



SUPPLEMENTAL DECLARATIONS
to
COMPREHENSIVE DECLARATIONS OF COVENANTS,
CONDITIONS AND RESTRICTIONS
for
LOS PASTORES SUBDIVISION
IN THE VILLAGE OF PLACITAS
SANDOVAL COUNTY, NEW MEXICO
JANUARY 20, 2024

**COMPREHENSIVE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS**

THIS DECLARATION, is made on the date and year below written by **LOS PASTORES, HOMEOWNERS ASSOCIATION**, a New Mexico non-profit business corporation, hereinafter referred to as the "Declarant".

RECITALS

1. Declarant is the owner of that certain real property described in Section 1.17 hereof (the "Property").
2. The purpose of this Declaration is to create and carry out a uniform plan for the improvement, development, sale and use of the property; to preserve so far as possible 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 of well designed, attractive improvements which are harmonious with their sites and consistent with existing improvements; and in general, to enhance the environmental quality and economic value of the property.

NOW THEREFORE, Declarant hereby declares that the property described above shall be held, sold used, developed, occupied, leased and conveyed subject to the following reservations, easements, restrictions, covenants and conditions and which 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 thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1.1. **"Architectural Control Committee"** shall mean the committee created pursuant to Article VI hereof. Such Architectural Control Committee shall hereinafter sometimes referred to as "ACC" or "Committee".

Section 1.2. **"Architectural Control Committee Rules"** shall mean such rules as are adopted by the ACC pursuant to Article VI hereof.

Section 1.3. **"Association" or "Homeowners Association"** shall mean the Los Pastores Homeowners Association, Inc. and the Los Pastores Water System inclusively.

Section 1.4. **"Common Facilities"** shall mean and refer to all existing and subsequently provided improvements upon or within the Common Properties, except those as may be expressly excluded herein. By way of illustration, Common Facilities may include, but are not necessarily limited to, the following: structures for storage or protection of equipment; fences; walls; common driveways; landscaping; utility equipment, water pumps, water tanks and lines; and any portions of public roads not accepted for maintenance by the County of Sandoval, and other similar and appurtenant improvements. References herein to the "Common Facilities" (any common facility) in the Subdivision shall mean and refer to Common Facilities as defined respectively in this Declaration and all Supplemental Declarations.

Section 1.5. **"Common Properties"** shall mean and refer to all those areas of land within the property as shown on the Subdivision Plats, except the lots shown thereon including the Entrance Road, together with such other property as the Association may, at any time or from time to time, acquire by purchase or otherwise, subject, however, to the easements, limitations, restrictions, dedications and reservations applicable thereto by virtue hereof and/or by virtue of the

Subdivision Plats, and/or by virtue of prior grants or dedications by Declarant. References herein to "the Common Properties in the Subdivision" shall mean and refer to Common Properties as defined respectively in this Declaration and all Supplemental Declarations.

Section 1.6. **"Declarant"** shall mean Los Pastores Homeowners Association.

Section 1.7. **"Declaration"** shall mean the covenants, conditions, and restrictions herein set forth in this entire document, as the same may be from time to time amended.

Section 1.8. **"Development Plan"** shall mean the plan for development of a lot which is required to be submitted to the ACC pursuant to Section 6.12 hereof.

Section 1.9. **"Drainage Way"** shall be any area designated on the Plat as such and in addition shall include any and all arroyos, creeks, streams, sedimentation basins or bar ditches located, designated or constructed on the property.

Section 1.10. **"Entrance Road"** shall be the roadway as shown, and to the extent shown, on the Subdivision Plat.

Section 1.11. **"Improvements"** shall mean the buildings, garages, carports, streets, roads, antennas, driveways, parking areas, walls, hedges, plantings, planted trees and shrubs, lighting and all other structures or landscaping improvements of every kind and type affecting the natural condition of the land or the drainage of surface waters on, across or from the land.

Section 1.12. **"Lot"** shall mean each parcel of land shown as a lot on the recorded Subdivision Plat of the property and designated thereon by a separate block and lot number, or any subsequent subdivision of a lot.

Section 1.13. **"Member(s)"** shall mean and refer to all those owners who are members of the Association as provided in the Declaration, together with all the owners in the subdivision who are members of the Association as provided in all Supplemental Declarations.

Section 1.14. **"Owner(s)"** shall mean and refer to the record owner, whether one or more persons, associations or entities, of legal, equitable or beneficial title of or to any lot. Owner shall include purchaser of a lot under an executory contract for sale of real property. The foregoing does not include persons or entities who hold an interest in any lot or in the property merely as security for the performance of an obligation. Any reference herein to owners shall include owners as defined herein and as defined or included in any Supplemental Declaration. If any lot is leased, the term owner(s), shall include lessees, provided the leases is in writing and for a term of at least one year.

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

Section 1.16. **"Property"** shall mean and refer to the real property located in Sandoval County, New Mexico, and more specifically described in Exhibit A to this Declaration, including the aerial and subsurface rights appurtenant thereto, and such additions thereto as may hereafter be annexed by Supplemental Declaration, as set forth on the Subdivision Plat filed in real property records of the Sandoval County Clerk.

Section 1.17. **"Legal Description"**

A certain tract of land situated within extended sections 32 and 33, T13N, R5E, New Mexico Principle Meridian, within the exterior boundaries of the San Antonio de las Huertas Grant, Sandoval County, New Mexico, and being more particularly described as follows:

Beginning at a point which is the intersection of the line common to sections 32 and 33, T13N, R5E, NMPM, and the southerly line of the parcel herein described, an iron pipe in place, from whence the southwest corner of extended section 33, T13N, RSE, NNU>M, of section 32 of fractionas T13N, RSE, New Mexico, showing Small Holding Claims, as

surveyed by Hiram T. Brown, U.S. Deputy Surveyor, July 1894, and accepted by GLO July 31, 1895, bears South, 3241.45 feet distance. From said beginning point running thence S 58 E, 26.40 feet distance to the southeast corner; thence, N 32 E, 1320.00 feet distance to a point; thence, S 58 E, 330.00 feet distance to a point; thence, N 32 E, 254.02 feet distance to the northeast corner; thence, N 58 W, 240.68 feet distance to a point, said point being the southwest corner of the Mr. Delara property, iron pin in place; thence, N 58 W, 1095.28 feet distance to the northwest corner; thence, S 32 W, 1574.02 feet distance to the southwest corner, being a point on the northerly right-of-way line of a county road; thence, continuing along said northerly right-of-way line, S 58 E, 979.56 feet distance to the point and place of beginning and containing 38.274 acres, more or less.

Section 1.18. **"Single-family Residential Use"** shall mean the occupation or use of a structure intended as a residence or dwelling unit by a single person, a family or a family-sized unit in conformity with this Declaration and the requirements imposed by applicable zoning laws or any other statute, county or municipal laws, rules, regulations, codes or ordinances.

Section 1.19. **"Structure"** shall mean anything erected, constructed, placed, laid or installed in, on, or over real property, the use of which requires a location on or in the ground but not including vegetation, trees, shrubs or plantings.

Section 1.20. **"Subdivision Map or Subdivision Plat" or "Plat Map" or "Final Plat"** shall mean the recorded map or plat of the Los Pastores Subdivision, as amended or replatted from time to time, covering any and all of the property referred to in this Declaration, and covering any additional real property annexed by Supplemental Declaration.

Section 1.21. **"Supplemental Declaration"** shall mean any Supplemental Declaration of

Covenants, Conditions, and Restrictions bringing or adding additional property within the scheme of this Declaration pursuant to Article II hereof. References herein (whether specific or general) to provisions set forth in "all (any) Supplemental Declaration" shall be deemed to relate to all property covered by this or any Supplemental Declaration.

Section 1.22. **"Visible from Neighboring Property"** shall mean that with respect to party given object, that such object is or would be visible to a person six (6) feet tall, standing on any part of a neighboring property. A neighboring property shall be any lot having a common lot line except for the intervention of a street, road, right-of-way, or easement.

Section 1.23. **"Water System"** means a system managed by the Los Pastores Homeowners Association, established pursuant to applicable law, for the purpose of providing domestic water service to a lot.

ARTICLE II

PROPERTY SUBJECT TO RESTRICTION

Section 2.1. **General Declaration.** Declarant hereby declares that the property within the Subdivision is and shall be held, conveyed, developed, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part, subject to this Declaration, as amended or modified from time to time. This Declaration is declared and agreed to be in furtherance of a general plan for the subdivision, improvement and sale of the property and is established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the property and every part thereof. All of this Declaration shall run with all of the property for all purposes and shall be binding upon and inure to the benefit of Declarant, all owners and their successors in interest.

