments subsequently approved by the Association.

Section 1.6. "Common Facilities" means all existing and subsequently provided Improvements upon or within the Common Properties.

Section 1.7. "Common Properties" means all those areas of land within the Property designated on the Subdivision Plats as Parks, and any other Property the Association may own or acquire. Excluded from the definition of Common Properties are all privately owned Lots, easements over privately owned Lots designated as Homeowner Association Maintained Roads or open space easements, private driveways, and all roadways accepted as a public right-of-way and maintained by Sandoval County.

Section 1.8. "Development Plan" means the plan and supporting documents for development of a Lot which are required to be submitted to the ACC in accordance with the provisions of these CC&Rs, paying particular attention to Sections 4.1, 4.2(a) and 4.3 of Article IV, Sections 6.4 and 6.5 of Article VI, and current ACC Supplemental Rules promulgated from time to time in accordance with Section 6.6 of Article VI.

Section 1.9. "Drainage Way" means any area specifically designated as such on the Plat, including the Open Space Easement, and in addition includes all arroyos, stream beds, sedimentation basins or barrow pits located, designated or constructed on the Property.

Section 1.10. "Improvements" means residential structures or any other buildings, garages, carports, decorative or functional structures, streets, roads, culverts, driveways, parking areas, sidewalks, walls, fences, gates, exterior lighting, basketball standards, private waste disposal systems, plantings, and

all other Structures or landscaping, of every kind and type, changing or affecting the natural condition of the land or drainage of surface waters on, across or from the land.

Section 1.11 "Lot" means each parcel of land designated as a lot by a separate block and lot number on the recorded Subdivision Plat of the Property, including any parcels of land subsequently subdivided into separate Lots in accordance with Section 9.12 of Article IX.

Section 1.12 "Member" means and refers to any persons or organizations defined as a "Property Owner" in Section 1.16 of this Article, and if the Property Owner is one or more individual persons residing on the Property, includes all members of the immediate household of that person also living on the Property. The term "Member" shall not include a lessee of any property rented or leased in the Subdivision; however, such lessee and members of the lessee's immediate household residing on the Property shall be entitled to use the Common Properties and Common facilities on the same basis as the Members.

Section 1.13. "Open Space Easement" means the area designated on the Subdivision Plat as an Open Space Easement and located over Lots labeled 1 through 6 and 12 through 14 in Block labeled 1, and subject to the restrictions set forth in Section 10.3 of Article X. The Association does not own the property encumbered by the Open Space Easement.

Section 1.14 "Park" means the unnumbered parcel of land designated on the Subdivision Plat as "Park", and located between Lots 24 and 25 of Block 7 and subject to the restrictions set forth in Section 10.3 of Article X. The Park has been conveyed to the Association by separate deed.

Section 1.15. "Private Waste Disposal System" means any septic tank, tank, septic system, evapotranspiration ("ET") system, or other system for the disposal of sewage or waste from a residential structure, including all pipes, fittings, lines, drain fields and other related equipment or attachments.

Section 1.16. "Property Owner" means and refers to the owner(s) of record whether one or more persons, associations or entities, of legal, equitable or beneficial title to any Lot. The term "Property Owner" includes a purchaser of a Lot under an executory contract for sale of real property, but does not include persons or entities who hold an interest in any lot or in the Property solely as a security interest for performance of an obligation. The term "Property Owner" does not include a lessee of any Lot, whether or not the Lot includes Improvements. The restrictions and conditions set forth in these CC&Rs relative to the activities, construction and maintenance of Improvements and landscaping on any Lot shall extend to the lessee of any Lot. This provision shall not release the Property Owner from liability for any failure by the lessee or the Property Owner to comply with these CC&Rs on the leased Lot.

Section 1.17. "The Property" or "The Subdivision" or "La Mesa" means all Lots, Common Properties and Common Facilities described on the La Mesa Subdivision Replat filed in real property records of the Sandoval County Clerk on September 28, 1993 and included as Exhibit A to these CC&Rs, including the aerial and subsurface rights and any additional real property that the Association may annex to the Subdivision.

Section 1.18. "Single-family Residential Use" means the occupation or use of a Structure as a residence (but excluding any commercial uses except as provided herein and excluding multiple dwelling units such as apartments, duplexes, "fourplexes" and multiple condominiums) by any individual person, a family or a family-sized unit in conformity with these CC&Rs and any requirements imposed by applicable zoning laws or any other state, county or municipal laws, regulations, codes, rules or ordinances.

Section 1.19. "Structure" means anything erected, constructed, placed, laid or installed in, on or over real property, but does not include vegetation, trees, shrubs or other plantings.

Section 1.20. "Subdivision Map" or "Subdivision Plat" or "Plat Map" or "Plat" or "Final Plat" means the recorded map or plat of the La Mesa Subdivision, as amended or replatted from time to time, covering any or all of the Property referred to in Section 1.17.

Section 1.21. "Visible From Neighboring Property" means that with respect to any given object or improvement, such object or improvement would be visible when viewed from a height of six feet or less above ground level from any point on a neighboring property. A neighboring property includes any Lot having a common lot line, or that would have a common lot line except for the intervention of a street, road, right-of-way or easement.

Section 1.22. "Water Cooperative" means any cooperative association established in accordance with applicable law of which a Property Owner is a member for the purpose of receiving domestic water service at a Lot.

ARTICLE II

PROPERTY SUBJECT TO RESTRICTION

Section 2.1. General Declaration. The Association hereby declares that the Property within the Subdivision is and shall be developed, maintained, conveyed, held, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part, subject to these CC&Rs, as amended or modified from time to time by the Association. The purpose of these CC&Rs is declared and agreed upon by the Members of the Association to be the enhancement and maintenance of the value, attractiveness, desirability and enjoyment of the Property by all of the Members of the Association, both

individually and collectively. All of the provisions of these CC&Rs shall run with all of the Property for all purposes, and shall be binding upon and inure to the benefit of the Association, all Property Owners, and their successors in interest.

Section 2.2. Description of Property. The Property subject to these CC&Rs includes all Property described in Section 1.17 of Article I, together with any and all Property added or annexed in accordance with these CC&Rs.

Section 2.3. Annexation of Adjacent Property by the Homeowners Association. The Association shall have the right to approve the addition or annexation of any property having a common border with the La Mesa Subdivision, either through purchase, lease or agreement with the owner(s) of the adjacent property, and such annexed property shall become a part of the Property subject to these CC&Rs. Purchase or lease of adjacent property must be approved by a two-thirds majority vote of the Members of the Association and shall be approved only for the purpose of acquiring open space for the recreation and benefit of all members. Annexation of property adjacent to La Mesa Subdivision must be approved by a two-thirds majority vote of the Members of the Association, and shall be approved for the purpose of bringing adjacent, privately owned property under these CC&Rs for the mutual benefit of the Association and the owners of the property to be annexed. By agreeing to annexation, the owner(s) of property to be annexed must consent and agree by recorded document to have their property bound by these CC&Rs and to be subject to the jurisdiction of the Association. Upon recording of the instrument confirming such annexation/addition of such property as a part of the Property subject to these CC&Rs, such property (and the owners thereof) shall be bound by, and shall otherwise become entitled to all of the obligations, limitations, rights and benefits of these CC&Rs.

Section 2.4 Annexation by KGA Development Corporation. KGA Development Corporation, its successors and assigns, reserve the right established by Section 2.3 of the original Declaration of Covenants, Conditions and Restrictions filed of record at Sandoval County on July 18, 1988, to bring within the coverage of these CC&Rs additional properties without the consent or approval of any Property Owners or the Association, subject to the following conditions precedent:

(a) Such additional properties must be adjacent to La Mesa Subdivision as it shall at the time exist; and

(b) The Owner (or Owners) of any property to be added under this section 2.4 must sign a Confirmation Agreement with the Association that, effective upon filing of such Confirmation Agreement with the records of the County Clerk for Sandoval County, New Mexico, such Owners (and the property covered by such confirmation) shall thereafter be bound by all terms, provisions, rights, obligations, and limitations as set out in these CC&Rs. The property to be added must at the time be subdivided into "Lots" as that term is utilized under

these CC&Rs and the minimum lot size within the property to be added shall not be smaller than the smallest Lot within La Mesa Subdivision at the time of annexation. Any Improvements placed on any of the Lots to be added as additional properties must also have been built in compliance with these CC&Rs and the then existing usage of such Lots must be in compliance with these CC&Rs, including the requirement (Section 3.1) that all Lots "shall be used, improved, maintained and devoted exclusively to Single-family Residential use"; and

(c) A one time fee must be paid to the Association for each Lot added pursuant to this Section 2.4 that is equal to the current "equity position of each individual Property Owner" in the assets of the Association. For purposes of this Section 2.4(c), the current "equity position of each individual Property Owner" means the cash assets held by the Association, plus any unpaid dues or other accounts receivable, minus the value of any outstanding loans, accounts payable or other financial liabilities of the Association, such sum to be divided by the number of Lots (developed or undeveloped) then contained within the subdivision; and

(d) The confirmation documentation referenced above shall clarify and confirm that the Association, as to such additional properties or lots, shall not be obligated for the cost of developing, constructing or maintaining any roads, rights-of-way, water delivery system, or other infrastructure affecting such Lots, except as expressly accepted by the Association in the confirmation documentation.

ARTICLE III

LAND USE

Section 3.1. Single-family Residential Use. All Property shall be used, improved, maintained and devoted exclusively to Single-family Residential Use. No business or commercial activity frequented by and open to the general public, and in any event, no business or commercial activity which takes place outdoors, shall be conducted within the Subdivision. Home occupations of the Property Owner (and other household members conforming to the definition set forth in Section 1.18) are permissible if conducted within the home, a garage or studio, and comply with any rules and regulations governing home occupations adopted by the Association. Nothing in this Article shall be deemed to prevent a Property Owner from leasing all of an individual Lot, with all of the Improvements on the Lot, to an individual person or family. Any such lease shall bind the lessee to comply with all of the provisions of these CC&Rs applicable to use and maintenance of the Property. The lease of a Lot and its improvements to another party shall in no way release the Property Owner from the absolute responsibility to comply with all of the provisions of these CC&Rs.

Section 3.2. Prohibition of Rental or Lease of a Portion of a Lot. No portion of a Lot, other than the entire Lot together with all of the Improvements located on the Lot, may be rented, leased or subleased to any person(s) or entity.

Section 3.3. Development Plan. Each Property Owner shall be required to submit to the ACC a detailed Development Plan in accordance with Articles IV and VI, and any ACC Supplemental Rules in effect at the time of submission. The Development Plan must be approved in writing by the ACC prior to the commencement of construction of any Improvement. No construction whatsoever, including, without limitation, site preparation, clearing of trees or shrubbery, grading or excavation, shall commence without the prior written approval of the ACC. All construction and development shall comply strictly with the Development Plan as it was approved by the ACC. Any changes to the Development Plan must be approved in writing by the ACC in accordance with Section 6.4(d) of Article VI. Any deviation from the Development Plan, as it may have been changed with the ACC's written approval, shall subject the Property Owner to a lien on the Lot and its improvements, forfeiture of the compliance deposit required under Section 6.4(c) of these CC&Rs, or both as the ACC and the Association may deem appropriate. Any person purchasing any portion of the Property subject to these CC&Rs acknowledges that the breach or violation of this covenant will likely result in irreparable harm to the rights and interests of other Property Owners in the Subdivision, and that the ACC or the Association, on behalf of such Property Owners, shall, in addition to forfeiture of a compliance deposit or a lien on the Lot, be entitled to injunctive relief, temporary or permanent, in order to prohibit such violation. This provision shall be in addition to any other remedies available at law or equity.

