

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

TUSCAN RIDGE VILLAS



COUNTY OF DONA ANA) DECLARATION OF COVENANT
STATE OF NEW MEXICO) ss PAGES: 33

I Hereby Certify That This Instrument Was Filed for
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Witness My Hand And Seal Of Office,
Lynn J. Ellins, County Clerk, Dona Ana, NM

Deputy

Vanessa Herrera

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
TUSCAN RIDGE VILLAS

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (the "Declaration") is made effective as of the 5th day of February, 2015, by TUSCAN VALLEY PROPERTIES INC.

RECITALS

A. Declarant desires to submit and subject the Property, together with all improvements thereon, and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto, to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights contained herein.

B. Declarant desires that the Property be developed in accordance with the recorded plat and general scheme of development into a residential community, to be known as "TUCAN RIDGE VILLAS".

C. Declarant establishes these covenants, conditions and restrictions upon the Property and each and every portion thereof for the purpose of enhancing and protecting the value of the Property.

D. It is desirable for the management of the Project to create an owners' association to which should be delegated and assigned the powers of managing, maintaining and administering the common areas within the Subdivision and administering and enforcing these covenants, conditions and restrictions and collecting and disbursing funds pursuant to the assessments and charges hereinafter created and to perform such other acts as are herein provided or which generally benefit its members and the owners of any interests therein.

E. TUCAN RIDGE VILLAS, Inc., a nonprofit corporation will be incorporated under the laws of the State of New Mexico.

F. Declarant desires and intends that the owners, mortgagees, beneficiaries and trustees under trust deeds, occupants and all other persons hereinafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interests subject to, the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the Project.

G. Declarant may, but is not obligated to, annex real property to the Parcel in addition to the Parcel, and thereby subject such property to the plan of this Declaration, and to bind the owners of any interests therein to the covenants, conditions and restrictions contained in this Declaration, which owners will become Members of the Association (as hereinafter defined) as provided herein.

NOW, THEREFORE, Declarant, for the purposes above set forth, declares that the Property shall hereafter be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights hereinafter set forth, all of which shall run with the land and be binding upon the Property and all parties having or acquiring any right, title or interest in or to the Property, or any part thereof, and shall inure to the benefit of each owner thereof, the Association and each member of the Association.

1. DEFINITIONS

1.1 "Annexation of Property" means any additional real property, which is annexed to the Parcel, thereby, becoming a part of the Property and subject to this Declaration, in accordance with Section 8, entitled "Annexation of Additional Property".

1.2 "Articles" means the Articles of Incorporation of the Association, as such may be amended from time to time, or of any successor thereto.

1.3 "Assessment" shall mean the amount which is to be paid by each Owner as a member of the Association as such Owner's proportionate share of the common expenses of the Association, as provided below.

1.4 "Association" means Tuscan Ridge Villas Association, Inc., a New Mexico non-profit corporation, its successors and assigns.

1.5 "Association Rules" means the rules and regulations which are adopted by the Association.

1.6 "Board" means the Board of Directors of the Association.

1.7 "Bylaws" means the bylaws of the Association adopted in accordance with the Articles, as such Bylaws may be amended from time to time, or of any successor thereto.

1.8 "Class A Members" means all the Owners who purchase or otherwise acquire a Lot from the Declarant. Class A Members shall have voting rights as provided for in Section 3.3.1.

1.9 "Class B Members" means the Declarant with respect to all the Lots the Declarant owns on the date of the recordation of the Tuscan Ridge Villas Subdivision. To the extent the Declarant becomes an Owner of any Lots after the recordation date of the Tuscan Ridge Villas Subdivision, the Declarant shall be a Class A Member with respect to its ownership of those Lots. Class B Membership shall have voting rights as provided for in Section 3.3.2.

1.10 "Common Areas" means all real property owned by the Association for the common use and enjoyment of the Members or Owners, specifically the private roads and drainage areas. The Common Area shall be for the common use and enjoyment of the members subject to the rules and regulations of the Association.

1.11 "Common Expense" means the actual and estimated costs incurred or to be incurred, as the case may be, by the Association in administering, maintaining and operating the Common Area and includes, maintenance, management, operation, repair, improvements and replacement of the Common Areas, including the Private Roads, drainage areas, and all other areas on the Property which are maintained by the Association.

1.12 "Declarant" means the aforementioned Declarant, its successors and assigns.

1.13 "Declaration" means this instrument, as from time to time amended.