Section 2-2. **Description of Property.** The property subject to this Declaration is all property

described in Section 1.16 and 1.17 hereof, together with any and all property added or annexed by Supplemental Declaration at a subsequent time.

Section 2.3. **Staged Subdivision.** Declarant, its successors and assigns, shall have the right to bring within the scheme of this Declaration additional properties in future stages of the development without the consent or approval of owners of any lots (other than Declarant); provided, however, that such additional properties must be adjacent to the property (as the property shall then exist). As additional properties are subdivided, Declarant shall, with respect to said properties, record Supplemental Declarations which may incorporate this Declaration by reference, and which may supplement or modify this Declaration with such additional covenants, restrictions and conditions which may be appropriate for those properties. Upon recordation of such additional plats or maps and the filing of a Supplemental Declaration containing restrictive covenants pursuant thereto then and thereafter the owners of all lots in the Subdivision shall have the rights, privileges and obligations with respect to all properties in the Subdivision (including such additional properties) in accordance with the provisions of, and to the extent set forth in this Declaration and each such Supplemental Declaration.

Section 2.4. **Other Additions.** Upon the arrival of the Association, in its sole discretion, the owner of any other property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association may file or record a Supplemental Declaration of Covenants and Restrictions upon the satisfaction of the conditions specified in Section 2.3 above.

ARTICLE III

LAND USE

Section 3.1. **Single Family Residential Use.** All property shall be used, improved and devoted

exclusively to Single-family Residential Use. No outdoor business or commercial activity frequented by and open to the general public (and in any event no business or commercial activity which takes place out-doors) shall be conducted within the Subdivision. Home occupations of owners are permissible if conducted inside the home, i.e., an artist's studio, a home business office, or a web design studio. Vehicles visiting a home business will not be permitted to park outside the business for an extended period of time. Any home business must be in compliance with any rules and regulations governing home occupations hereinafter adopted by the ACC. Nothing contained herein shall be deemed to prevent the leasing of all of the lot to a single person, family or family sized unit from time to time by the owner thereof subject to all the provisions of this Declaration.

Section 3.2. **Development Plan.** Each Owner shall be required to submit a detailed Development Plan, pursuant to the rules of the ACC, and such plan must be approved in writing prior to commencement of construction of any improvement. No construction whatsoever, including, without limitation, site preparation, clearing of trees or excavation, shall commence without the prior written approval of the ACC. All construction and development shall comply strictly with the approved Development Plan. Any person purchasing any portion of the property subject to this Declaration acknowledges that the breach or violation of this covenant is likely to result in irreparable harm to the rights and interest of other owners in the Subdivision and that the Declarant, the ACC, or the Association, on behalf of such owners, shall be entitled to injunctive relief, temporary or permanent, in order to prohibit such violation; provided, however, that this provision shall be in addition to any other remedies available hereunder or at law or equity.

Section 3.3. **Time for Construction.**

- a. Construction of any structure or improvement shall be continuous and

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 the construction.

- b. The foundation 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 by way of limitation, clearing of trees, excavation or site preparation for the purpose of foundation.
- 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 areas or roadways.

ARTICLE IV

RESIDENTIAL STRUCTURES

Section 4.1. **Requirements.** All single-family residential structures shall be subject to the following requirement, and each enumerated item must be included in the Development Plan submitted and approved in writing by the ACC prior to the commencement of construction; provided, however, that the following requirements shall not be the sole basis for the consideration by the ACC (see Section 6.15 of this Declaration). Once approved, no structure or improvement may vary from the Development Plan without further approval of the ACC.

- a. **Set Backs:** All structures are subject to a twenty-five (25) foot setback requirement from any road or street right of way boundary, and a fifty (50) foot setback requirement from any structure situated on an adjacent lot. A twenty-five (25) foot setback shall also be observed from side and rear lot lines. The ACC shall have the

right to impose additional and/or modified setback requirements from all lot lines to preserve lines of sight of neighboring properties, and to accommodate the terrain on certain lots.

- b. **Minimum Floor Areas:** All single-family residential structures shall have a floor area of not less than eighteen hundred (1800) square feet, exclusive of portals, porches (open and closed), patios, garages, carports, balconies or decks. No structure shall be allowed that is more than fifteen (15) feet in height above the highest natural grade adjacent to the structure, excepting chimneys.
- c. **Subdivision Design and Architectural Style:** All structures and improvements shall be constructed in, Southwestern/New Mexico Pueblo, New Mexico territorial, Northern New Mexico architectural style, or earthsheltered designs utilizing traditional New Mexico materials, including adobe and/or stucco in natural earth-tones (browns) or other colors approved in writing by the ACC. Contemporary clerestory styles and other active and passive solar or otherwise environmentally appropriate features may be permitted, if, in the judgement of the ACC, the structure represents an appropriate and integrated blend of contemporary and traditional style and technology.
- d. **Exterior Color Schemes and Materials:** The ACC shall have the right to impose limitations on the exterior color and building materials to be used in all structures consistent with Subdivision Design and Architectural Style.
- e. **Private Waste Disposal System:** 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 Improvement Division and approved in writing by the ACC.

- f. **Roofing Materials:** The ACC shall have the right to impose limitations on roofing materials to be used in any structure.
- g. **Driveway:** The ACC shall have the right to impose limitations on driveway design, including materials, aprons, 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.
- h. **Garbage Containers:** The ACC shall have the right to require each owner to keep garbage cans undercover and out of site. In no instance shall garbage cans, boxes, dumpsters or any container designated to hold garbage, trash or refuse be permitted to stand outside a home except during collection times. All such containers must be enclosed and not visible to other occupants of the subdivision.
- i. **Tanks, Air Conditioners and Swamp Coolers:** The ACC shall have the right to approve the location of any tank, air conditioner or swamp cooler used or proposed in connection with a single-family residential structure, including propane tanks, tanks for storage of water, and swimming pool filter tanks. All tanks, air conditioners, and swamp coolers shall be screened so as not to be visible from neighboring property, or from any street, road, easement or right-of-way. Oil or gasoline tanks are prohibited on any lot.
- j. **Exterior Lighting:** The ACC shall have the right to approve the location, number, size and design of all proposed exterior lighting. No street lamp, security

lights, unshaded flood lights, or neon arc lamps will be permitted without written permission of the ACC. Further, all lighting in the subdivision will be governed as stipulated in the Night Sky Protection Act adopted by the New Mexico legislature on April 6, 1999.

Section 4.2. **Trees, Shrubs and Landscaping.** The ACC shall have the right to approve the removal and/or addition of trees, scrubs, hedges, ground cover and all other landscaping. There shall be no disturbance of trees or other ground cover during construction without the written approval of the ACC. All landscaping should be designed to conserve water. No Chinese elms, cotton bearing cottonwood trees or Bermuda grass shall be maintained on any lot. No lawns shall be more than 500 square feet in an enclosed area on any lot. Natural vegetation is to be restored to its original state whenever and wherever possible within 180 days of the completion of construction of the house located on any lot.

Section 4.3. **Windmills, Towers and Antennas.** No windmill, visible antenna 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 attached to a building or structure or otherwise, 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.

Section 4.4. **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 owner other than Declarant, within the Subdivision

unless the same shall be contained in 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 no provision hereof shall 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 equipment, 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. Furthermore, lot owners must insure, prior to building a home, that all utilities servicing the lot and home be properly located and identified as to their function (i.e., water meter, electricity and other required stub outs). If any anomalies are found, or if the relocation of any utilities must be carried out, the situation must be reported to the president of the home owner's association. This notification should be done at least 60 days prior to the start of construction of the new home. The lot owner will be responsible for the cost of relocating any utilities or the search for missing utilities.

Section 4.5. **Temporary Structures - Occupancy During Construction.** Except as permitted in Section 5.13, no trailer, basement of any incomplete building, tent, shack, garage or barn and no temporary building of any kind shall be used at any time for residence on the property within the Subdivision either on a temporary or permanent basis.

Section 4.6. **Out-buildings.** Acceptable out-buildings include a principal garage or carport for not more than three vehicles and either a studio or workshop. Any proposed out-buildings must be included in the Development Plan and approved in writing by the ACC.