Section 3.4. Time for Construction.

(a) Construction of any Structure or Improvement shall be continuous and shall proceed in an orderly fashion without interruptions, and any Structure or Improvement on a Lot shall be completed in a reasonable time, not to exceed twelve (12) months from the commencement of construction.

(b) The foundation or slab for any Structure or Improvement shall be completed as soon as is practically possible after the commencement of construction.

(c) Commencement of construction shall mean the first on-site work for construction, including, but not limited to, clearing of trees or shrubbery, excavation, grading or site preparation for the installation of the foundation or slab.

(d) Materials and equipment necessary for construction, and all debris resulting from clearing or construction, shall be confined to the Lot, and shall not be left on any other Lots, Common Property or roadways.

ARTICLE IV

RESIDENTIAL STRUCTURES AND IMPROVEMENTS

Section 4.1. Requirements. All Residential Structures and all other Improvements shall be subject to the requirements and restrictions set forth in this Article as amplified in any Supplemental Rules promulgated by the Architectural Control Committee and approved in accordance with Section 6.6 of Article VI. Each item enumerated in this Article must be included in the Development Plan submitted to, and approved in writing by, the ACC prior to the commencement of construction. Once approved, no Structure or Improvement may vary from the Development Plan without further written approval of the ACC.

(a) Setbacks: With the exception of driveways, driveway entrance fences, walls and structures (e.g. pilasters) as provided in this section, all Structures are subject to a twenty-five (25) foot setback requirement from any road or street right-of-way boundary. Except as provided in Section (i)(5) of this Article, a twenty-five foot setback shall also be observed from side and rear lot lines. Approved driveway entrance fences, walls or decorative structures shall observe a setback of at least ten (10) feet from any road or street right-of-way boundary.

(b) Locating Structures and Improvements; Height Limitations. The ACC shall have the authority and responsibility to ensure that Structures, landscaping and other Improvements are located on each Lot to preserve, to a reasonable degree, the views and lines of sight of neighboring properties. To that same end, the ACC shall have the authority and responsibility to impose limitations on a Lot by Lot basis on the height of any Structure, landscaping or Improvement. All Property Owners must recognize that locating the residential structure to maximize views from one Lot may adversely affect the views from another. Likewise, landscaping improvements or other Structures on one Lot may block the views from others. The ACC is charged with the difficult responsibility of balancing the interests of all Property Owners, and each individual Property Owner is strongly encouraged to cooperate both with neighbors and with the ACC on issues of views.

(c) Minimum Floor Areas: All primary Residential Structures shall have a heated floor area of not less than one thousand eight hundred (1800) square feet, exclusive of portals, porches (open and closed), patios, garages, carports, balconies or decks.

(d) Subdivision Design and Architectural Style: All Structures and Improvements shall be constructed in Southwestern/New Mexico Pueblo, New Mexico Territorial, or Spanish Mission architectural style, utilizing traditional New Mexico materials including adobe and/or stucco in natural earth-tones (browns) or other colors approved in writing by the ACC. Flat roofs are encouraged. Contemporary clerestory styles and other active and passive solar


features may be permitted, if in the judgment of the ACC, the structure represents an appropriate and integrated blend of contemporary and traditional style and technology. Pitched roofs are prohibited unless consistent with a recognized, traditional Northern New Mexico style approved in writing by the ACC. These elements shall be referred to as the "Subdivision Design and Architectural Style" .

(e) Exterior Color Schemes and Materials: The ACC shall approve, and shall have the right to impose limitations on, the exterior colors and building materials to be used in all Structures consistent with Subdivision Design and Architectural Style. The ACC shall have the authority to approve ornamental wrought iron for use on balconies, gates and around windows, but not for fences. Specific color authorizations and restrictions shall be set forth in the ACC Supplementary Rules promulgated in accordance with Section 6.6 of Article VI.

(f) Private Waste Disposal Systems: Private waste disposal systems shall be constructed or allowed to remain or to be used on any lot only when approved as to design, capacity, location and construction by all appropriate public health agencies including the State of New Mexico Environmental Division and approved in writing by the ACC.

(g) Roofing Materials: The ACC shall have the right to impose limitations on roofing materials to be used on any structure if the roof surface is visible from neighboring property, or from any street, road, easement or right-of-way.

(h) Driveways: The ACC must approve, and shall have the right to impose limitations on driveway design, including materials, aprons, decorative entryway structures such as gates, walls, fences and pilasters, location and point of contact with dedicated roads, streets or other private driveways in the Subdivision. The ACC may require the installation and maintenance of culverts at the point of contact with dedicated roads or wherever a driveway crosses a drainage way.

(i) Fences, Walls, Retaining Walls, and Gates. 

(1) The following materials are specifically authorized for walls and fences to enclose courtyards and garden areas: adobe block, stuccoed or unstuccoed; cinder block or framed wall with paper and wire under three coat stucco or any equivalent stucco system which effectively conceals the underlying construction in all weather conditions; "coyote" fencing; split rail cedar of two or three rails; vertical cedar pickets mounted between stuccoed pilasters of the same color as the residence spaced no more than twenty five (25) feet apart, and with the cedar pickets stained or painted to match as nearly as possible the color of the residence; painted pipe (horse lots, corral area only). Vermin wire may be installed if concealed behind natural vegetation or mounted behind split rail cedar, or "coyote" fencing. The ACC may approve additional wall and fencing

materials and designs, but the use of chain link fence, barbed wire or rolled livestock fencing shall not be approved under any circumstances.

(2) Gates may be constructed of wood, wrought iron or other materials set forth in the ACC Supplemental Rules, and painted in color schemes as established by the ACC.

(3) Retaining walls may be constructed of block or concrete under paper and wire with three coat stucco, or any equivalent stucco system which effectively conceals the underlying cinder block construction in all weather conditions, or of rock, railroad ties or other materials approved by the ACC.

(4) Heights for fences, walls and retaining walls will normally be limited to six feet. However, in areas where the fencing or wall is not visible from roadways or neighboring lots, either because of natural vegetation or grades, or where the Property Owner can show a requirement for a greater height, such greater height may be approved.

(5) Lot lines shall not be fenced, and the twenty five foot (25') setbacks for structures shall normally be observed for fences and walls. However, the ACC may waive this provision and may, subject to subparagraph (a) of this section, authorize a wall or fence inside the 25 foot setback where the topography of the Lot or other conditions make such waiver desirable and reasonable. Where a waiver would permit the fence or wall to be installed within 25 feet of a neighboring Lot, the ACC shall not grant the waiver without first seeking comments from the Owner of that neighboring Lot.

(6) The ACC shall not disapprove requests to enclose less than one half acre of any Lot behind walls and/or fences so long as the request meets the other provisions of this Article. Requests to enclose more than one half acre of a Lot behind walls and/or fences shall be at the discretion of the ACC and shall be subject to the normal appeals process set forth in Section 6.8.

(7) The ACC shall not impose restrictions on fencing, walls or retaining walls contrary to the provisions specifically set forth in this section.

(j) Tanks, Air Conditioners and Swamp Coolers: The ACC must approve the location of any tank, air conditioner or evaporative cooler ("swamp cooler") used or proposed in connection with a residential Structure, including propane tanks, tanks for storage of water, and swimming pool filter tanks. All tanks, air conditioners, and evaporative coolers shall be screened so that no portion of the unit is Visible From Neighboring Property, or from any street, road, easement or right-of-way. Oil, diesel fuel or gasoline storage tanks are prohibited on any Lot.


(k) Screens. The screening required for tanks, swamp coolers, antennas or other structures as required in this article, may consist of evergreen trees or shrubbery, or any of the materials approved for fencing or the residential

Structure itself. Roof mounted units shall be screened by stuccoed parapets, but latilla access panels to service equipment may be approved. The size and layout of the allowed screening installation will be sufficient for the Property Owner to conduct unobstructed maintenance of the item being screened.

(l) Exterior lighting: The ACC must approve the location, number, size and design of all proposed exterior lighting. To preclude intrusive lighting shining onto neighboring property, all exterior lights must be shielded or screened so that the bulb is not Visible From Neighboring Property. Where exterior lighting does not conform to this requirement but has been approved in writing by the ACC, Section 4.7 allows the Property Owner to retain such nonconforming lighting subject to operating the lights in accordance with section 5.9.(c). No street lamp, security lights or neon arc lamps will be permitted.

(m) Solar Equipment. Request for approval of installation of any type of solar equipment shall be included in the Development Plan and approved in writing by the ACC if such equipment or installation will be Visible From Neighboring Property, or from any street, road, easement or right-of-way.

(n) Windmills, Towers, and Antennas. No windmill, visible antenna, including satellite dishes, or other service for the transmission or reception of television signals, radio signals or other form of electromagnetic radiation shall be erected, used or maintained on any Lot, whether or not attached to a building or Structure, without prior approval of the ACC. No radio signals, television signals, or any other form of electromagnetic radiation shall originate from any Lot which may unreasonably interfere with the reception of any television or radio signal on any other Lot. Satellite dish antennas larger than twenty (20) inches in diameter will only be approved by the ACC if screened so that they are not Visible From Neighboring Property, or from any street, road, easement or right-of-way.

(o) Outbuildings.  Acceptable outbuildings include a principal garage or carport for not more than four vehicles, and either a studio, a guest house or a workshop. Any proposed outbuildings must be approved in writing by the ACC.

Section 4.2. Trees, Shrubs and Landscaping.

(a) During initial construction of the residential Structure on the building Lot, the ACC must approve the removal and/or addition of trees, shrubs, hedges, ground cover and all other landscaping in accordance with the Builder's Development Plan. There shall be no disturbance of trees or other ground cover during construction without the written approval of the ACC. The Development Plan shall include plans to reclaim areas disturbed during construction, and failure to complete the reclamation plan as approved by the ACC shall make the Builder subject to forfeiture of the Compliance Deposit required by Section 6.4.(c), and to any other legal remedies available to the Association.

(b) After the initial Property Owner has moved into his home, landscaping decisions shall generally be the purview of the Property Owner subject only to the restrictions contained in this Section. However, every Property Owner is strongly encouraged to consider water usage in making landscaping decisions. To that end, the Association strongly encourages the use of drought tolerant, low water usage and/or native plants in landscaping situations, and discourages the installation of high water consumption lawns and turf. The following limitations are intended to provide each individual Property Owner with the broadest possible discretion in developing his or her own landscaping without interference, while encouraging voluntary water conservation and maintaining to some degree the ambiance of our native landscape.

(1) The ACC shall establish, as part of the Supplemental Rules, a list of plants recognized for their drought tolerance and low water requirements when established. Plants listed in the ACC Supplemental Rules shall be considered acceptable for plantings anywhere on a Lot without any requirement for further ACC approval, provided that large trees and shrubs would not interfere with views from Neighboring Property. Any Property Owner may propose that low water use plants not already listed be added to the approved list, and the ACC shall evaluate whether such plants would be appropriate based on available literature and the goal of limiting water consumption.