1.14 "Architectural Guidelines" means the rules, regulations, restrictions, architectural standards and design guidelines from time to time adopted by the Architectural Control Committee pursuant to Section 6. Said Architectural Guidelines are attached hereto as Exhibit B and by this reference are made a part hereof.

1.15 "Architectural Control Committee" means the committee provided for in Section 6, entitled "Architectural and Landscape Control".

1.16 "Family" means a single family unit related by blood, adoption, marriage or legal custody.

1.17 "Fiscal Year" means the fiscal year as defined in the Bylaws.

1.18 "Lot" means a subdivided lot which is part of the Property. A "Lot" shall not include any Common Areas. A "Lot" includes the residential dwelling unit, garages, structures and other improvements constructed thereon.

1.19 "Member" means every Person who is a Class A or Class B Member in the Association pursuant to Section 3, entitled "Association".

1.20 "Mortgage" means any recorded, filed or otherwise perfected instrument given in good faith and for valuable consideration which is not a fraudulent conveyance under New Mexico law as security for the performance of an obligation, including without limitation a deed of trust, but shall not include any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code as adopted by the State of New Mexico.

"Mortgagee" means the holder of a note secured by a Mortgage, including the trustee and beneficiary under any deed or trust. "Mortgagor, means the party executing a Mortgage. "First Mortgage" means a Mortgage which is the first and most senior of all Mortgages upon the same property. "First Mortgagee" means the holder of a First Mortgage.

1.21 "Occupant" means any Person, other than an Owner, in rightful possession of a Lot, whether as a guest, tenant or otherwise.

1.22 "Owner" means the record owner, whether one or more Persons, of fee simple title to any Lot, whether or not subject to any Mortgage, but excluding those having such interest merely as security for the performance of an obligation. Where any Lot is sold by means of Articles of Agreement for Deed, Installment Contract or other similar arrangement, the contract purchaser, and not the contract seller, shall be the "Owner".

1.23 "Person" means a natural person, corporation, partnership, trustee or other entity capable of holding title to real property, and their respective heirs, successors and assigns.

1.24 "Plat" means the plat of subdivision of the Property as first recorded in the official records of Dona Ana County, New Mexico, and as thereafter from time to time amended or supplemented, together with all subsequent plats of subdivision for real property annexed to the Property.

1.25 "President" means the duly elected or appointed president of the Association.

1.26 "Private Roads" and "Private Streets" are synonymous and mean any street, roadway, drive, sidewalk, walkway, path or other right of-way within the Project which has not expressly been dedicated to the public use, but excluding any such item which is on or upon a lot.

1.27 "Property" means the Parcel and any additional real property made subject to this Declaration by annexation pursuant to Section 8, entitled "Annexation of Additional Property", together with all buildings, improvements and other permanent fixtures of whatever kind now or hereafter located thereon and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto.

1.28 "Record" or "Recording" means an instrument of record in, or the act of recording an instrument with, the office of the County Recorder for Dona Ana County, New Mexico.

1.29 "Supplemental Declarations" means a declaration of covenants, conditions and restrictions, or similar instrument, annexing additional real property to the Parcel and subjecting such real property to this Declaration as provided in Section 8, entitled "Annexation of Additional Property".

1.30 "Turnover Date" means the date which first occurs: a) conveyance by Declarant of fee simple title to ninety percent (90%) of all Lots; or b) at any such other time as Declarant

may decide.

2. WAIVER

2.1 **Waiver.** No Member or Owner may exempt himself, and no Member or Owners shall be exempt, from personal liability for Assessments or release any lot owned by him from the liens, charges and other provisions of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, by voluntary waiver of, or suspension or restriction of such Owner or Member's right to, the use and enjoyment of the Common Areas or the abandonment of such Owner or Member's Lot or membership.

3. ASSOCIATION

3.1 **Purpose of Association.** The Association has been, or will be, incorporated as a non-profit corporation to serve as the governing body for all of the Owners and Members for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the Subdivision. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Owners and Members in accordance with the provisions of this Declaration, the Articles and the Bylaws.

3.2 **Membership in Association.** Every Owner shall be a Member of the Association and such membership shall automatically terminate when Member ceases to be an Owner. The Declarant shall be a Member of the Association for so long as it is an Owner. Any attempt to make a prohibited transfer of a membership in the Association is void and will not be recognized by or reflected upon the books and records of the Association. Prior to any Owner leasing his Lot, the Owner shall deliver to the Association a copy of the lease. No lease of any Lot shall become effective until such condition is complied with. Upon the effective date of the lease, the lessor shall cease to be and the lessee shall become a Member of the Association. Upon the expiration or other termination of the lease, the lessor or other Owner of the Lot shall become a Member and lessee shall cease to be a Member.