Section 4.7. **Signs.** Except for a 24"x36" "For Sale" sign, no signs, billboard or advertising structure shall be erected or maintained on any lot or parcel of property within the Subdivision,

unless approved in writing by the ACC or otherwise consistent with signage rules issued by the ACC.

Section 4.8. **Improvements and Alterations.** No structure, improvements, alterations, repairs, excavations or other work which in any way alters the exterior appearance of any structure within the Subdivision or the appearance of any other improvements located thereon from its natural or improved state existing on the date such property was first conveyed in fee to the current owner, purchaser or annexed by Declarant, whichever is later, shall be made or done without the prior written approval of the ACC.

Section 4.9. **Solar Equipment.** The Subdivision is an alternative energy development. Sources of energy should be designated on the Development Plan. Location, dimension and description of any type of solar equipment shall be included in the Development Plan and approved in writing by the ACC.

Section 4.10. **Water Conservation System.** Each Development Plan should include a description of the proposed water system for the house and property. Irrigation shall be limited to cistern or drip irrigation system. Swimming pools are prohibited.

Section 4.11. **Chemical Fertilizers, Pesticides or Herbicides.** No commercial chemical fertilizers, pesticides or herbicides other than those approved by the ACC shall be used on any of the property. This provision in no way limits the use of those products which are readily available for consumer use and approved by an agency, such as the Food and Drug Administration, for the purpose intended.

Section 4.12. **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 unless the same is approved in writing by the ACC.

ARTICLE V

RESTRICTIONS

Section 5.1. **Animals - Household Pets.** Except to the extent permitted in Section 5.16 of Article V of this Declaration, 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 written request of any owner, the ACC shall conclusively determine at its sole discretion, in accordance with its rules, whether an animal is a domestic household pet, whether an animal is a nuisance. The decision of the ACC in such matters is final, conclusive and shall be enforced as other restrictions contained herein. No animal may be stabled, maintained, kept, cared for or boarded for hire or remuneration on the property and no kennels or breeding operation will be allowed. No animal shall be allowed to run at large and all animals 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. **Non-disturbance of Natural Vegetation and Maintenance of Lawns and Plantings.** No owner shall cut, tamper, destroy or remove any pinon or juniper tree on any lot except pursuant to the Development Plan for said lot approved in writing by the ACC. Each owner, on his lot, shall keep all shrubs, trees, grass and plantings of every kind which are visible from neighboring property or from a dedicated road, common property or common facility, property cultivated, pruned and free of trash and other unsightly material. Declarant, the Association and the ACC shall have the right at any reasonable time to enter upon any lot to

replace, maintain and cultivate shrubs, trees, grass or other plantings located thereon, at cost to owner.

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 neighboring property or from streets or from access roads.

Section 5.4. **Hunting/Trapping/Firearms and Explosives.** Hunting, trapping and discharge of firearms or other explosives are expressly prohibited within the Subdivision. This includes fireworks. However, the use of sparklers as those used on the 4th of July festivities will be permitted to be used by adults or under adult supervision.

Section 5.5. **Waste.** The commission of waste is expressly prohibited within the Subdivision.

Section 5.6. **Mineral Exploration.** No mining, quarrying, tunneling, excavation or drilling for exploration or removal of any minerals including oil, gas, gravel, rocks, earth, earth substances of any kind shall be permitted within the Subdivision.

Section 5.7. **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 owner are permissible if conducted in the home or studio and in compliance with any rules and regulations governing home occupations hereafter adopted by the ACC.

Section 5.8. **Obnoxious 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 property within the Subdivision, and no odors shall be permitted to arise therefrom, so as to render any such property or any portion thereof unsanitary,

unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provision, 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 such property which are audible from neighboring property.

Section 5.9. **Garbage.** No garbage or trash shall be placed or kept on any lot except in covered containers located and constructed in accordance with Section 4.1(h). In no event shall such containers be maintained so as to be visible from neighboring property. All rubbish, trash, and garbage shall be removed 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. This paragraph is not intended to exclude compost piles, bins or facilities, all of which are encouraged.

Section 5.10. **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 making deliveries for the purpose of loading or unloading) maintained, constructed, reconstructed, or repaired on the property. No motor vehicle or trailer of any type shall be constructed, reconstructed or repaired on the property in such a manner as will be visible from neighboring property. No trailer of any type shall be parked on a homeowner or lot owner's property unless it is adequately screened so as not to be visible from neighboring property or from dedicated roadways. Non-operable vehicles must be garaged and not visible from neighboring property or dedicated roadways. In the event of an emergency or failure of a vehicle, the vehicle must be repaired or towed away in a reasonable amount of time. 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 adequately screened so as not to be visible from neighboring property or from dedicated roadways. No motorized vehicle of any kind may be operated in any manner which is dangerous, noisy or which creates a nuisance.

Section 5.11. **No Overnight Parking.** No vehicle of any kind shall be allowed to park overnight on any dedicated roadway within the Subdivision.

Section 5.12. **Emergency or Temporary Maintenance Vehicles.** The provisions of this Declaration shall not prevent any emergency vehicle repairs or operation of any emergency vehicle, ambulance, etc. within the Subdivision. The provisions of this Declaration 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 5.13. **Motorcycles.** The use of motorcycles 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 motorcycles operated within the Subdivision shall have mufflers installed in good condition which limits the exhaust noise to no more than eight (8) decibels, ten (10) feet from the end of the exhaust pipe.

Section 5.14. **Continuing Adequacy of Repair or Maintenance.** No building or structure upon the property within the Subdivision shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and adequately painted or otherwise finished. Such duty to repair shall include the maintenance of any exterior structures and finish which were included in the Development Plan approved by the ACC.

Section 5.15. **Service Yards and Storage Yards.** Any service yard, storage yard, or storage

pile shall be located so as not to be visible from neighboring property, dedicated roadways, common facilities 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 5.16. **Gates, Walls, and Fences.** Fences are permitted to enclose approved lawn and garden areas within the immediate vicinity of the single-family residential structure. Owners may not fence lot lines excepting rear lot lines which abut either of the public roads. No wire or chain link fences shall be maintained in the Subdivision, excepting dog runs. Dog runs must be located in rear yards only.

ARTICLE VI

ARCHITECTURAL CONTROL COMMITTEE

Section 6.1. **Establishment and Composition.** There is hereby established an Architectural Control Committee ("ACC"), which shall consist of two (2) regular members and one (1) alternate member. The following persons are hereby designated as the initial members:

<u>Position</u>	<u>Name</u>	<u>Type</u>	<u>Address</u>
Office #1		Regular	
Office #2		Regular	
Office #3		Alternate	

Members of the ACC shall serve without salary or pay and none of the members shall be required to be an architect or to meet any other particular qualifications for membership.

Section 6.2. **Voting and Status of Alternate Members.** Except as otherwise provided herein, a vote or written consent of a majority of the regular members of the ACC at a meeting or otherwise, shall constitute the act of the Committee. Except as hereinafter provided, alternate members shall not be

entitled to vote. In the event of absence or disability of one (1) or more regular members, the remaining member or members, even though less than a quorum, may designate the alternate member to act or substitute for the absent or disabled regular member for the duration of such absence. or disability. The alternate member designated shall be entitled to vote in place of the regular member for whom he so substitutes. Notwithstanding the foregoing provisions, the ACC is not authorized to act unless two (2) regular members are present or, in the event action is taken without a meeting, unless two (2) regular members consent in writing thereto.

Section 6.3. **Term of Office.** Unless the initial members of the ACC have resigned or been removed, their term of office shall be for the period of time beginning as of the date of recordation of this Declaration and ending on the dates indicated below, and until appointment of their respective successors:

Office #1 and 3	January 1, 2005
Office #2	January 1, 2004

Thereafter, the term of each ACC member appointed shall be for a period of three (3) years and thereafter until the appointment of a successor. Any new member appointed to replace a member who has resigned or been removed shall serve such member' s unexpired term.

Members who have resigned or whom terms have expired may be reappointed. At such time as the composition of the ACC is added or altered, a writing referring to and identifying this Declaration by recording data shall be recorded in the real property records of Sandoval County, New Mexico, setting forth the name and address of each member of the Committee as it is constituted.

Section 6.4. **Appointment and Removal.** The members of the ACC will be appointed by a majority of the Board of Directors for a period of 3 years and members may also be removed

for cause by a majority vote of the Board of Directors.

Section 6.5. **Resignations**. Any regular member or alternate member of the ACC may resign at any time from the Committee by giving written notice thereof to Declarant or the Association as the situation requires.