(2) Within thirty feet (30') of the residential Structure, or within ten feet (10') of fences, walls or the boundaries of a driveway, or within enclosed courtyards and fences, the Property Owner may use reasonable discretion in landscaping decisions, whether or not plants to be installed are listed in the ACC Supplemental Rules, without advance ACC approval (i.e., without submission of a formal development plan requiring ACC approval).

(3) Approval of the ACC shall be required for the removal of any native junipers or piñon trees lying outside approved walls and fences.

(4) Approval by the ACC shall be required for the installation of trees or large shrubs likely to have an adverse impact on the views and lines of sight from neighboring properties as discussed in Section 4.1(b).

Nothing in this section precludes action by the ACC, Board of Directors or Homeowners Association as a body should a Property Owner install or maintain his landscaping in a manner that makes it an eyesore or antithetical to the property values within the subdivision.

Section 4.3. Underground Utility Lines. No utility lines, including, but not limited to, wires or other devices for the communication or transmission of telephone or electric current or power, cable television or any other type of line or wire shall be erected, placed or maintained anywhere in or upon any Property, by any Property Owner, within the subdivision unless the same shall be contained within a conduit or cables installed and maintained underground or concealed in, under or on buildings or other Structures as approved in

writing by the ACC; provided, however, that this provision shall not be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings, or Structures which have been previously approved in writing by the ACC. The installation method, including but not limited to, location, type of installation, trenching method and other aspects of installation for both temporary and permanent utilities shall be included in the Development Plan and approved in writing by the ACC.

Section 4.4. Temporary Structures - Occupancy During Construction. No trailer, basement of incomplete building, tent, shack, garage, barn and no temporary building shall be used at any time for a residence on the Property within the Subdivision either on a temporary or permanent basis.

Section 4.5. Improvements and Alterations. With the exception of landscaping as discussed in Section 4.2, no alterations, repairs, excavations, repainting, re-stuccoing or other work which in any way alters the exterior appearance, including the color, of any Structure or Improvement within the Subdivision from its natural or improved state existing on the date such Lot was first conveyed in fee to the current Property Owner, shall be made or done without the prior written approval of the ACC.

Section 4.6. Access to Common Properties. No ramps, paths, walls, private streets or other access shall be constructed from or over a Lot to any Common Property, as defined in Section 1.7, unless the same is approved in writing by the ACC.

Section 4.7 "Grandfather" Clause. Improvements installed prior to the adoption of these Replacement CC&Rs that are not in conformance with this Article or with approved ACC Supplementary Rules, but which were approved in writing by the ACC prior to the adoption of these CC&Rs, may be retained by the present Property Owner and all subsequent Property Owners as a "Nonconforming Improvement". However, any proposed changes to a Nonconforming Improvement must be submitted to the ACC, and the ACC may require that such change incorporate any modifications necessary to bring the Improvement into compliance with these CC&Rs or with approved ACC Supplementary Rules.

ARTICLE V

RESTRICTIONS

Section 5.1. Animals - Household Pets.

(a) Except to the extent permitted in Section 5.19 of Article V of these CC&Rs, no animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats or any other type of animal not considered to be a domestic

household pet within the ordinary meaning and interpretation of such words may be kept, maintained or cared for on the Property. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed on the Property other than the Lot of its owner unless confined to a leash or under voice control. Upon the written request of any owner the Board of Directors, or any committee established under Section 6.1 for the purpose of enforcing this Article, shall conclusively determine in accordance with this Section and any approved ACC Supplemental Rules, whether an animal is a domestic household pet, whether an animal is being allowed to run at large or whether an animal is a nuisance. A decision in such matters may be appealed in accordance with Section 6.8 and shall be enforced as other restrictions contained in these CC&Rs.

(b) Except as provided in Section 5.19, no animal may be stabled, maintained, kept, cared for or boarded for hire or remuneration on any property within La Mesa Subdivision, and no kennels or breeding operation will be allowed. No animal shall be allowed to run at large and all animals, including horses as allowed in Section 5.19, shall be kept within an enclosed area which must be clean, sanitary and reasonably free of refuse, insects and waste at all times.

Section 5.2. Maintenance of Lawns and Plantings. Each owner, on his Lot, shall keep all shrubs, trees, grasses, and plantings of every kind which are Visible From Neighboring Property or from any street, road, easement or right-of-way or from any Common Property, properly cultivated, pruned and free of trash and other unsightly material.

Section 5.3. Clothes Drying Facilities. Outside clothes lines or other facilities for drying clothes or airing clothes shall not be erected, placed or maintained on any Lot unless they are concealed in such a manner so as not to be Visible From any Neighboring Property or from any street, road, easement or right-of-way or from any Common Property.

Section 5.4. Hunting/Trapping/Firearms and Explosives. Hunting, trapping and discharge of firearms or other explosives are expressly prohibited within the Subdivision. This provision does not prohibit any Property Owner from trapping rodents or pests on his own Lot.

Section 5.5. Dumping. Dumping of ashes, trash, rubbish, sawdust, garbage, land fill, solid waste or any type of refuse or other unsightly or offensive material is expressly prohibited within the Subdivision.

Section 5.6. Waste: The commission of waste is expressly prohibited within the Subdivision.

Section 5.7. Mineral Exploration. No mining, quarrying, tunneling, excavation, or drilling for exploration or removal of any materials including oil,

gas, gravel, rocks, earth or earth substances of any kind shall be permitted within the Subdivision.

Section 5.8. Business Activities. No business or commercial activity frequented by and open to the general public, and in any event no outdoor business or commercial activity, shall be conducted within the subdivision. Home occupations of the Property Owner or of a lessee are permissible if conducted in the home or studio and in compliance with any rules and regulations governing home occupations adopted by the Homeowners Association.

Section 5.9. Obnoxious Activities.

(a) Nuisance and Offensive Activities. No nuisance, obnoxious or offensive activities shall be permitted on any Lot, nor shall any rubbish or debris of any kind be placed or permitted to accumulate on or adjacent to any of the Lots or Common Properties within the Subdivision, and no odors shall be permitted to arise, so as to render any portion of any Property unsanitary, unsightly, offensive or detrimental to any other Property in the vicinity or to its occupants.

(b) Exterior Speakers; Use of Radios and "Boom boxes". Without limiting the generality of any of this Section, no exterior speakers, horns, whistles, bells or any other devices, except security devices used exclusively for security purposes, shall be located, used or placed on any Property which are audible from neighboring Property. While it is acknowledged that noise is an essential element during some construction activities, Contractors must recognize that such activities may be extremely annoying to neighboring Property Owners. Neither Contractors, their subcontractors nor Property Owners shall operate or permit operation of radios or other portable entertainment devices at a volume audible on neighboring properties. Once notified in writing by the ACC or the Board of Directors of a recurring noise problem at a construction site, the responsible Contractor or Property Owner shall take reasonable action to correct the problem. Failure to correct the problem following written notification shall result in forfeiture for the first violation of \$100.00 of the Construction Deposit required under Section 6.4.(c) of Article VI. Subsequent violations shall result in forfeiture of \$200.00 per violation.

(c) Use of Exterior lighting. Notwithstanding the installation requirements set forth in Section 4.1.(l) of Article IV, Property Owners shall utilize exterior lighting judiciously and with due regard for neighbors. Where exterior lighting does not conform to the requirements of Section 4.1.(l) but has been approved by the ACC in writing, Section 4.7 allows the Property Owner to retain such nonconforming lighting. However, nonconforming lighting shall be turned off when not actually required, and under no circumstances will nonconforming lighting be allowed to burn past 10:00 p.m. at night, nor will it be turned on prior to 6:00 a.m. in the morning. The Board of Directors, or a committee established in accordance with section 6.1 to enforce this Article, shall

investigate complaints of repeated violations of this provision and if such complaints are confirmed to be accurate, the Board of Directors shall proceed in accordance with Section 6.9. of Article VI.

Section 5.10 Fires. Open burning of weeds, although not prohibited, can threaten the safety of the entire neighborhood if proper precautions are not taken. Property Owners may be held liable both by other individual Property Owners and by the Homeowners Association should burning get out of control and cause any damage to adjoining property. Under no circumstances will the open burning of trash be permitted in the Subdivision. In addition to these CC&Rs applicable within La Mesa, Sandoval County enforces burning ordinances and each Property Owner is cautioned to ensure compliance with current County regulations.

Section 5.11. Trash, Construction Waste and Garbage.

(a) During Construction. No garbage, trash or construction waste shall be placed or kept on any lot except in covered containers as approved by the ACC for the period a residence is under construction. All rubbish, trash, and garbage shall be removed regularly from Lots and shall not be allowed to accumulate thereon. No incinerator shall be kept or maintained on any lot. No garbage, trash, or debris shall be permitted to be buried on any Lot at any time nor shall the burning thereof be permitted. The operators of concrete trucks shall not be permitted to dump excess concrete or wash concrete residue from their trucks anywhere except in the driveway of the residence under construction, and then only with the approval of the general contractor for that residence.

(b) Property Owners. Property Owners should ensure that all trash and rubbish set out for regular collection or special pickup by commercial trash haulers is secured in either covered garbage containers or in properly secured plastic bags so that rubbish cannot be blown into neighboring yards or disturbed by roaming predators. Trash and rubbish should not be set out more than twenty four (24) hours in advance of regularly scheduled pickup. Empty trash containers should be retrieved by the Property Owner no later than 8:00 a.m. the day after pickup

Section 5.12. Vehicles and Equipment. No bus, truck larger than a one-ton pickup, semi-trailer, tractor, machinery or equipment shall be kept, placed (except during the course of loading or unloading), maintained, constructed, reconstructed, or repaired on the property. No motor vehicle or trailer of any type shall be stored, constructed, reconstructed or repaired on the Property in such a manner as will be Visible from Neighboring Property. Motor homes, recreational house trailers, horse trailers, truck campers, boats, boat trailers and recreational vehicles of any sort or type which are intended to be kept on the Property by the owner must be placed in such a manner that they will not be Visible From Neighboring Property or from dedicated roadways, or Common

Properties. No motorized vehicle of any kind may be operated in any manner which is dangerous, noisy or which creates a nuisance.

Section 5.13. No Overnight Parking. No vehicle of any kind shall be allowed to park overnight on any dedicated roadway within the Subdivision.

Section 5.14. Emergency or Temporary Maintenance Vehicles. The provisions of these CC&Rs shall not prevent any emergency vehicle repairs or operation of an emergency vehicle, ambulance, etc., within the Subdivision. The provisions of these CC&Rs shall also not prevent the operation or temporary use of construction trailers, vans or other trucks, machinery/equipment, construction shelters or facilities maintained during and used exclusively in connection with the construction of any Improvement approved in writing by the ACC.

Section 5.15. Motorcycles and Off Road Vehicles. The use of motorcycles, motor scooters, motorized bicycles and all terrain vehicles shall be limited to those which have been approved and are legal for street use. Such use shall be limited to the public streets. No off-road use of any vehicles shall be permitted and all vehicles operated within the Subdivision shall have mufflers installed in good condition which limit the exhaust noise to no more than eighty (80) decibels, ten feet from the end of the exhaust pipe.