3.3 **Voting Rights:** The Association shall have two classes of voting Members:

3.3.1 **Class A Members.** Each Class A Member shall be entitled to one vote for each Lot which he owns. When any Class A Membership is held in the name of two or more individuals, or entities, whether fiduciaries, joint tenants in common, tenants in partnership or in any other manner of joint or common ownership, such joint owners shall share among them the right to vote, which such right shall be exercised as a whole, and not in part, in the manner which they shall jointly determine; and if such joint Owners fail to determine the manner in which their vote should be cast, their vote shall not be counted. When one joint Owner signs a proxy or purports to vote for his co-Owners, such vote shall be counted and bind all such Owners. The provisions of this paragraph shall apply, insofar as possible, to the execution of proxies, waivers, consents or objections and for the purpose of ascertaining the presence of a quorum.

3.3.2 Class B Members. The Class B Member shall be entitled to three votes for each Lot with respect to which it is an Owner.

3.4 Pledge of Voting Rights. Notwithstanding the foregoing, in the event that an Owner has granted an irrevocable proxy or otherwise pledged the voting right appurtenant to the Membership with respect to his Lot to a Mortgagee as additional security, only the vote of such Mortgagee will be recognized if a copy of such proxy or other instrument pledging such vote has been filed with the Association. In the event that more than one such instrument has been filed, the Association shall recognize the rights of the first Mortgagee to so file, regardless of the priority of the Mortgagees themselves.

3.5 Transfer of Memberships. Except as provided in Section 3.4, Association shall not be transferred, pledged or alienated in any way; provided, however, that Membership shall automatically be transferred to the new Owner (subject to Section 3.2) upon the transfer of the Lot to which it appertains (and then only to such transferee) whether by sale, intestate succession, testamentary disposition, foreclosures of a mortgage or other legal process transferring fee simple title to such Lot.

3.6 Assignment of Declarant's Voting Rights. If any lender to whom the Declarant has assigned, or hereafter assigns, as security all or substantially all of its rights under this Declaration, succeeds to the interests of the Declarant by virtue of said assignment the absolute voting rights of the Declarant as provided in Section 3.3.2 shall be terminated thereby, and such lender shall hold the Declarant's memberships and voting rights on the same terms as they were held by the Declarant pursuant hereto.

3.7 Board of Directors.

3.7.1 The affairs of the Association shall be conducted by a Board as herein provided and in accordance with the Articles and Bylaws. Except for directors elected by the Declarant, each director shall be a Member or the spouse of a Member. If a director shall cease to meet such qualifications during his term, he will thereupon cease to be a director and his place on the Board shall be deemed vacant.

3.8 Duties and Powers of the President.

3.8.1 To the extent not prohibited by law, or as otherwise herein expressly limited, including without limitation Section 3.8.2, the President of the Association shall be empowered to exercise control over the affairs of the Association and to act on behalf of, and bind, the association in every instance wherein the Association is required or permitted to take any action. The action of the President shall at all times be subject to the review of the Board.

3.8.2 Notwithstanding anything in Section 3.8.1 to the contrary, the President shall not have the power to borrow any funds on behalf of the Association, make any expenditures on behalf of the Association which are, in the aggregate, more than 5% in excess of the total amount of the Association's annual budget for the year in which such expenditures are

to be made, or increase the amount of or levy any Assessments (except as Special Assessment), without the prior approval of the Board.

3.8.3 The President may appoint such assistants as he deems necessary or appropriate. No compensation shall be paid to the President or any assistant except as provided in the Association's budget or as otherwise approved by the Board.

3.8.4 Any right or power herein given or delegated to the President which cannot be exercised by the President, whether by reason of law or otherwise, shall be deemed to be a right or power to be exercised by the Board.

3.9 President's Determination Binding. In the event of any dispute or disagreement between any Owners, Members, or any other Person subject to this Declaration, relating to the Project, or any question or interpretation or application of the provisions of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, the determination thereof by the President shall be final and binding on each and of such Owners, Members or Persons. The President may, at his election, delegate the resolution of such dispute or disagreement to the Board or a committee appointed by the President.

3.10 Association Rules. The Board shall be empowered to adopt, amend or repeal such rules and regulations as it deems reasonable and appropriate (the "Association Rules"), and will be binding upon all persons subject to this Declaration and which will govern the use and occupancy of the Common Areas or any other part of the Subdivision.