Section 6.6. **Vacancy**. Vacancies on the ACC, however caused, shall be, except as provided in Section 6.4 of this Article, filled by Declarant. A vacancy shall be deemed to exist in case of death, resignation or removal of any regular or alternate member.

Section 6.7. **Transfer of Authority to the Association**. The duties, rights, powers and authority of the ACC constituted hereby may be assigned at any time, at the sole election of a majority of the regular members of the ACC, to the Homeowners Association, and from and after the date of such assignment, and the acceptance thereof by the Association, the Association shall have full right, authority and powers, and shall be obligated to perform the functions of the ACC as provided herein.

Section 6.8. **Address**. The address of the ACC shall be P.O Box 1427, Placitas, NM 87043, or such other place as may be from time to time designated by the ACC by written instrument recorded in the real estate records of Sandoval County, New Mexico; and the last instrument so recorded shall be deemed the Committee's proper address.

Section 6.9. **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 this Declaration, and to carry out all other duties imposed on it by this Declaration.
- b. **Development Plan Submission Fees**. The ACC shall require a submission fee of \$150.00 for each proposed Development Plan. This fee shall be considered as a

filing requirement of the Development Plan and such plan will not be considered unless and until such costs are paid.

Section 6.10. **Meetings.** The ACC shall meet from time to time as necessary to perform its duties hereunder. Subject to provisions of Section 6.2 above, and except as otherwise provided herein, the vote or written consent of a majority of the regular members at a meeting or otherwise shall constitute the act of the Committee. The Committee shall keep and maintain written records of all actions taken by it at such meetings or otherwise.

Section 6.11. **Action Without Formal Meeting.** The ACC, in accordance with Sections 6.2 and 6.10 hereof, may take action without formal meeting by unanimously consenting in writing on any matter which they might consider at a formal meeting. Such unanimous written consent shall constitute the act of the Committee. For the purposes hereof, unanimous written consent shall mean a writing by the two (2) regular members of the ACC except as the provisions of Section 6.2 may apply.

Section 6.12. **Procedure for Submission and Approval of Development Plan.** Before commencing construction, remodeling or alteration of any structure, the owner shall submit to the Architectural Control Committee:

- a. Preliminary floor plans, elevations and location of the structure on the lot;
- b. After approval of the preliminary plans, the owner shall submit two complete sets of final plans and specifications. The final plans and specifications shall include; (1) energy sources and utility information; (2) water conservation plan; (3) plat plan accurately showing the location on the lot of all structures proposed to be constructed, altered, or maintained; (4) proposed elevations of all structures; (5) proposed colors for exteriors; materials to be used in construction including

roofing material and solar equipment.

- c. At the time the plans are submitted to the ACC, the owner shall be responsible for notifying all adjacent landowners that plans have been submitted. Such notice shall be mailed certified mail return receipt requested no later than 48 hours after final plans are submitted.
- d. The ACC may request additional or amended materials.

Section 6.13. **ACC Rules.** The ACC shall have the authority to adopt, amend, add to, replace and rescind, from time to time, procedural or substantive rules to make more definite and certain, and to carry out the purpose of and intent of the provisions of this Declaration. Any conflict between such rule and any provision of this Declaration shall be resolved in favor of the provision of this Declaration. A copy of such rules, as in effect from time to time shall be provided to any owner requesting the same in writing; provided that the failure to deliver a copy of any such rules, or the failure of the ACC from time to time to adopt any such rules shall not in any manner inhibit or impair the requirement that a Development Plan be approved by the ACC prior to construction or any other provision of this Declaration.

Section 6.14. **Basis for ACC Approval or Disapproval.** The Subdivision is intended by Declarant to be a unique alternative energy development composed of homes of the highest quality and elegant appearance. Toward this end, it is intended that the ACC have the greatest degree of discretion possible in reviewing, approving or disapproving Development Plans. Declarant intends that the ACC shall have the right to consider as the basis for any approval or disapproval of a Development Plan, (a) compliance or noncompliance with certain objective standards set out in this Declaration or in any rules or guidelines subsequently published or adopted by the ACC; (b) the nature and quality of the building materials and methods of

construction to be used; c) the location of the proposed improvements on the lot, (d) the visual impact of the proposed improvements from the standpoint of style and consistency with other improvements constructed or approved by the ACC for construction in the Subdivision; (e) the experience and expertise of the general contractor; (f) the proposed water and energy systems to be incorporated in the home; and (g) such other subjective factors as the ACC shall, in its discretion, deem relevant or appropriate. **ANY PERSON PROPOSING TO PURCHASE ANY LOT IN THE SUBDIVISION IS CAUTIONED TO CONSULT WITH THE ACC CONCERNING INTENDED IMPROVEMENTS PRIOR TO BECOMING UNCONDITIONALLY OBLIGATED TO PURCHASE SUCH LOT.**

Section 6.15. **Decisions Conclusive.** All decisions of the ACC shall be final and conclusive, and no owner or any other person, association or entity shall have any recourse against the ACC, or any member thereof, for its or such member's approval or refusal to approve all or any portion of a Development Plan or of any material submitted therewith, or for any other decision rendered under the authority of this Declaration.

Section 6.16. **Liability.** Neither the Declarant nor the ACC or any member thereof shall be liable to any owner, or 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 of any material submitted therewith, whether or not defective; (ii) the construction or performance of any work, whether or not pursuant to any approved Development Plan or any materials submitted therewith; (iii) the development of the property; (iv) the structural capacity or 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 either 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 under the authority of this Declaration. Neither the ACC, nor any member is required to consult with or determine the view of any other owner with respect to any Development Plan, or any materials submitted to the ACC.

Section 6.17. **Modifications and Waivers.** The ACC, upon such terms and conditions, upon the payment of such fees or expenses, and for such procedures as it may prescribe, may, but is not required to, adopt, review and approve or disapprove, in whole or in part, with or without conditions, applications for the modification or waive of any requirement of Article IV of this Declaration or of the ACC rules applicable to any improvement or use of, in, on, or abutting any lot. Such applications shall contain such information as the Committee may prescribe and shall affirmatively show that the application of such requirements, under the circumstances, creates unnecessary and undue hardship. The Committee may decide the matter upon the application and any materials or written statements accompanying it or may allow oral presentations in support of or in opposition to the application prior to the decision, at its discretion. The Committee shall render a decision in writing, which decision need not contain any reasons, findings, or conclusions for the decision and shall forward one (1) copy to the applicant, and retain one (1) copy in its records. Without limiting the general applications of such section, the provisions of Section 6.15 and Section 6.16 of this Article shall apply to the actions and the decisions of the Committee and its members under this Section.

Section 6.18. **Governmental Agency Approval.** Nothing in this Declaration shall relieve or be interpreted as purporting to relieve any 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 to approval of a Development Plan, or as additional insurance to the Committee that the improvements and uses of an approved Development Plan meet governmental requirements, or for both such purposes.

Section 6.19. No one will be permitted to build a residence or outbuilding in a flood plain or drainage channel.

ARTICLE VII

LOS PASTORES, INC. HOMEOWNERS ASSOCIATION

Section 7.1. **The Homeowners Association.** Declarant shall cause the formation and incorporation of the Homeowners Association as non-profit corporations organized and existing under the New Mexico Non-Profit Corporation Act, charged with the duties and invested with the powers prescribed by law and set forth in the Articles of Incorporation and this Declaration.

Section 7.2. **Membership.** Each owner (whether one or more persons or entities) of a lot shall, upon and by virtue of becoming such owners, automatically become a member of the Homeowners Association and shall remain a member thereof until his ownership ceases for any reason, at which time his membership in the Homeowners Association shall automatically cease. Membership in the Homeowners 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 Homeowners Association, and no certificate of membership will be issued.

Section 7.3. **Meetings of Members.** Meetings of members shall be held at such place, either within or without New Mexico as may be provided in the CC&Rs. In the absence of any such provision, all meetings shall be held at a home of one of the directors in Placitas, NM 87043.

- a. Annual Meeting. An annual meeting of the members shall be held at such time as may be provided in the CC&Rs. If the annual meeting is not held within any thirteen-month period, the district court may, on the application of any member, order a meeting to be held.

However, failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

- b. Directors Meetings. Directors meetings shall be held at such time as may be provided in the CC&Rs.
- c. Special Meetings. Special meetings of the members may be called by the president or by the Board of Directors.