Section 5.16. Continuing Adequacy of Repair or Maintenance. No Structure upon the Property within the Subdivision shall be permitted to fall into disrepair, and each such Structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. Such duty to repair shall include the exterior maintenance of any Structures, including the finish, that was included in the Development Plan approved by the ACC.

Section 5.17. Service Yards and Storage Yards. Any service yard, storage yard, or storage pile, excluding unobtrusive firewood piles, shall be located so as to not be Visible From Neighboring Property, dedicated roadways, or Common Property. Any Structure of a permanent nature is to be built with regard to these items and must be included in the Development Plan and approved in writing by the ACC.

Section 5.18. Signs. Except for an owner erected 24" X 36" "For Sale" sign, a real estate company "For Sale" sign, or a Builders sign allowed to be in place only during the actual period of construction on the Lot, no sign, billboard, or advertising structure shall be erected or maintained on any Lot or Property within the Subdivision. Signs allowed under this section must meet the standards approved and published in the ACC Supplemental Rules unless otherwise approved in writing by the ACC or the Board of Directors.

Section 5.19. Horses permitted on Certain Lots.

(a) Notwithstanding Section 5.1 of these CC&Rs, the Owners of each of the lots designated as "Horse Property" on La Mesa Subdivision Replat dated April 8, 1992, may keep not more than four horses on the Property Owner's lot, provided that the horses are kept, cared for, and fed in secure corrals and barns the size, location, and construction of which have been approved by the ACC as part of the Owners Development Plan. Horses may be ridden in the Open Space Easement, on any Lot approved for horses (by the Property Owner and his invitees), on paths or trails within the Park specifically designated by the Association, and to the extent permitted by the Association and the County of Sandoval, along the publicly dedicated road rights-of-way in the Subdivision.

(b) In addition to the lots approved for horses in this Section 5.19, the Homeowners Association shall have the right to designate other and additional lots for horses, provided that such designation is approved in writing by: (1) all owners of adjacent Lots, including the owners of all Lots that, but for the existence of a road right-of-way, would be adjacent; and (2) all owners of lots whose residence is within 400 feet of the nearest property line of the Lot to be approved for horses.

(c) Any Property Owner who keeps horses on his approved Lot shall remove manure on a regular basis to minimize the nuisance posed by offensive odors and flies.

ARTICLE VI

ENFORCEMENT

Section 6.1. Establishment and Composition of Committee(s) for Enforcement.

(a) Architectural Control Committee. There is established an Architectural Control Committee ("ACC") which shall consist of a minimum of five (5) members, the precise number to be determined from time to time by the Board of Directors to ensure the Committee can adequately perform its duties. The ACC is a committee accountable to the Homeowners Association through the Board of Directors and shall perform the duties set forth in this Article. Members of the ACC shall serve without salary or pay and each member of the ACC must be a Member in good standing of the Homeowner's Association.

(b) Alternative Enforcement. The ACC shall serve as the primary enforcing agency on behalf of the Homeowners Association when any individual Builder or Property Owner violates any provision of Article IV of these CC&Rs. The Board of Directors shall have the authority to enforce compliance with any Article of these CC&Rs, and may establish a committee or any other mechanism not contrary to the CC&Rs, Bylaws or Articles of Incorporation, for the purpose of investigating violations and taking action to enforce the provisions of these CC&Rs.


Section 6.2. Appointment, Resignation, Removal and Term of Office. All members of the ACC shall be appointed in writing by the Board of Directors of the Homeowners Association and shall normally serve for a period of two years. The Board of Directors may remove any member of the ACC at any time, with or without cause. A member of the ACC may resign at any time, with or without providing a reason, by mailing or delivering a signed statement of his or her desire to resign to the President of the Board of Directors. Whenever the Board of Directors removes a member of the ACC, or whenever a member resigns, sells his property in La Mesa, or ceases in any way to remain a Member in good standing of the Homeowners Association, the Board of Directors shall appoint a replacement who will serve the remainder of the two year term of office. Members may be reappointed for a second term, but no Member shall serve for more than two consecutive terms, whether or not the first term was a full term. All appointments to the ACC shall be made by the Board of Directors in June of each year, with three terms expiring in June of even numbered years, and all remaining terms expiring in odd numbered years. If the Board of Directors creates an additional committee in accordance with Section 6.1(b) for the purpose of enforcement of these CC&Rs, the provisions of this Section 6.2 shall apply to membership of such committee.

Section 6.3. Fundamental Purpose and Guiding Principle of the ACC. Members of the ACC are charged with the difficult task of overseeing the physical development and maintenance of La Mesa Subdivision to ensure that all

members are able to maintain both the value of their property, and a high level of enjoyment of use of that property. Decisions and actions by the ACC require a fair and just balancing of the individual rights of each Property Owner, and the group rights of adjacent Property Owners and all Members of the Homeowners Association. Articles IV and V outline the basic rules and restrictions by which each La Mesa Property Owner has agreed to abide. While it is recognized that some degree of latitude is required for the ACC to operate with any degree of effectiveness, members of the ACC are obligated to base all decisions and actions on these CC&Rs and on any Supplemental Rules approved by the Board of Directors under the provisions of Section 6.6 of this Article. Actions and decisions by the ACC which exceed the scope of the ACC's authority, or which are contrary to the language or spirit of these CC&Rs may be overturned by the Board of Directors.

Section 6.4. Specific Duties.

(a) General. It shall be the duty of the ACC to receive, consider and act upon all proposals, plans, complaints, requests for determination, Development Plans or other matters submitted pursuant to the terms of these CC&Rs, and to carry out all other duties imposed on it by these CC&Rs or by action of the Board of Directors.

(b) Development Plan and Submission Fees. Prior to the commencement of construction as defined in Section 3.4(c), the Builder or Property Owner shall submit a proposed Development Plan, conforming to the requirements and restrictions in these Articles, and to the specific requirements established by the ACC and published in the ACC Supplemental Rules. At the time of Plan submission, the ACC shall collect from the builder or Property Owner a submission fee for each proposed Development Plan. The submission fee is a one-time charge, initially established at two hundred dollars and no cents (\$200.00) but subject to change at the discretion of the Board of Directors to reflect actual processing costs. All proceeds from such fees shall be paid into the Homeowners Association general fund. The fee is a filing requirement of each individual Development Plan and such Plan will not be considered for approval by the ACC until such costs have been paid. No additional fees will be charged to the individual Builder or Property Owner, or to any subsequent Property Owner, to obtain ACC approval for modifications or additions to the Development Plan required under these Articles, provided that construction on the site as defined in Section 3.4 of Article III commences within six months of written Plan approval. The ACC shall establish procedures and requirements for Plan submission within the ACC Supplemental Rules, and may require resubmission and/or a new ACC review if construction has not commenced within six months of Plan approval. The approved Development Plan, all approved changes to the Plan, and all correspondence related to the Plan, its approval and any changes, shall be maintained by the ACC in a separate file for each building Lot. 

(c) Compliance Deposit. In addition to the non-refundable submission fee, the ACC shall collect from each Property Owner or his Builder, prior to the commencement of any construction at the building site, a refundable deposit of one thousand five hundred dollars and no cents (\$1,500.00) to serve as a performance and compliance deposit. In recognition of the additional costs and risks incurred by the Association when a Builder fails to meet his obligations under these CC&Rs, the Board of Directors may authorize and require a compliance deposit of up to five thousand dollars and no cents (\$5,000.00) when the Builder has previously forfeited any portion of a compliance deposit in accordance with this Section, or when the Builder has previously had a lien filed by the Association against a Lot for failure to comply with these CC&Rs, the approved Development Plan or the ACC Supplemental Rules. Whenever the ACC collects a compliance deposit in excess of \$1,500.00, that sum shall be placed into a separate, interest bearing trust fund designating the Property Owner or the Builder, as appropriate, the beneficiary of any interest accrued. So long as the Property Owner and his Builder and his subcontractors comply with the provisions of these CC&Rs, with the Development Plan as approved by the ACC, and with the ACC Supplemental Rules regarding construction activity, the Property Owner or the Builder shall have the entire compliance deposit refunded, including interest accrued on any deposit in excess of \$1,500.00, upon completion of construction activities and satisfactory cleanup of the construction site. If the Property Owner or his Builder or his subcontractors fail to comply with the provisions of these CC&Rs, or with the approved Development Plan or with the ACC Supplemental Rules, the Property Owner and his Builder will be notified in writing of the violation(s), and the Association shall be authorized to withhold so much of the compliance deposit as the ACC deems, in its sole discretion, necessary to cure the violation(s). The sum withheld by the Association shall be retained until such time as the Property Owner or the Builder corrects the violation(s). If within thirty (30) days after receiving notice from the ACC of a violation the violation(s) has (have) not been cured, the Property Owner or Builder shall be deemed to have forfeited that portion of the deposit necessary to cure the violation, and the Association may, in its sole discretion, contract with another party to cure the violation using the retained funds from the compliance deposit as payment.

(d) Subsequent Additions or Changes to the Development Plan. Once the Development Plan has received approval, any additions or changes to the Property, whether made by the Builder, the Property Owner, or a Builder hired by the Property Owner, must be approved in writing by the ACC as a change or addition to the Development Plan. Written approval of such changes must be made prior to commencement of their construction or installation. This provision applies to the original Property Owner of each Lot and to all subsequent owners of the Lot, no matter how ownership was acquired.

(e) Improvements Specifically Requiring ACC approval. Whether proposed in the original Development Plan or as subsequent changes or additions to the plan, the following improvements require specific consideration and approval by

the ACC: the residential structure, its precise location on the Lot, and any additions or exterior changes thereto; detached carports, garages, shops, guest houses or studios allowed under these articles, the precise location on the Lot, and any additions or exterior changes thereto; all exterior lighting visible from any neighboring property; driveways and associated entryway structures; gates, walls and fences; screening of any Improvements where required by these CC&Rs or approved ACC Supplemental Rules; retaining walls; air conditioning and evaporative cooler installations and screening; septic systems; water storage and propane tanks; solar equipment; decks, patios and portals; awnings; antennas; basketball standards; swimming pools, exterior spas and hot tubs; tennis courts; trees or shrubbery impairing the views from neighboring property; exterior color schemes and any changes thereto; and the basic landscaping plan. This listing is included to illustrate specific Improvements frequently encountered in development of a residential lot, and the inclusion of the listing does NOT preclude the requirement to obtain approval by the ACC for any other changes to the Property that meet the definition of an "Improvement" contained in Article I.

(f) Enforcement of these Articles; Complaints. The ACC shall serve as the primary enforcing agency on behalf of the Homeowners Association when any individual Builder or Property Owner violates any provision of Article IV of these CC&Rs. Any individual Property Owner may file a written complaint with the ACC setting forth an alleged violation and the specific section of these CC&Rs believed to have been violated. The ACC, or the Board of Directors, or a committee created pursuant to Section 6.1(b) for such purpose, shall investigate any such complaint within ten (10) days of its receipt and if the complaint is found to be valid, the ACC shall proceed in accordance with section 6.9. Where any member of the Board of Directors or of the ACC is personally aware of a violation, the Board or the ACC shall proceed in accordance with section 6.9 of this Article without awaiting a complaint from an individual Property Owner.

Section 6.5. Submission and Approval of Development Plan, Additions and Changes.