Special meetings of the members may also be called by such other officers or persons or number or proportion of members as may be provided in the articles of incorporation or the CC&Rs. In the absence of a provision fixing the number or proportion of members entitled to call a meeting, a special meeting of members may be called by the members having one-twentieth of the votes entitled to be cast at such meeting.

- d. Notice of Meetings. Unless otherwise provided in the articles of incorporation or the CC&Rs, written notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten or more than fifty days before the date of the meeting,

either personally, by email, or by mail, by or at the direction of the president, or the secretary, or the officers or persons calling the meeting, to each member entitled to vote at the meeting. If mailed the notice shall be deemed to be delivered when deposited in the United States addressed to the member at his address as it appears on the records of the corporation with postage thereon prepaid.

- e. Waiver of Notice. Attendance at any meeting by a member shall constitute a waiver of notice of the meeting, except where a member attends a meeting for the expressed purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.
- f. Quorum. The number or percentage of members entitled to vote represented in person or by proxy, or the number or percentage of votes represented in person or by proxy, which shall constitute a quorum at a meeting of members shall be two-thirds (2/3). A majority of the votes entitled to be cast on a matter to be voted upon by the member present or by proxy at which a quorum is present shall be for the adoption thereof unless a greater proportion is required by the Nonprofit Corporation Act, the articles of incorporation or the CC&Rs.

Section 7.4. **Voting.** Subject to the provisions of Section 7.6., all members of the Homeowners Association in good standing shall be entitled to one (1) vote for each lot owned at any meeting of members of the Homeowners Association or with respect to any matter submitted to a vote of the members of the Homeowners Association. If more than one person holds an interest in any lot, all such persons shall be members of the Homeowners Association. The vote for such multiply-owned lot shall be exercised as the owners 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 CC&Rs of the Homeowners Association may provide more specific rights with respect to voting by members.

A member entitled to vote may vote in person or, unless the articles of incorporation or the CC&Rs otherwise provide, may vote by proxy executed in writing by the member or his duly authorized attorney-in-fact. No proxy shall be valid eleven months from the date of its execution, unless otherwise provided in the proxy. Where directors or officers are to be elected members, the CC&Rs may provide that such elections may be conducted by mail.

Section 7.5. **Board of Directors and Officers.** The affairs of the Homeowners 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 CC&Rs, as the same may be amended from time to time.

- a. The number of directors and officers shall not be less than three. Subject to such limitation, the number of directors and officers shall be five (5) plus any number of Members at Large as may be deemed appropriate by the board from time to time to facilitate management of the Association. The number of directors and officers may be increased or decreased from time to time by amendment to the CC&Rs, unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment of the articles of incorporation.
- b. Election of Directors and Officers. The directors constituting the first Board of Directors shall be named in the articles of incorporation and shall hold office until the first annual election of directors and officers or for such other period as may be specified in the articles of incorporation or the CC&Rs. Thereafter, directors and officers shall be elected or appointed in the manner and for the terms provided in the

articles of incorporation or CC&Rs. In the absence of a provision fixing the term of office, the term of office of a director or officer shall be two years.

- c. Term of Office. Each director or officer shall hold office the term of which he is elected or appointed and until his successor shall have been elected or appointed and qualified.
- d. Removal from Office. A director or officer may be removed from office pursuant to any procedure therefore provided in the articles of incorporation or the CC&Rs.
- e. Vacancy. Any vacancy occurring in the Board of Directors and any directorship or office to be filled by reason of an increase in the number of directors may be filled by affirmative vote of a majority of the remaining directors and officers, though less than a quorum of the Board of Directors, unless the articles of incorporation or the CC&Rs provide that a vacancy or directorship so created shall be filled by some other manner, in which case, such provision shall control. A director or officer elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office. Any directorship to be filled by reason of increase in the number of directors may be filled by the Board of Directors for a term of office continuing only until the next election of directors.
- f. Quorum of Directors and Officers. A majority of the number of directors fixed by the CC&Rs, or in the absence of a CC&R fixing the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business, unless otherwise provided in the articles of incorporation or the CC&Rs; but in no event shall a quorum consist of less than one-third of the number of directors so fixed or stated. The act of the majority of the directors and

officers present at a meeting at which a quorum is present shall be the act of the Board of Directors.

- g. **Quorum for a Meeting.** Meetings of the Board of Directors and officers, regular or special, may be held either within or without New Mexico and upon such notice as the CC&Rs may prescribe. Attendance of a director or officer at meeting shall constitute a waiver of notice of the meeting except when a director or officer attends a meeting for the express purpose objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors and officers need be specified in the notice or waiver of notice of the meeting unless required by CC&Rs. Except as otherwise restricted by articles of incorporation or CC&Rs, members of the Board of Directors or any committee designated thereby may participate in a meeting of the board committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time and participation by such means constitute presence in person at a meeting.
- h. **Duties of Directors and Officers.** A director or officer shall perform his duties as a director or officer including his duties as a member of any committee of the board upon which the director or officer may serve, in good faith, in a manner the director or officer believes to be in or not opposed to best interests of the corporation and with such care as an ordinarily prudent person would use under similar circumstances in a like position. In performing such duties, a director or officer shall be entitled to rely on factual information, opinions, reports including financial statements and other

financial data in each case prepared or presented by:

1. One or more officers of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;
2. Counsel, public accountants or other persons as to matters which the director reasonably believes to be within such person's professional or expert competence:
or
3. A committee of the board upon which the director does not serve, duly designated in accordance with a provision of the articles of incorporation or the CC&Rs as to matters within its designated authority, which committee the director reasonably believes to merit confidence, but the director shall not be considered to be acting in good faith if the director has knowledge concerning the matter in question that would cause such reliance to be unwarranted.

i. Officers.

1. The officers of a corporation shall consist of a president, a vice president, a secretary, a treasurer, a water system manager, and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such time and in such manner and for such terms not exceeding three years as may be prescribed in the articles of incorporation or the CC&Rs. All officers shall be elected or appointed annually by the members. Any two or more offices may be held by the same person, except the offices of president and treasurer or secretary.
2. The officers of the corporation may be designated by such additional titles as may be provided in the articles of incorporation or the CC&Rs.

3. Any officer elected or appointed may be removed by the persons authorized to elect or appoint the officer whenever, in their judgment the best interest of the corporation will be served thereby. The removal of an officer shall be without prejudice to the contract rights, if any, of the officer so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

Section 7.6. **Control of the Homeowners Association.** The management and control of the affairs of the Los Pastores Homeowners Association is vested in the duly elected officers and Board of Directors of the Homeowners Association. Members of the Homeowners Association shall have the right to elect members of the Board of Directors and to vote on all other matters properly put before the members, in accordance with the Articles of Incorporation and CC&Rs of the Homeowners Association. All owners are required to pay dues and every owner should be treated equally per its lot designation: vacant or improved.

Section 7.7. **Powers and Duties of the Homeowners Association.** The Homeowners Association shall have such rights, powers and duties as set forth in the Articles of Incorporation and CC&Rs, as the same may be amended from time to time.

Section 7.8. **Personal Liability.** No member of the Board of Directors or any Committee of the Homeowners Association or any of the Officers of the Homeowners Association shall be personally liable to any owner or any other party including the Homeowners Association for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Homeowners Association, the Board of Directors or any other representative or employees of the Homeowners Association unless the director has breached or failed to perform the duties of the director's office in compliance with Section 53-8-25.1 NMSA 1978; provided, however, that such person has, upon the basis of such information may be possessed

by him, acted in good faith, without willful or intentional misconduct.

Section 7.9. **Indemnification of Directors and Officers.** The corporation shall have the power to indemnify any director or officer or former director or officer of the corporation against reasonable expenses, costs and attorneys' fees actually and reasonably incurred by him in connection with the defense of any action, suit or proceeding, civil or criminal, in which he is made a party by reason of being or having been a director or officer. The indemnification may include any amounts paid to satisfy a judgment or to compromise or settle a claim. The director or officer shall not be indemnified if he shall be adjudged to be liable on the basis that he has breached or failed to perform the duties of his office and the breach or failure to perform constitutes willful misconduct or recklessness. Advance indemnification may be allowed of a director or officer for reasonable expenses to be incurred in connection with the defense of the action, suit or proceeding provided that the director or officer must reimburse the corporation if it is subsequently determined that the director or officer was not entitled to indemnification. Each corporation may make any other indemnification as authorized by the articles of incorporation or CC&Rs or by a resolution adopted after notice by the members entitled to vote. As used in this section "director" means any person who is or was a director or officer of the corporation and any person who, while a director of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee or agent of any foreign or domestic corporation or nonprofit corporation, cooperative, partnership, joint venture, trust, other incorporated or unincorporated enterprise or employee benefit plan or trust.