(a) The proposed Development Plan, and any changes or additions proposed by the Builder or Property Owner, shall be submitted in writing to the ACC in accordance with the approved Supplementary Rules adopted and promulgated in writing by the ACC.

(b) The ACC must approve or disapprove any Development Plan or proposal for addition or changes thereto, properly submitted in accordance with the published ACC Procedural Rules, within thirty (30) days of receipt by the ACC. As a practical matter, the ACC will make every effort to reach a final decision within fourteen days of receipt of the Development Plan. The Builder or Property Owner should contact the ACC if any doubt exists as to progress of committee action on the Development Plan or other proposals submitted to the ACC. If the ACC has not acted within thirty (30) days of receiving the Development Plan, the applicant shall immediately notify the Board of Directors, and the Board of

Directors shall take immediate action to expedite an ACC response to the applicant. HOWEVER, FAILURE OF THE ACC TO RESPOND DOES NOT CONSTITUTE APPROVAL OF THE PLAN OR PROPOSAL, AND THE PROPERTY OWNER OR BUILDER IS NOT AUTHORIZED TO PROCEED ABSENT WRITTEN APPROVAL BY THE ACC. If the Committee requests additional or amended materials or an amended Development Plan during the initial thirty (30) day period, or approves on condition that certain additional or amended material be submitted, such period shall automatically be extended to a minimum of fifteen (15) days following the date upon which such additional materials are required to be delivered to, received by and receipted for by the Committee. Additional fifteen (15) day extensions shall occur if further additional or amended materials are requested or required during any subsequent extension period. If the additional or amended materials are not received on or before the required date, then the Development Plan shall automatically be disapproved. Likewise, if the proposed Development Plan requires a waiver of a setback in accordance with Section 4.1(i)(5) of Article IV, the ACC may extend the approval period not to exceed an additional fifteen (15) days to permit notification of the requested waiver and reception of comments from a Property Owner whose Lot shares a border adjacent to that for which the waiver is requested. No approval by the ACC will be effective until received by the applicant in writing.

(c) ANY PERSON CONSIDERING THE PURCHASE OF EITHER A BUILDING LOT OR AN EXISTING HOME IN LA MESA SUBDIVISION IS STRONGLY ADVISED TO CONSULT WITH THE ACC ABOUT THE ACCEPTABILITY OF ANY INTENDED IMPROVEMENTS PRIOR TO BECOMING OBLIGATED TO PURCHASE THE PROPERTY.

Section 6.6. ACC Supplemental Rules.

(a) The ACC shall draft and propose procedural and substantive rules necessary to carry out its authority under these CC&Rs. The Supplemental Rules shall not expand or alter the restrictions adopted by the Homeowners Association as set forth in these CC&Rs. Any conflict between the ACC Supplemental Rules and any provision of these CC&Rs shall be resolved in favor of the provisions of the CC&Rs. A copy of such Rules in effect shall be maintained as a permanent part of the records of the Homeowners Association, and a copy shall be provided to every Property Owner.

(b) Prior to becoming effective, such Supplemental Rules, or any amendments, additions, replacements or recisions to them proposed by the ACC, shall be reviewed and approved by a vote of the Board of Directors.

Section 6.7. Basis for ACC Disapproval. The ACC shall base its decisions and actions on the following factors, whether considering the initial Development Plan or subsequent changes and additions to the Plan proposed by the builder or owner:

- (a) compliance with standards and restrictions set forth in these CC&Rs and with the approved ACC Supplemental Rules;
- (b) the nature and quality of the design, building materials and methods of construction to be used, and their consistency with other property in the Subdivision;
- (c) the location of the improvements on the property and their impact on views from neighboring properties as discussed in Article IV, Section 4.1(b).
- (d) the experience and any record established by a particular Builder for cooperation with the ACC and compliance with the CC&Rs.

The above list of factors does not appear in any order of priority, and does not preclude the ACC from considering other factors within the scope of these CC&Rs. If the ACC denies approval of any portion of the Development Plan or subsequent proposals for changes or additions, the ACC shall send a letter to the applicant explaining in full the rationale for its decision, and delineating changes which must be made to receive ACC approval. A copy of the letter will be included in the individual file for the property and another copy will be provided to the Board of Directors.

Section 6.8. Appeal of ACC Action. Actions and decisions of the ACC may be appealed to the Board of Directors by the applicant if he or she can document any of the following from the rationale offered by the ACC in its letter of denial:

- (a) the decision conflicts with, or is based on something other than, the objective standards set forth in these CC&Rs or in the ACC Supplementary Rules as approved by the Board of Directors; or
- (b) the proposed Improvement denied by the ACC is specifically authorized by the provisions of these CC&Rs or the approved ACC Supplementary Rules; or
- (c) the decision is based on factors beyond the scope of the ACC's legitimate authority to impose such restrictions.

Any decision by the ACC which simply and clearly applies objective standards, as set forth in these Articles or in the ACC Supplementary Rules as approved by the Board of Directors, will generally not be considered a basis for appeal. Any appeal of a decision or action by the ACC shall be submitted in writing to the Board of Directors with a copy to the ACC. Within fifteen (15) days of receiving the appeal, the Board of Directors shall meet to consider the assertions of the Property Owner. At least one member of the ACC who voted against the Property Owner's proposal shall attend the meeting of the Board to discuss the ACC's decision. If the decision under appeal conflicts with the objective standards set forth in these CC&Rs, or denies approval of a specific Improvement authorized by these CC&Rs, the Board of Directors may set aside

the decision of the ACC. All other appeals, unless the decision of the ACC was clearly beyond the scope of its authority, shall be thoroughly evaluated by the Board of Directors considering both the rights of the individual Property Owner to the enjoyment of his property, and the rights of the other Members of the Association to protection of their property values under these CC&Rs. The decision of the ACC may be overturned by a majority vote of the Directors. The decision of the Board of Directors shall be provided in a letter to the Property Owner with a copy to the ACC for its files.

Section 6.9. Procedure for Correcting Violations. A Builder or Property Owner who fails to comply with an ACC decision, as amended if applicable, on appeal to the Board of Directors; or who fails to seek ACC approval as required in these CC&Rs; or who makes or erects Improvements on his property which do not comply with the objective requirements or restrictions set forth in Article IV of these CC&Rs, shall be deemed by the ACC to be in violation of the covenants, conditions and restrictions legally adopted and enforceable by the individual Property Owners acting through the La Mesa Homeowners Association. Those improvements which would otherwise be in violation of these CC&Rs but which had already been approved in writing by the ACC at the time these CC&Rs were adopted, shall be considered "grandfathered" and will not be challenged under this article. Whether the violation was inadvertent or intentional, the following actions shall be taken by the ACC and, if necessary, the Board of Directors, to have the violation corrected:

(a) Within ten (10) days of becoming aware of a possible violation or of receiving a complaint of violation in accordance with section 6.4.(f), the ACC shall fully investigate the possible violation. If the ACC determines that there is indeed a violation, it shall submit a letter via certified mail to the Property Owner on whose Lot the violation exists. The letter will courteously instruct the Property Owner of the ACC's belief that the Property Owner is in violation of a specific section of these CC&Rs, and will request that the violation be corrected within a reasonable time as determined by the ACC. The Property Owner may correct the violation, request a reasonable extension of time to correct the violation, or submit a proposal to change his Development Plan and/or the violating installation which he believes will bring the Property into compliance.

(b) If the Property Owner corrects the violation within the time period, or within an extension granted by the ACC, no further action will be required other than the ACC placing a written memorandum in the individual file that the violation has been corrected.

(c) If the Property Owner responds to the ACC with a proposal to change his development Plan and/or the violating installation, the application will be processed in the same manner as any other proposed change or addition to a Development Plan, including the right to appeal as set forth in section 6.8. If the Property Owner fails to respond to the certified letter from the ACC within thirty days, or refuses to take delivery of the certified letter, or refuses to comply

with the request to correct the violation, or is denied his request and any subsequent appeals to change his Development Plan and/or the violating installation to achieve compliance, the ACC shall send a second letter by registered mail, demanding that the property owner correct the violation or face the possibility of legal action to force compliance with these CC&Rs. Copies of the initial request, the letter of demand, and any other documentation shall be delivered to the President of the Board of Directors.

(d) If the Property Owner does not take action to correct the violation within ten (10) days of receiving the letter of demand, or the Property Owner refuses to accept the letter of demand, the Board of Directors shall cause a lien to be filed with the county clerk's office, Sandoval County. The value of the lien will be that estimated by the Board as necessary to hire a commercial contractor to correct the violation, plus expenses for legal and administrative fees. Said lien will provide notice to any potential buyer that the property is encumbered and can only be conveyed to a buyer by satisfying the lien with the Homeowners Association.

(e) The process for correcting a violation of these CC&Rs other than the provisions contained in Article IV shall follow the procedures contained in subparagraphs 6.9.(a) through 6.9.(d) except that the action shall be taken by the Board of Directors, or a separate committee established for the purposes set forth in subparagraph 6.1(b).

Section 6.10 Certified Mail or Hand Delivery of ACC Correspondence. All ACC correspondence providing notification of a possible violation of these CC&Rs, or denying ACC approval of a Property Owner's proposal, or responding to the Property Owner on issues appealed to the Board of Directors, shall be delivered by hand to the Property Owner, or sent to the Property Owner's address by certified mail, return receipt requested. All correspondence to the ACC shall be hand delivered to an individual Member or mailed, postage prepaid to:

* La Mesa Homeowners Association
ATTN: Architectural Control Committee
05 Calle Cienega
Placitas, NM 87043

* NOTE: This mailing address is subject to change without amendment to these CC&Rs. All Property Owners shall be notified in writing of any change of mailing address.

Section 6.11. ACC Meetings and Voting.

(a) The ACC shall meet from time to time as necessary to perform its duties under this Article. A quorum, necessary to conduct business, shall consist of at least fifty one percent (51%) of the appointed members. A simple majority of members present shall constitute the act of the Committee. The Committee

shall keep and maintain written records of all actions taken at such meetings, including a record of each member's vote for approval or disapproval.

(b) When any Property Owner submits a proposal to the ACC for approval, the ACC shall notify that Property Owner at least seven (7) days prior to the meeting at which the ACC intends to consider the proposal. The Property Owner shall be invited to attend such meeting as an observer and to assist in clarifying any issue arising from the proposal. Attendance at such meeting shall be at the sole discretion of the individual Property Owner.

Section 6.12. Action Without Formal Meeting. The ACC may take action without a formal meeting on any matter which the Committee might consider at a formal meeting by obtaining the written consent of at least fifty one percent (51%) of the appointed ACC members. Such written consent shall constitute the act of the Committee provided that at least fifty one percent (51%) of the appointed members of the Committee sign in assent to the decision. One signed copy of the assent shall be provided to the requesting Property Owner and another shall be retained in the files of the ACC. All ACC members not signing the assent shall be notified of the action taken at the next regular meeting of the committee.

Section 6.13. Waiver and Estoppel. The approval by the ACC of any Development Plan, specifications or drawings or any materials accompanying it for matters requiring approval of the ACC shall not be deemed to constitute a waiver of or create any right of estoppel against the Committee's right to withhold approval of any similar Development Plan, drawing, specification or matter subsequently submitted for approval.