Section 7.10. **Books and Records.** Each corporation shall keep correct and complete books and records of accounts and shall keep minutes of the proceedings of its members, Board of Directors and committees having any of the authority of the Board of Directors. Each corporation shall keep at

its registered office or principal office in New Mexico a record of the names and addresses of its members entitled to vote. All books and records of a corporation may be inspected by any member, or his agent or attorney, for any proper purpose at any reasonable time.

Section 7.11. **Shares of Stock and Dividends Prohibited.** A corporation shall not have or issue shares of stock. No dividend shall be paid and no part of the income, profit or assets of a corporation shall be distributed to its members, directors or officers. A corporation may pay compensation in a reasonable amount to its members, directors or officers for services rendered and may confer benefits upon its members in conformity with its purposes and upon dissolution or final liquidation may make distributions as permitted by the Nonprofit Corporation Act [53-8-1 NMSA 1978].

ARTICLE VIII

LOS PASTORES WATER SYSTEM

Section 8.1. **Water System.** The name under which this Homeowners Association will own and operate the well and water system and conduct business shall be the Los Pastores Water System.

Section 8.2. **Purpose.** The purpose of the Water System is to provide water to the properties of the Los Pastores Homeowners Association.

Section 8.3. **System.** The system shall include all wells, equipment, tanks, a 1/3 undivided interest in the fire protection tanks and supply line, distribution lines, meters, valves, easements, materials, supplies and property which is owned by the Los Pastores Homeowners Association. Said system shall end at the location of the water meter on each lot.

Section 8.4. **Construction.** The system will be owned, operated, maintained and utilized by members of the Los Pastores Homeowners Association.

Section 8.5. **Duration.** The Water System will continue as long as its facilities are used to

supply water to its members unless it is terminated with the consent of all members of the Los Pastores Homeowners Association.

Section 8.6. **Water System Manager.** The Water System Manager will be a member of the Los Pastores Homeowners Association and will be elected at the Annual Meeting or any Special Meeting of the Los Pastores Homeowners Association called for the purpose of electing the Water System Manager. The Water System Manager will be elected by a majority vote of the members attending a meeting where the Water System Manager is to be elected, and each member will be entitled to one vote for each membership which he, she or they own. The Water System Manager may be removed by a vote of a majority of the members at any Meeting or Special Meeting of the Los Pastores Homeowners Association.

Section 8.7. **Duties of the Water System Manager.** The Water System Manager shall carry on the normal business of the Water System and shall be authorized to enter into contracts on behalf of the Los Pastores Homeowners Association and only for the purpose of maintaining or replacing parts of the water system. He or she shall cause all billings, maintain the books and records, make necessary meter readings and perform all the other duties necessary to conduct the business of the Water System. The Water System may require that the Water System Manager be bonded for a sum deemed prudent. The Water System Manager may also be compensated in a manner approved by the membership.

Section 8.8. **Easements.** Each member shall grant the Water System an easement upon and over his or her property for power and water lines, pump stations, storage tanks and the general distribution system necessary to serve the Water System members. In locating the well, pump house and distribution lines, the Water System will try to locate such facilities so that they will not interfere with the member's use of his or her property. Care shall be taken so that the

needs of the Water System and the property owner can be accommodated to the greatest extent possible. Each member agrees that he or she will not place their septic tank or drain field nearer than one hundred feet (100') of any well operated by the Water System.

Section 8.9. **Operating Costs.** Operating costs are those usual normal costs incurred for routine maintenance, utility costs, insurance, supplies, water testing, purification.

accounting, administrative and other miscellaneous expenses. Costs shall be covered by HOA fees, voted on by the membership at the Annual Meeting.

Section 8.10. **Major Maintenance.** Major maintenance are those expenses and costs associated with the replacement of or major repair of any equipment or property of the Water System.

They also include alteration or improvements which might be made to the system. If it becomes necessary to incur such an expense and if such maintenance or repairs are not urgent, the Water System Manager will communicate to all board members of the Los Pastores Homeowners Association advising them of the necessity and expense to be incurred and giving them five (5) days in which to respond. If no response is received within such time, the Water System Manager shall incur such costs and then notify the Board that he or she has incurred such expenses.

Section 8.11. **Limitation of Water Pumped.** It is understood that the Water System is utilizing a well for which the State Engineer's Office has given a domestic well permit. This permit allows and limits the amount of water pumped to three (3) acre feet per year of 977,554 gallons per year. Each member shall therefore be entitled to six tenths (6/10) acre feet per year **per lot** or 195,510 gallons per year, **whichever is the more restrictive.**

Each member shall be limited to a maximum of 160 gallons per day **per person** plus 132 gallons per day for outdoor landscaping. Any member exceeding this allocation may be

subject to restricted consumption to bring the annual usage in line with the entitled amount and the membership may also impose a surcharge not to exceed triple the amount of the current quarterly charges. Due to the arid nature of the land upon which the Water System is located the Water System may place further restrictions on water use to assure the viability of the well.

Section 8.12. **Water Conservation Measures.** The only land use permissible is residential use. Agricultural uses are not permitted. Commercial use is not permitted except home occupations of the lot owner if conducted in the home or studio and in compliance with rules and regulations of any state or local government having jurisdiction over the subdivision. The members of the Water System shall follow water conservation standards required by Appendix A to Land and Subdivision Regulations of Sandoval County, and Section 6 of the Water Conservation and Quantification of Water Demands in Subdivisions: a guidance manual for public officials and developers, Brian C. Wilson, P.E., New Mexico state engineer office, technical report 48, February 1996. Those standards include but not limited to requirements for use of low water plumbing fixtures and appliances and limitations on landscaping.

Section 8.13. **Monitoring Water Use.** To monitor water consumption each shared well will be metered and a meter will be placed on each lot. The Water System shall monitor each user for compliance with restrictions on consumption. The Water System shall assess a penalty for households which exceed the combined indoor and outdoor domestic use. The penalty shall be based on a sliding scale with the penalty becoming more severe the more water is used. Funds collected as penalties shall be placed in the HOA maintenance fund.

Section 8.14. **Ingress and Egress.** The Water System shall have the right of ingress and egress upon any member's property to repair and maintain the Water System. The Water System shall

exercise care in so doing and return the property to as near the same condition as practicable.

ARTICLE IX

ASSESSMENTS

Section 9.1. **Maintenance Fund.** All funds collected by the Association from the regular maintenance charges provided for in this Article, together with all funds collected by the Association from the regular annual maintenance charges imposed on the lots in the Subdivisions by all Supplemental Declarations, shall constitute and be known as the "Maintenance Fund". The Maintenance Fund shall be held, used, and expended by the Association for the common benefit of all members to promote the health, safety, recreation, and welfare of the members, including, without limitation; (1) maintenance and construction of privately maintained roadways, bridges, culverts and related improvements including the entrance road; (2) the installation, construction, erection, and relocation of improvements related to the enhancement and beautification of the Common Properties and Facilities in the Subdivision; (3) funds to support the operation and maintenance of the Water System, and (4) accounting and legal fees, including legal fees incurred by the Association while enforcing the provisions of this Declaration. The Association may, in its sole discretion, give one or more of the purposes set forth in this Section 9.1 preference over other purposes, and it is agreed that all expenses incurred and expenditures and decisions made by the Association in good faith shall be binding and conclusive on all members. All buyers of a lot or home in the Los Pastores subdivision will receive a copy of the CC&Rs, with amendments, at the time of closing or upon written request to the homeowners Association.

Section 9.2. **Covenant for Assessments.** Subject to provisions set forth below in Section 9.3 relating to the rate at which the maintenance charge and assessment imposed herein shall be

paid on unimproved lots, each and every lot in the property is hereby severally subjected to and impressed with a regular annual maintenance charge or assessment in the amount of One Hundred Fifty and no/100 Dollars (\$150.00) per year per lot (herein sometimes referred to as the "full maintenance charge") which charge shall commence on January 1, 2004, and be due and payable on said date and on the first day of January of each year thereafter, and which shall run with the land, and shall be subject to increase and decrease in accordance with the Articles of Incorporation and CC&Rs of the Association.