Section 6.14. Liability. Neither the Homeowners Association nor the ACC nor any member of the ACC nor KGA Development Corporation nor its successors or assigns shall be liable to any individual Member or Property Owner, or to any other person, association, or entity, for any damage, loss or prejudice suffered or claimed on account of: (i) the approval or disapproval of any Development Plan or any materials submitted therewith, whether or not defective; (ii) the construction or performance of any work, whether or not pursuant to an approved Development Plan or any materials submitted therewith; (iii) the development of the Property; (iv) the structural capacity or the safety features of the proposed Improvement or Structure; (v) whether or not the location of the proposed Improvement or Structure on the building site is free from possible hazards from flooding or from any other possible hazards, whether caused by conditions occurring upon or off the Property; (vi) soil erosion causing sliding conditions; (vii) compliance with governmental laws, ordinances and regulations; (viii) any decision made or action taken or omitted to be taken under the authority of these CC&Rs; (ix) any act taken or decision made in connection with any other land contiguous to the Subdivision, including but not limited to any decision to annex or refuse to annex to the Subdivision any contiguous land or property; (x) the execution and filing of any estoppel

certificate, whether or not the facts therein are correct; provided, however, that with respect to the liability of a member, such member has acted in good faith on the basis of such information as may be possessed by him. Without in any way limiting any of the foregoing provisions of this Section, the ACC as a body, or any ACC member individually, may, but is not required to, consult with or determine the opinion of any other Property Owner with respect to any proposal, Development Plan, or any materials submitted to the ACC. Additionally, by allowing the Homeowners Association and its members to revise the original Comprehensive Declaration of Covenants, Conditions and Restrictions, KGA Development Corporation is not adopting or otherwise endorsing any representation or statement made in these CC&Rs. Moreover, any reference to KGA Development Corporation or its successors or assigns in these CC&Rs, or the fact that KGA Development Corporation has allowed the revisions herein to the original Comprehensive Declaration of Covenants, Conditions and Restrictions, shall not give rise to any cause of action by the La Mesa Homeowners Association or its members against KGA Development Corporation or its successors or assigns.

Section 6.15. Governmental Agency Approval. Nothing in these CC&Rs shall relieve or be interpreted as purporting to relieve any Property Owner from also securing such approval(s), certificate(s) or permit(s) of any governmental agency or entity with jurisdiction as may be required by law as a condition to the commencement, construction, maintenance, addition, change or alteration to or of any Improvement, and the Committee may require that a copy of such approval(s), certificate(s) or permit(s) be provided to the Committee as a final condition of approval of a Development Plan, or as additional assurance to the Committee that the Improvements and uses of an approved Development Plan meet governmental requirements, or for both such purposes.

ARTICLE VII

LA MESA HOMEOWNERS ASSOCIATION

Section 7.1. The Association. The Association was formed as a nonprofit corporation, organized and existing under the New Mexico Nonprofit Corporation Act (New Mexico Statutes Annotated, 1978, §§ 53-8-1 through 53-8-99), charged with the duties and invested with the powers prescribed by law and set forth in the Articles of Incorporation, Bylaws, and these CC&Rs. Neither the Articles of Incorporation nor the Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with these CC&Rs.

Section 7.2 Membership. Each Property Owner, whether one or more persons or entities, along with all members of the Property Owner's immediate family living on the Property, shall upon and by virtue of the ownership of a Lot, automatically become a Member of the Association and shall remain a Member until ownership ceases for any reason, at which time membership in the Association shall automatically cease. Membership in the Association shall be

appurtenant to and shall automatically follow the legal ownership of each Lot and may not be separated from such ownership. Whenever the legal ownership of any Lot passes from one person to another, by whatever means, it shall not be necessary that any instrument provide for transfer of membership in the association, and no certificate of membership will be issued.

Section 7.3 Voting. Subject to the provisions of Section 7.5, all Members of the Association in good standing, in accordance with Article III of the Bylaws, shall be entitled to one (1) vote for each Lot owned at any meeting of the Members of the Association or with respect to any matter submitted to a vote of the Members of the Association. If more than one person holds an interest in any Lot, all such persons shall be Members of the Association. The vote for such multiply-owned Lot shall be exercised as the Members among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. The Articles of Incorporation and Bylaws of the Association may set forth more specific rights with respect to voting by Members.

Section 7.4 Board of Directors and Officers. The affairs of the Association shall be conducted by a Board of Directors and such officers as the Directors may elect or appoint, in accordance with the Articles of Incorporation and the Bylaws, as the same may be amended from time to time.

Section 7.5 Control of the Association. The Members shall have the right to elect the members of the Board of Directors and to vote on all other matters properly put before the Members, all in accordance with the Articles of Incorporation and Bylaws of the Association.

Section 7.6 Powers and Duties of the Association. The Association shall have such rights, powers and duties as set forth in the Articles of Incorporation and Bylaws, and as the same may be amended from time to time.

Section 7.7 Personal Liability. To the extent permitted by law, all Property Owners release and otherwise waive any claims for any damage or loss arising from any act, omission, or error of any agent of the Association or of any officers or directors of the Association while performing or engaged in any duties or activities pertaining to these CC&Rs, provided that such act, omission, or error does not constitute willful misconduct or recklessness.

Each of the Directors of the Association (and, to the extent permitted by law, each member appointed to the ACC as a delegated body answerable to the Board of Directors), shall enjoy the full protection of immunity from personal liability permitted under New Mexico law, including without limitation § 53-8-25.3 NMSA 1978 (and any amendments thereto). Subject to the limitations of such immunity as provided, and specifically as set forth in § 53-8-25.3(A) and (B), the Association shall procure adequate insurance in such amounts and scope of coverage as the Board of Directors may in its sole discretion deem appropriate to provide coverage that will include the obligation of the Association to indemnify any director, officer, or appointed member of the ACC

against reasonable expenses, costs and attorney's fees reasonably incurred by such person in connection with the defense of any action or suit, civil or criminal, in which such person is made a party by being, or having been, a director, officer or appointed member of the ACC. Such indemnification obligation shall include any amounts paid to satisfy a judgment or to compromise or settle a claim. Excluded from the scope of this indemnification shall be any acts under which such person is adjudged to be liable on the basis that he breached or failed to perform the duties of his office and the breach or failure to perform constitutes either willful misconduct or recklessness. Advanced indemnification may be allowed for such persons for reasonable expenses to be incurred in connection with the defense of the action, suit or proceeding provided that such person must later reimburse the Association if it is determined that the person was not entitled to indemnification.

ARTICLE VIII

ASSESSMENTS

Section 8.1. Operating Fund. All funds collected by the Association from the regular operating charges or assessments provided for in this Article and in Article VI shall constitute and be known as the Operating Fund. The Operating Fund shall be held, used, and expended by the Association for discretionary and nondiscretionary expenditures for the common benefit of all members.

(a) Nondiscretionary expenses are those essential for the Association to carry out its specific obligations established by these CC&Rs, the Articles of Incorporation or the Bylaws of the Association, and shall include but not be limited to the following:

- (1) maintenance of Improvements located on the Common Properties of the Subdivision, including the Park and any other areas acquired by the Association;
- (2) utility charges in connection with the operation or use of Common Properties or Common Facilities;
- (3) administrative expenses including postage, administration and office supplies;
- (4) charges for additional services as contracted for by the Board of Directors on behalf of the Association and necessary to discharge Association responsibilities under the Articles of Incorporation, Bylaws and these CC&Rs;
- (5) charges for liability and property insurance and other insurance related to the activities of the Association, the Common Facilities and the Common Properties;

(6) accounting and legal fees, including legal fees incurred by the Association for defending against any legal action filed against the Association or for enforcing or amending these CC&Rs, the Articles of Incorporation or the Bylaws of the Association.

(b) Discretionary expenses shall include all those that the membership may optionally incur on behalf of the Association, but which are not specifically required to meet the obligations of the Association established by these CC&Rs, the Articles of Incorporation or the Bylaws, including but not limited to:

(1) improvements to any of the Common Properties or Common Facilities, including but not limited to construction, replacement or installation of shrubbery, trees or other landscaping, paths and walkways, fences and walls, signs, shelters, tables, parking and utilities;

(2) legal services not related to defense against a legal action filed against the Association or to enforcement of these CC&Rs, the Articles of Incorporation or the Bylaws of the Association.

(3) contributions to a nonpolitical cause or organization whose activities clearly, directly, and concretely benefit the Association. However, the Operating Fund shall not be used for contributions to political parties or special interest groups.

Section 8.2 Covenant for Assessments.

(a) Annual Assessment. Each and every Lot in the Property is severally subjected to and impressed with a regular annual operating assessment or charge referred to as the "annual operating assessment", which assessment under these revised CC&Rs shall commence on **July 1, 1998**, and shall be due and payable on said date and on the first day of **July** each year thereafter, and which shall run with the land. The annual operating assessment shall be determined in accordance with Section 8.3 of this Article and shall apply to each and every improved Lot, defined as a Lot upon which a certificate of occupancy has been issued for a residence. The annual operating assessment for an unimproved Lot, defined as a Lot for which a certificate of occupancy has not yet been issued, shall be at a rate equal to one half of that for an improved Lot. The Board shall prorate the assessment for the year in which the certificate of occupancy is issued for each Lot, and shall include the additional charges on the next annual assessment.

(b) The Board of Directors may authorize a payment schedule other than a single annual payment, provided that such payment schedule is available to each and every Property Owner at the option of the Property Owner. Each owner of a Lot, by his claim or assertion of ownership or by accepting a deed to any such Lot, whether or not it shall be so expressed in the deed, is conclusively

deemed to covenant and agree, as a covenant running with the land, to pay to the Association each and all of the charges and assessments against his Lot and/or assessed against him by virtue of his ownership of a Lot, as the same shall become due and payable, without demand.

(c) The charges and assessments established by these CC&Rs shall be a charge and a continuing lien upon each Lot, together with all Improvements. Each assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person or entity that was the Property Owner of the Lot at the time the obligation to pay such assessment accrued, and no Property Owner shall avoid personal liability for the payment of any assessment by waiver of the use or enjoyment of all or any of the Common Properties or Facilities or by abandonment of the Lot or the interest in the Lot.

Section 8.3. Duties of the Board of Directors.

(a) Annual Budgets. The Board of Directors of the Association shall, not later than **March 15** of each year, prepare a nondiscretionary budget in accordance with Section 8.1.(a) of this Article, and a proposed discretionary budget in accordance with Section 8.1.(b). The budget shall include maintenance of an operating surplus not greater than one hundred fifty percent (150%) of the average annual nondiscretionary expenditures over the prior three fiscal years. The purpose of such operating surplus shall be to meet any unanticipated, nondiscretionary expenses incurred by the Association, without resorting to a special assessment. Based on the nondiscretionary budget, the Board shall then establish the nondiscretionary operating assessment for the next fiscal year beginning on July 1. The discretionary budget shall be mailed in the form of a ballot to each property owner no later than **March 31** of each year, along with a copy of the nondiscretionary budget and the amount of the nondiscretionary operating assessment. The written ballot shall include each proposed discretionary expenditure for the next fiscal year and the estimated cost per Lot such expenditure would incur if passed. The ballot shall authorize absentee voting by mail in accordance with the Bylaws, or by attendance at the annual Association meeting in April.

(b) Annual Operating Assessment. Following the vote at the annual meeting of the Association, the Board shall compute the discretionary operating assessment based on the expenditures approved by the membership, and the total operating assessment to be levied against each Lot or Property Owner. Finally, the Board shall prepare a roster of the properties and applicable assessments which shall be kept in the office of the Association and shall be open to inspection by any Property Owner. Written notice of the assessment shall be sent no later than **May 15** of each year to every Property Owner subject to such assessment. The Association shall furnish to every Property Owner liable for said assessment a receipt in writing setting forth that said assessment has been paid. Such receipt shall be conclusive evidence of payment of any assessment shown on the receipt to have been paid.

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Section 8.4. Special Assessments.

(a) Nondiscretionary. A special assessment may be imposed by the Board of Directors, with a date due and payable as the Board may determine to be necessary, to meet any unanticipated or unbudgeted, nondiscretionary expenditures that arise, and which would deplete the operating fund below a sufficient level to meet all budgeted expenditures through the end of the current fiscal year. Such an unanticipated, nondiscretionary expenditure justifying a Board imposed special assessment might include, but would not be limited to, major repairs to homeowner maintained roads, common Properties, or Common Facilities where delay of repairs would pose a significant hardship on one or more affected Property Owners, or legal fees and associated costs to defend a lawsuit filed against the Association.

(b) Discretionary. Although sound planning by the Board of Directors and early input into the budgeting process by interested Property Owners should generally preclude any requirement for a discretionary special assessment, such assessment may be placed on the agenda for any regular or special meeting of the Association and passed by a majority vote of the Members present so long as notice of such vote was properly provided to all Members in accordance with the Bylaws, and a quorum as defined by the Bylaws was present at the meeting. Such special assessment shall be binding on all Members of the Association in the same manner as any annual assessment.

Section 8.5. Unimproved Lots. Notwithstanding the foregoing, each Property Owner of an unimproved Lot shall pay fifty percent (50%) of the then existing full annual operating assessment and of any special assessment for each Lot owned, unless and until a residential Structure has been built on the Lot.

Section 8.6. Liens to Secure Assessment. The regular operating charges or assessments and any applicable special operating assessment shall constitute and be secured by a separate and valid and subsisting lien, created and fixed by these CC&Rs, which shall exist upon and against each Lot and all its Improvements, for the benefit of the Association and the Members. Subject to the condition that the Association be made a party to any court proceeding to enforce any lien deemed to be superior, the lien created by this provision of the CC&Rs shall be subordinate and inferior to:

(a) all liens for taxes or special assessments levied by City, County, and State Government, or any political subdivision or special district thereof, and

(b) all liens securing amounts due or to become due under any real estate contract of sale, mortgage or deed of trust filed for record, prior to the date payment of any such charges or assessments becomes due and payable.

Any judicial foreclosure of any such superior lien under any mortgage, deed of trust, or other security instrument in which the Association or any Water Cooperative has been made a party, shall cut off and extinguish the liens securing operating charges or assessments which become due and payable prior to such foreclosure date, but no such foreclosure shall free any Lot from the liens securing assessments subsequently becoming due and payable, nor shall the liability of any Member personally obligated to pay operating charges or assessments which become due prior to such foreclosure, be extinguished by any foreclosure.

Section 8.7. Effect of nonpayment of Assessment. If any charge or assessment due to the Association is not paid within thirty (30) days from the due date, the same shall bear interest from the due date until paid at eighteen percent (18%) per annum, or the maximum amount allowed by law for breach of contract if such is less than 18% per annum, and, if placed in the hands of an attorney for collection, or if a lawsuit is filed for nonpayment of an assessment, or if the charge or assessment is collected through probate or other judicial proceedings, there shall be paid to the Association an additional, reasonable amount, but not less than ten percent (10%) of the amount owing, for attorney's fees. The Association may, as a common expense of all members, institute and maintain an action at law or in equity against a defaulting Property Owner to enforce collection and/or to foreclose a lien against his Lot. All such actions, including an action to foreclose the lien of a mortgage or deed of trust on real property, may be instituted and brought in the name of the Association.

Section 8.8. Collection and Enforcement. Each Property Owner, by his assertion of title or claim of ownership or by his acceptance of a deed to a Lot, whether or not it shall be so recited in such deed, shall be conclusively deemed to have expressly vested in the Association and in its officers and agents, the right, power and authority to take all action which the Association shall deem proper for the collection of assessments and/or for the enforcement and foreclosure of the liens securing the same.

ARTICLE IX

GENERAL PROVISIONS

Section 9.1. Cost of Performance. The costs and expenses incurred to perform any obligation or responsibility set forth in these CC&Rs shall be borne by the person, association, or entity charged with such performance or responsibility, and shall be subject to the provisions of article VIII.

Section 9.2. Breach not Ground for Recision. No breach or continuing breach of the restrictions, covenants, conditions, duties or obligations imposed, allowed or granted by these CC&Rs shall be grounds for cancellation, termination or recision of all or of any provision of these CC&Rs.

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Section 9.3. Notice Before Enforcement. No action or proceeding for the enforcement of the restrictions, covenants, conditions, rights and duties imposed, allowed or granted by these CC&Rs shall be commenced until the person or entity responsible for wrongful performance, defective performance or failure of performance has been provided written notice of action required to correct the performance and has failed or refused to do so within ten (10) days of receiving such written notice. This provision is inapplicable where the result of the performance or failure to perform or the defective performance of any obligation imposed or restricted by these CC&Rs poses imminent danger of damage or injury to persons or property, or where animals are involved.

Section 9.4. Enforcement and Alternative Dispute Resolution.

(a) Enforcement. Enforcement to restrain violation of these CC&Rs, 1997 Replacement, or to recover damages, may be by proceedings at law or in equity in a court of competent jurisdiction against any person or entity violating or otherwise failing to comply with these covenants, conditions, and restrictions. Such proceeding may be brought by any Member of the Association in good standing, and/or by a resolution of a majority of the Board of Directors acting on behalf of the Association. Nothing contained in these CC&Rs shall obligate the Association, the Board of Directors or the ACC to enforce any covenant, condition or restriction through legal proceedings.

No delays or omissions by the Association, the ACC, or by the individual Members of the Association shall in itself be deemed a waiver of the right to seek enforcement. There shall be no liability imposed on the ACC, the Association, or its Board of Directors for any alleged failure or neglect to pursue enforcement by legal proceedings for any alleged violation of, or noncompliance with, these CC&Rs, 1997 Replacement.

In any enforcement proceedings, the prevailing party (or parties) shall, if deemed appropriate by the trial court in its discretion, be entitled by contract to recover reasonable costs and expenses, including reasonable attorney's fees.

(b) Mediation. Prior to the filing of any lawsuit for enforcement of these CC&Rs, 1997 Replacement, the parties shall attempt to resolve the issues in dispute through mediation or negotiation, and the parties involved shall share the cost of any outside mediator that may be retained. It is the intent of this provision to encourage the resolution of disputes by negotiation and mediation rather than to through action by a court of law.

(c) Arbitration. Except for actions filed by the Association seeking immediate injunctive relief for a violation of these CC&Rs, 1997, Replacement, any action not resolved through mediation and negotiation shall be considered for submission to binding arbitration prior to the filing of a lawsuit. Arbitration shall be conducted pursuant to the then current American Arbitration Association Rules for commercial disputes. The fees and charges of the American Arbitration Association shall be divided equally among the parties

participating in the arbitration proceedings unless the arbitrator, in his sole discretion, decides otherwise. To the extent permitted by law, the Association and its individual Members and Property Owners agree to waive any right to trial of the dispute by jury. The arbitrator may, if appropriate, award as a part of any arbitration award, reasonable attorney's fees and costs of the prevailing party, such award being a contractual right recognized during the period. Any arbitration proceedings shall be held in Sandoval County and generally at a location selected by the Association. All determinations and findings of the arbitration shall be binding upon all parties in accordance with the rules of the American Arbitration Association and applicable law. The arbitrators shall follow New Mexico law when addressing legal issues in the arbitration.

Section 9.5. Modification, Repeal or Amendment. Any of the provisions of these CC&Rs may be modified, amended or repealed by a vote of not less than two-thirds (2/3) of all Property Owners except for KGA Development Corporation's rights (and its successors and assigns' rights) under section 2.4 of these CC&Rs, which section is entitled "Annexation by KGA Development Corporation," and except for the provisions regarding KGA Development Corporation (and the provisions regarding its successors and assigns) in section 6.14 of these CC&Rs, which section is entitled "Liability." Those provisions of these CC&Rs modified, amended or repealed by a vote of not less than two-thirds (2/3) of all Property Owners shall become effective after approval by the Association by filing a written instrument incorporating such modification, amendment or repeal with the County Clerk, Sandoval County.

Section 9.6. Severability. Invalidation of any of the provisions of these CC&Rs by the final judgment or decree of any court shall in no way affect or impair the validity of any other provision.

Section 9.7. Joint and Several Obligations. The terms of these CC&Rs shall be binding on any person(s) or entity that takes physical possession or obtains title or ownership of any Lot within the Property, whether possession or title is obtained through a lease, rental agreement, sheriff's deed, trustee's deed, deed in lieu of foreclosure, any other deed, order or decree declaring, settling or confirming possession or title. Any lessee or Property Owner shall be jointly and severally liable with the lessor or immediate prior Property Owner for any continuing performance, defective performance or failure of performance of any act or obligation restricted or imposed under these CC&Rs.

Section 9.8. Covenants to Run with the Land. The restrictions, easements, covenants, conditions, rights and duties of these CC&Rs shall run with and bind the land within the Property, as defined in Section 1.17 of Article I, and shall inure to the benefit of each Property Owner of any Lot, his or her respective legal representatives, heirs, successors and assigns unless amended, modified or repealed by the Association.

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Section 9.9. Successors. Deeds of conveyance of any Lot may contain the provisions, restrictions, covenants and conditions contained in these CC&Rs by reference to them; however, whether or not such reference is made in any deed, by becoming a Property Owner of any Lot within the Property, such Property Owner binds himself, herself or itself and any heirs, personal representative, successors, transferees and assigns to all the provisions, restrictions, covenants and conditions imposed under these CC&Rs or any subsequent modifications or amendments.

Section 9.10. Word Meanings. Throughout these CC&Rs, terms in the singular shall include the plural, and the masculine gender shall include the feminine and neuter, and vice versa, unless the context otherwise requires.

Section 9.11. Captions and Section Headings. The captions and headings of various articles, sections, paragraphs or subparagraphs of these CC&Rs are included for convenience only, and shall not be interpreted as defining or limiting in any way the substance or content of the article, section, paragraph or subparagraph.

Section 9.12. Further Subdivision. Except as provided in this section, no Lot within the Subdivision shall be further subdivided or separated into smaller Lots or Parcels by any Property Owner, and no portion of any Lot or any easement or any other interest, other than a security interest or a lease or rental, shall be conveyed or transferred by any Property Owner. A Property Owner of a Lot greater in size than four (4.0) acres may, with the written approval of the ACC subdivide said Lot into not more than two Lots, each of which must be at least two (2.0) acres in size after the subdivision.