Section 9.3. **Unimproved Lots.** Notwithstanding the foregoing, each owner shall pay fifty percent (50%) of the then existing full maintenance charge assessment for each lot owned by it, unless and until a **residential structure has been built thereon**. All of the unimproved lot owners shall be obligated to pay maintenance charges as described in this section of the CC&Rs.

Section 9.4. **Duties of the Board of Directors.** The Board of Directors of the Association shall fix the date of commencement and the amount of assessment against each lot or owner for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any owner. Written notice of the assessment shall thereupon be sent to every owner subject thereto. The Association shall, upon demand at any time, furnish to any owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 9.5. **Liens to Secure Assessment.** The regular maintenance charges or assessments, any

applicable special maintenance charge, as hereinabove provided for, and any assessment imposed by the Water System shall constitute and be secured by a separate and valid and subsisting lien, hereby created and fixed, and which shall exist upon and against each lot and all improvements thereon, for the benefit, as appropriate, of the Association, subject to the condition that the Association be made a party to any court proceeding to enforce any lien hereinafter deemed to be superior, the lien hereby created 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 or Contract of Sale, any mortgage or deed of trust filed for record, prior to the date payment of any such charges or assessments become 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 has been made party, shall cut off and extinguish the liens securing maintenance 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 thereafter becoming due and payable, nor shall the liability of any member personally obligated to pay maintenance charges or assessments which become due prior to such foreclosure, be extinguished by any foreclosure.

Section 9.6. **Effect of Non-Payment of Assessment.** If any charge or assessment due the Association is not paid within thirty (30) days from the due date thereof, the same shall bear interest from the due date until paid at eighteen percent (18%) per annum, and, if placed in the hands of an attorney for collection or if suit is brought thereon or if 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, as attorney's fees. The Association as a common expense of all Members, may institute and maintain an action at law or in equity against any defaulting Member to enforce collection and/or for foreclosure of the liens against his lot. All such actions may be instituted and brought in the name of the Association and may be maintained and prosecuted in a like manner as an action to foreclose the lien of a mortgage or deed of trust on real property.

Section 9.7. **Collection and Enforcement.** Each member, 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.

Section 9.8. **Liens to Secure Assessment.** All regular maintenance charges or assessments, any applicable special maintenance charges, and any assessment imposed by the Association, if unpaid, shall constitute a valid lien, and it shall exist upon, and against, and be secured by each lot and all improvements thereon, for the benefit of the Association. Any such lien shall be deemed to be superior or equal to any other lien of any other kind, including mortgage liens. In the event that a property is subject to any judicial foreclosure under any mortgage, deed of trust, or other security instrument the lien of the Association shall become due and payable prior to such foreclosure date, and no such foreclosure shall free any lot from the liens securing assessments thereafter becoming due and payable, nor shall the liability of any member personally obligated to pay maintenance charges or assessments which become due prior to such foreclosure are to be extinguished by any foreclosure.

ARTICLE X

GENERAL PROVISION

Section 10.1. **Cost of Performance.** Cost and expense in performing any obligation or responsibility in this Declaration 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 hereof.

Section 10.2. **Breach not Ground for Rescission.** No breach or continuing breach of the restrictions, covenants, condition, duties or obligations imposed, allowed or granted by this Declaration shall be grounds for cancellation, termination or rescission of this Declaration or of any provision thereof.

Section 10.3. **Notice Before Enforcement.** Except where damage or injury to persons or property is imminent as a result of the performance or failure to perform or the defective performance of any obligation imposed or restricted by this Declaration or where or where animals are involved, no proceeding for the enforcement of the restrictions, covenants, condition, rights and duties of the restrictions, covenants, condition, rights and duties imposed, allowed or granted by this Declaration shall be commenced until ten (10) days written notice of wrongful performance, defective performance or failure of performance is given to the person, association or entity responsible for such performance and such wrongful or defective performance or failure to perform has not been cured with such time. Such notice shall be deemed to be given if deposited in the U.S. Mail, mailed postage prepaid, certified, return receipt requested and said ten (10) days shall commence with the date of posting thereof.

Section 10.4. **Enforcement.** Declarant, ACC, Association or any owner shall have the right to enforce by proceeding, at law or in equity, for damages or for injunction or both, all restrictions, covenants,

conditions, rights and duties imposed, allowed or granted by the provisions of this Declaration. In any such proceedings, the prevailing parties shall be entitled to recover costs and expenses shall be subject to the provisions of Section 10.16. Failure by Declarant, ACC, Association or owner to enforce any restrictions, covenant, condition, duty or right herein contained shall in no event be deemed a waiver of their respective right to do so at a later time.

Section 10.5. **Attachment of Covenant on Resale or Remodel.** This declaration shall attach following the lease or resale of the property or any lot and any remodeling or other alteration of any improvement must be approved by the ACC through the Development Plan process.

Section 10.6. **Deviation from Approved Plan.** All Development Plans approved in writing by the ACC must be complied with strictly and any deviation, change or alternation not in compliance with said plan must be further approved in writing by the ACC. Violation hereof shall be subject to enforcement in accordance with the provisions of this this Declaration.

Section 10.7. **Covenants to Run with the Land.** The restrictions, easements covenants, conditions, rights, and duties of this Declaration shall run with and bind the land within the property, as defined herein, and shall inure to the benefit of the owner of any lot therein, their respective legal representatives, heirs, successors and assigns for a term of twenty (20) years from the date this Declaration is recorded in the real property records of Sandoval County, New Mexico, after which time such restrictions, easements, covenants, condition, rights and duties shall automatically be extended for successive periods of ten (10) years, unless amended, modified or repealed as hereinafter provided.

Section 10.8. **Modification or Repeal During Initial Term.** Any of the provisions of this Declaration may be amended or repealed during the initial twenty (20) year term by a recorded written instrument, executed and acknowledged by Declarant and the owners of not less than

sixty six percent (66%) of the lots.

Section 10.9. **Modification or Repeal During Extension Terms.** Any of the provisions of this Declaration may be amended or repealed during any extension term (10 years) by a recorded written instrument, executed and acknowledged by Declarant and the owners of not less than fifty one percent (51%) of the lots.

Section 10.10. **Severability.** If any provision or provisions of this Agreement are determined to be invalid by any judgment, order or finding of any court or other governmental agency having competent jurisdiction over the Association, then such determination will in no way affect the validity of any other provisions of this Agreement which will remain in full force and effect.

Section 10.11. **Joint and Several Obligations.** The terms of this Declaration in effect on the date of any lease or recording of a sheriff's deed, trustee's deed, deed in lieu of foreclosure, other deed, other order or decree declaring, settling or confirming title, pursuant to which one or more persons, association, or entities becomes a Lessee or an owner as hereinbefore defined, shall be binding upon such Lessee or new owner and such Lessee or new owner shall be jointly and severally liable with his Lessor or the immediate prior owner for any continuing performance, failure of performance or defective performance of any act or obligation restriction or imposed hereunder.

Section 10.12. **Successors.** Deeds of conveyance of any lot may contain the provisions, restrictions, covenants and conditions contained herein by reference to this Declaration; however, whether or not such reference is made in any or all said deeds by becoming an owner as herein defined of any of the property, each such owner, for himself or itself, his or its heirs, personal representative, successors, transferees and assigns, binds himself or itself and such heirs, personal representatives, successors, transferees and assigns, to all the provisions,

restrictions, covenants and conditions now or hereafter imposed by or under the authority of this Declaration and any amendments thereof.

Section 10.13. **Assignment of Rights and Obligations of Declarant.** The rights of Declarant hereunder are fully assignable to any person, association or entity and any and all obligations and duties of Declarant are fully delegable and assignable to any person, association or entity.

Section 10.14. **Word Meanings.** The words such as "herein", "hereafter", "hereof", "hereunder", and "hereinabove" refer to this Declaration as a whole and not merely to a section or paragraph or article in which such words appear unless the context otherwise requires. Singular shall include the plural and the masculine gender shall include the feminine and neuter and vice versa unless the context otherwise requires.

Section 10.15. **Caption and Section Headings.** The captions and headings of various articles, sections, paragraphs or subparagraphs of this Declaration are for convenience only and are not to be considered as defining or limiting in any way the intent of the provisions hereof or thereof.

Section 10.16. **Declarant's Exemption.** Nothing contained in this Declaration shall be construed to prevent the erection and maintenance by Declarant of structures, improvements or signs necessary or convenient to the development, sale, operation or other disposition of the property within the Subdivision.