Section 9.13. Combining of Lots. A Property Owner of two (2) or more contiguous Lots may, with the written approval of the ACC combine said Lots into one Lot. Any expenses incurred in combining such Lots shall be the sole responsibility of the Property Owner. After combination, the resulting Lot shall be treated as one (1) Lot for all purposes of these CC&Rs including but not limited to annual operating assessments and voting rights within the Association. After Lots are combined in accordance with this section, they may only be divided or separated with the written approval of the ACC, and then only if the proposed division meets the requirements of Section 9.12.

Section 9.14. Certificate of Compliance of Improvements or Structure. The ACC shall issue a Certificate of Compliance to the Property Owner suitable for recording with the County Clerk, following completion of a Structure or Improvement in conformance with the Development Plan or proposal approved by the ACC. The Certificate shall certify that the Improvement or Structure complies with the approved plans and specifications and shall identify the Lot and the Improvement or Structure, the use or uses of the Improvement or Structure, and the specifications on file with the ACC pursuant to which the Improvement was made or the Structure erected. The Certificate will provide

nothing more than acknowledgment that the Improvement or Structure was completed in accordance with the plans approved by the ACC; the Certificate does NOT certify or in any way imply that the design, workmanship, or materials used for the Improvement or Structure comply with or meet any requirements imposed by building codes, statutes, or ordinances within the State of New Mexico or Sandoval County. The cost of recording such a Certificate shall be borne by the Property Owner.

ARTICLE X

ROADS AND EASEMENTS

Section 10.1. Existing Easements. The Subdivision Plats, particularly the plat of La Mesa Subdivision (9 sheets) filed on May 3, 1988 at Vol. 3, Folio 720B (Document #18782) (1988 Plat) and the subsequent "Amended Composite, "Plat of La Mesa Subdivision (showing composite of replats and original Lots) filed September 28, 1993 in Vol. 3, Folio 1078-A, records of the County Clerk for Sandoval County, New Mexico ("1993 Amended Composite Plat") and recorded matters referenced therein, indicate the roadways, streets, thoroughfares, rights-of-way and easements affecting the Subdivision. All dedications, limitations, restrictions and reservations shown on the Subdivision Plats and all grants and dedications of thoroughfares, easements, restrictions, rights-of-way and related rights made by KGA Development Corporation in establishing and developing La Mesa Subdivision are hereby acknowledged (except as otherwise noted herein) by the Association, and shall be included in and made subject to all of the provisions of these CC&Rs. As noted on the Subdivision Plats, KGA Development Corporation has retained title to an "access control" strip, ten feet (10') in width, within the La Mesa Subdivision at the northernmost end of the right-of-way for Calle Rosa in Block #6. With the exception of this access control strip (and subject to other limitations shown on the Subdivision Plat), the Association reserves the right to make changes in and additions to the established easements and rights-of-way for the purpose of most efficiently and economically installing Improvements on behalf of the Members of the Association. Nothing in these CC&Rs, however, shall impair reasonable property access from an existing easement. The following existing easements are described for the benefit and ready reference of the Property Owner who should consult the Subdivision plats.

(a) Road rights-of-way (thoroughfares). All of the major roadways or thoroughfares within La Mesa, whether paved or gravel, were dedicated by KGA to public use and were accepted by Sandoval County for use and maintenance. These roadways include Camino Barranca, Calle Chamisa, Calle Piñon, Calle Ponderosa, Calle Cienaga, Calle Montoya, Calle Cacto, Calle Cholla, Calle Corvo, Calle Cobre, Calle Rosa, Camino Manzano and Calle Cumbre. Although roadway driving surfaces are approximately twenty four feet (24') in width, the

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dedicated right-of-way along all of these county roads is fifty feet (50') in width (plus full or half *cul-de-sacs* as shown on the Subdivision plats), and County regulations prohibit the installation by any Property Owner of any Structure within the county owned right-of-way. Whether or not the ACC has approved the location of any Improvement, the liability and resolution for any encroachment on the county right-of-way shall be the sole responsibility of the Property Owner.

(b) Easement for Utility Installation and Maintenance. There was created by KGA Development Corporation in the Dedication Statement of the 1988 Plat (see sheet 3) a public utility easement, adjacent and parallel to each of the publicly dedicated thoroughfares (county roads), and along both sides of them, extending seven and one half feet (7½') upon and across, over and under all Lots wherever a Lot has a common boundary with a publicly dedicated thoroughfare (county road), with rights of ingress and egress to install, replace, repair and maintain all utilities therein. By virtue of these easements, it is expressly permissible for all utility companies or cooperatives providing utility services to install and maintain pipes, wires, conduits, service lines or other utility facilities or appurtenances on, above, across and under the Property within the established 7½ foot public utility easements. The surface of the utility easement may be planted with shrubbery, trees or other vegetation, but neither the Association nor any supplier of utility services through any easement area shall be liable to the Property Owner for any damages done to any vegetation planted within the utility easement during construction, maintenance, operation or repair of utility lines within the easement. The utility companies furnishing services shall have the right as necessary to remove trees and shrubs which interfere with maintenance, whether occurring naturally or planted by a Property Owner, situated within the 7½ foot utility easements shown on the Subdivision Plats, and to trim overhanging trees and shrubs located on portions of the Property abutting such easements.

(c) Maintenance of Slopes. There was created by KGA Development Corporation in its original Declaration of Covenants, Conditions and Restrictions an easement ("Public Slope Easement") adjacent and parallel to each of the major roadways, and along both sides of them, extending ten feet (10') in width across and over all of the Lots wherever a Lot has a common boundary with a major roadway right-of-way, to permit drainage and County maintenance of roads within the Subdivision. Except as may be specifically noted to the contrary on Subdivision Plats, the utility easement and the Public Slope Easement overlap (see drawing in upper left-hand corner of 1993 Amended Composite Plat). Each Property Owner covenants and agrees that the County of Sandoval may take any action necessary to maintain or repair side slopes within these easements to preserve the integrity of the right-of-way or roadway.

Section 10.2. Homeowner Association Maintained Property. All easements designated on the Subdivision Plats as a "Private Access Easement Homeowners

Association Maintained" or defined in these CC&Rs as "Common Properties" or "Common Facilities" shall be maintained totally and perpetually at the expense of the Homeowners Association with funds from the annual operating assessment established in Article VIII. "Maintained" shall mean to a standard that the County maintains other comparable roads. Generally maintenance is expected to allow a sedan vehicle to pass at a moderate speed for the road conditions. However, nothing in this provision shall be interpreted to preclude the Association from negotiating with Property Owners whose Lots are accessed by a Homeowners Association Maintained Road to obtain a release from the requirements of this provision for maintaining the road to or across their Lots. If all of the Property Owners served by a "Homeowner Association Maintained Road" agree in writing to such a release, all Property Owners served by that access shall be bound by that release.

Section 10.3. Open Space Easement and Park. There were created by KGA Development Corporation, in its original Declaration of Covenants, Conditions and Restrictions, a Park and an Open Space easement, as defined in Sections 1.13 and 1.14 respectively, for the use and benefit of the Members of the Association. No Improvement or Structure shall be constructed or placed in the Open Space Easement by any Property Owner, nor shall any person move or disturb any plants, rocks, trees, nests or artifacts of any kind within the easement except as the County of Sandoval may require to maintain the public road and rights-of-way established within or adjacent to the easement, or with the written approval of the Association. Likewise, no Improvement or Structure shall be constructed or placed in the Park by any Property Owner, nor shall any person move or disturb any plants, rocks, trees, nests or artifacts of any kind within the Park except as the Association shall approve in writing. Improvements may be installed in the Park if approved by the Association. Improvements may be installed in the Open Space Easement if approved by both the Association and the Property Owner of the Lot on which the Improvements are to be installed. Motorized, wheeled and vehicular traffic of all kinds shall be prohibited within the Open Space Easement and the Park including but without limitation, cars, trucks, motorcycles, dirt bikes, all terrain vehicles (ATVs), snowmobiles and bicycles. Radios, televisions, loud speakers and all other sources of amplified sound shall be prohibited in the Open Space Easement and the Park. The Park shall be maintained as deemed appropriate by the Association, for walking, hiking, and horseback riding only by Members of the Association in good standing in accordance with the Articles of Incorporation and Bylaws. In addition, the Park may be utilized for picnicking and other appropriate activities approved by the Association for the benefit of Members in good standing and their invited guests. Members of the Association in good standing may utilize the Open Space Easement for walking, hiking and horseback riding. Further rules governing the use, maintenance and operation of the Open Space Easement and the Park may be adopted by the Association under the provisions of the Articles of Incorporation and the Bylaws. Any such rule that would be contrary to this Section 10.3 shall only be approved as an amendment to these CC&Rs and passed in accordance with Section 9.5.

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Section 10.4. Easements for Access by the Board of Directors of the Association and the ACC. The Board of Directors and the ACC shall have the right of a permanent easement upon any and all Lots within the Subdivision for the purpose of correcting any violation of these CC&Rs, and for inspections required to ensure or confirm compliance with these CC&Rs. However, after a Property Owner or lessee is actually living on the Lot, neither the Board of Directors nor the ACC shall exercise this right unless the Board of Directors has approved with a recorded vote the action to be taken, and has provided the Property Owner and/or lessee at least twenty four (24) hours in advance with written notification of the date, time, intended action, the reasons and basis for such action, and the name(s) of the person(s) authorized by the Board of Directors to take the action. This provision does not provide any individual member of the Board of Directors or of the ACC any authority to enter upon any Lot where the Property Owner or a lessee is actually living, until the Board has passed a formal resolution in accordance with this section. Such individual action without the formal authority of the Board of Directors is outside the scope of the duties of members of the ACC and the Board, and releases the Association from any obligation of indemnity established in Section 7.7 of these CC&Rs.

Section 10.5. Water Well Easement. See the General Note on the Amended Composite Plat granting an easement to the La Mesa Water Cooperative for installation, maintenance and operation of a water well facility.

Section 10.6. Other General Easement References. See the Subdivision Plats (and the documents, notes and references listed thereon) as to other easements, grants, restrictions, etc., affecting the Property (La Mesa Subdivision).

IN WITNESS WHEREOF, the undersigned, as the duly elected members of the Board of Directors of the La Mesa Homeowners Association, do set their hand and seal this ____ day of _____, 1998.

LA MESA HOMEOWNERS ASSOCIATION

By: June L. Lane
 President
Thomas R. Qualls
Barbara M. Spivack
David C. Shup
Will Parker

*****An "Acknowledgment", witnessed by a notary public will be required at filing.****

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ACKNOWLEDGEMENT

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANDOVAL)

This foregoing instrument was acknowledged before me
this 9th day of NOVEMBER, 1998 by

Chana R. Adams, Thomas D. Qualls, Evelyn M. Spivak, Manit Jan Singh, and Will Parker
Directors of La Mesa Homeowners
Association, Inc.

Chana R. Adams
Notary Public

My Commission Expires:

August 16, 2000



STATE OF NEW MEXICO	
COUNTY OF SANDOVAL	
This instrument was filed for record at	
<u>12:08</u>	A.M. (P.M.) on
NOV 12 1998	
Recorded in Vol. <u>401</u>	
of records of said county, folio <u>78317-78359</u>	
By <u>Eleanor</u>	Clk. & Recorder Deputy <u>GB</u>

78359