Section 10.17. **Rentals.** No portion of a lot, other than the entire lot together with the improvements hereon, may be rented or leased and then only to a single family.

Section 10.18. **Resubdivision.** Except as provided in the next following sentence, no lot within the subdivision shall be further subdivided or separated into smaller lots or parcels by any owner, other than Declarant, and no portion of any lot or any easement or any other interest (other than a security interest or a rental or lease) therein shall be conveyed or transferred by

any owner. An owner of a lot greater in size than two (2) acres may, with the written approval of the ACC, subdivide said lot once into not more than two lots each of which after the subdivision is at least equal to one (1) acre size. Declarant reserves the right to change lot lines and resubdivide the property at any time and from time to time, provided that the total number of lots in the subdivision (as initially constituted) shall never exceed thirty (30) lots. Each owner hereby makes, constitutes and appoints Declarant, with full power of subdivision, as his or its lawful attorney-in- fact, with power to execute, acknowledge, file and record with any governmental authority any appropriate documents for the purpose of effecting the subdivision of any lot or portion thereof, in accordance with the terms of this Declaration. The foregoing power (I) is coupled with an interest, (ii) is irrevocable, (iii) shall survive the dissolution of or resignation of Declarant, (iv) may be exercised for each owner individually or by listing all of the owners and executing any instrument with a single signature as attorney-in-fact for all of them, and (v) shall be binding upon all assignees and successors of each owner.

Section 10.19. **Combining of Lots.** An owner of two (2) or more contiguous lots may, with prior written approval of the ACC, combine said lots into one (1) lot. Such combination shall be at the sole expense of said owner. After combination, the resulting lot shall be treated as one (1) lot for all purposes of the Declaration, including voting rights within the Association and resubdivision.

Section 10.20. **Certificate of Compliance of a Structure or an Improvement.** Upon completion of a structure or improvement approved by the ACC and upon written request by the owner of the lot, the ACC shall issue a certificate of Compliance in a form suitable for recordation. The certificate shall identify the lot and the structure or improvement, the use or uses to be conducted thereon the plans and specifications on file with the ACC pursuant to which the structure was erected or improvement was made and shall specify that the structure or improvement complies with the

approved plans and specifications. The certificate shall not be construed to certify the acceptability, sufficiency or approval by the ACC of the actual construction of the structure or improvement or of the workmanship or materials thereof. The owner is hereby notified and shall again be so notified upon issuance of the certificate, that the certificate in no way warrants, except as set forth above, the sufficiency, acceptability or approval of the ACC of the construction, workmanship, materials or equipment of the structure or improvement. Preparation and recordation of such a Certificate shall be at the expense of the owner of the improved lot.

Section 10.21. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and shall be binding upon the parties hereto, their heirs, successors and assigns.

ARTICLE XI

EASEMENTS

Section 11.1. **Existing Easements.** The Subdivision Plats will dedicate for use as such, subject to the limitation set forth therein, certain roadways, streets, rights-of-way and easements shown thereon and such Subdivision Plats will establish dedications, limitations, reservations and restrictions applicable to the property. Further, Declarant and Declarant's predecessors in title may, prior to the property becoming subject to this Declaration, grant, create and dedicate by recorded instrument(s) certain other easements, restrictions, rights-of-way and related rights affecting the property. All dedications, limitations, restrictions and reservations shown on the subdivision plat and all grants and dedications of easements, restrictions, rights-of-way and related rights made by Declarant or Declarant's predecessors in title, prior to the property becoming subject to this Declaration, are incorporated herein by reference and made a part of this Declaration for all purposes as if fully set forth herein and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the property.

Section 11.2. **Changes and Additions.** Declarant reserves the right to make changes in and additions to the above easements and rights-of-way for the purpose of most efficiently and economically installing the improvements. Further, Declarant reserves the right, without the necessity of the joinder of any owner or other person or entity, to grant, dedicate, reserve or otherwise create, at any time or from time to time, rights-of-way and easements for public utility purposes (including without limitations, gas, water, electricity, telephone and drainage (water delivery lines and wells), in favor of any person or entity, along and on either or both sides of any lot line, which such easement shall have a maximum width of seven and one-half (7.5) feet on each side of such lot line.

Section 11.3. **Utility Installation and Maintenance.** There is hereby created an easement upon, across, over and under all of the property for ingress and egress in connection with installing, replacing, repairing and maintaining all utilities, including, but not limited to water, gas, telephones, electricity, cable television and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies, Water System and other entities supplying service to install and maintain pipes, wires, conduits, service lines or other utility facilities or appurtenances thereto on, across and under the 'property within the public utility easements from time to time existing and from service lines situated within such easements to the point of service on or in any structure.

Notwithstanding anything contained in this section, no electrical lines, water lines or other utilities or appurtenances thereto may be relocated on the property until approved by Declarant or the ACC. No overhead wires will be permitted. The utility companies furnishing service shall have the right as necessary to remove trees situated within the utility easements shown on the Subdivision Plat and to trim overhanging trees and shrubs located on portions of the properties abutting such easements.

Section 11.4. **Maintenance of Slopes.** Each owner covenants and agrees to the creation of an

easement to maintain a cut or fill side slope on a lot along any publicly dedicated right-of-way to insure the proper maintenance and drainage of roads in the Subdivision, provided that the owner is requested to do so in writing by the ACC prior to approval by the ACC of the Owners Development Plan.

Section 11.5. **Drainage Easements.** Each owner covenants to provide easements for drainage and water flow as contours of land and the arrangement of Declarant's improvements and improvements approved by the ACC thereon require. Each owner further covenants not to disturb or displace any trees or other vegetation within the drainage easements as defined in this Declaration and shown on the plat. There shall be no development, improvements or structures, temporary or permanent, in any drainage easement, except as approved in writing by the ACC.

Section 11.6. **Easements for Access by Declarant or ACC.** Declarant, the ACC and the Association shall have the right and permanent easement to enter upon any and all lots in the Subdivision for the purpose of maintenance, repair, removal of drainage obstructions and for the inspections as to compliance with these covenants. Declarant, the ACC and the Association shall have the right to enter any lot for the purpose of correcting any violation of any covenant herein.

Section 11.7. **Surface Areas.** The surface of easement areas for underground utility services may be used for planting of shrubbery, trees, lawns or flowers. However, neither Declarant nor any supplier of any utility service using any easement area shall be liable to any owner or to the Association for any damage done by them or either of them or their respective agents, employees, servants or assigns to any of the aforesaid vegetation as a result of any activity relating to the construction, maintenance, operation or repair of any facility in any such easement area.


ARTICLE XII

Section 12.1 **Maintenance of Private Roads and Easements.** All private roads and private easements designated as such on the Plat, as common facilities, shall be maintained totally and perpetually at the expense of the Homeowner's Association pursuant to the maintenance assessments set forth herein.

IN WITNESS WHEREOF, the undersigned, being Declarant herein, has set its hand and seal this 20th day of January, 2024.

DECLARANT:

LOS PASTORES HOMEOWNERS ASSOCIATION

By: 

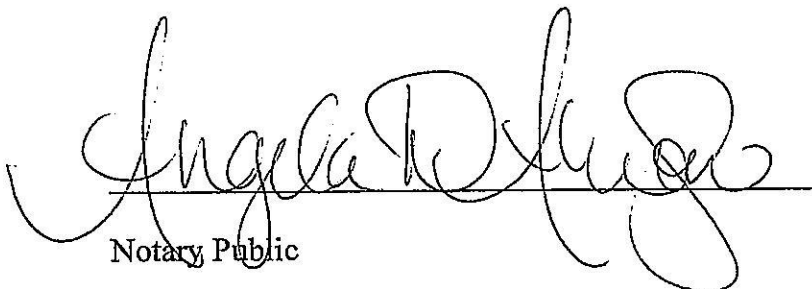
Alexander T. McMahon, President

ACKNOWLEDGEMENT

STATE OF NEW MEXICO

COUNTY OF SANDOVAL

The foregoing instrument was acknowledged before me this 25 day of
January, 2024, by Alexander T. McMahon, President of Los Pastores
Homeowners Association, a New Mexico Nonprofit Corporation, on behalf of said corporation.


Notary Public

My Commission Expires:

12-26-24

STATE OF NEW MEXICO
NOTARY PUBLIC
ANGELA D ARAGON
Commission Number 1079775
My Commission Expires DECEMBER 26, 2024