3.11 Indemnification. To the fullest extent permitted by law, every director and every officer of the Association and the members of the Design Review Committee and the Declarant shall be indemnified by the Association and every other person serving as an employee or direct agent of the Association, or on behalf of the Association as a member of a committee or otherwise may, in the discretion of the board be indemnified by the Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having served in such capacity on behalf of the Association (or in the case of the Declarant without limitation by reason of having appointed, removed or controlled or failed to control members of the Board or the Design Review Committee) or any settlement thereof, whether or not he is a director, officer or member of the Design Review Committee or serving in such other specified capacity at the time such expenses are incurred, provided that the Board shall determine, in good faith, that such officer, director, member of the Design Review Committee or other person, or the Declarant did not act, fail to act, or refuse to act willfully or with gross negligence or fraudulent or criminal intent in the performance of his duties. The foregoing rights or indemnification shall be in addition to and not exclusive of all other rights to which such persons may be entitled at law or otherwise.

3.12 Non-Liability of Officials. To the fullest extent permitted by law, neither Declarant, the Board, its Officers, the Architectural Control Committee, or any other committee of the Association nor any member thereof, shall be liable to any Member, Owner, Occupant, the Association or any other Person for any damage, loss suffered or claimed on account of any

decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, inaction, omission, error, negligence or the like made in good faith and which Declarant, the President, the Board, or such committees or persons reasonably believed to be within the scope of their respective duties.

3.13 Easements. The Association is authorized and empowered to grant upon, across or under real property owned or controlled by the Association such permits, licenses, easements and rights-of-way for sewer lines, water lines, underground conduits, storm drains, television cable and other similar public or private utility purposes, roadways or other purposes as may be reasonably necessary and appropriate for the orderly maintenance, preservation and enjoyment of the Common Areas or for the preservation of the health, safety, convenience and welfare of the Owners and Members, provided that any damage to a Lot resulting from such grant shall be repaired by the Association at its expense.

3.14 Accounting. The Association at all times shall keep or cause to be kept true and correct records of account in accordance with generally accepted accounting principles and shall have available for the inspection of all Owners and Members at reasonable times during Regular business hours such books which shall specify in reasonable detail all expenses incurred and funds accumulated from Assessments or otherwise.

3.15 Records. The Association shall, upon reasonable written request and during reasonable business hours, make available for inspection by each Owner and Member the books, records and financial statements of the Association together with current copies, as amended from time to time, of this Declaration and the Articles, Bylaws, Association Rules, and Design Guidelines. Notwithstanding the foregoing to the contrary, until the Turnover Date, the Association shall not be required to make its books and records available for inspection except as required by law. The Declarant shall be under no obligation to make its own books and records available for inspection by any Owner, member or other person or entity.

3.16 Managing Agent. All powers, duties and rights of the Association, the President or the Board, as provided by law and herein, may be delegated to a managing agent under a management agreement provided, however, that no such delegation shall relieve the Association of its obligation to perform any such delegated duty. Any agreement for professional management or any other contract providing for services of the Declarant or any other party, shall not exceed a term of three years, which term may be renewed by agreement of the parties thereto for successive one-year periods, and shall further provide for termination by either party with or without cause and without payment of a termination fee upon 90 days written notice.

3.17 Declarant's Control of Association. Notwithstanding anything in this Declaration to the contrary, the Declarant shall maintain absolute control over the Association, including appointment of the President, the members of the Board, and the members of the Architectural Control Committee and any divisions concerning the amount of monthly assessments until the Turnover Date. On the Turnover Date, or as soon thereafter as is practical, the Declarant will relinquish control of the Association to the other Members and the Members shall hold their first annual meeting as provided in the Bylaws.

4. ASSESSMENTS.

4.1 **Creation of Lien and Personal Obligation.** Each Owner, by acceptance of a deed or other conveyance of an interest in a Lot, and by acceptance of his membership, is deemed to covenant and agree to pay to the Association all assessments to be established and collected from time to time as provided in this Declaration. The Assessments, together with interest thereon, late charges, attorney's fees and court costs, and other costs of collection thereof, as hereinafter provided, shall be a continuing lien upon such Owner's Lot (or combined Lots) against which the Assessments are made. Each Assessment, together with such interest and other costs, shall also be the personal obligation of the Owner to whom such Assessment relates. The personal obligation for delinquent payments shall not pass to an Owner's successor unless expressly assumed by him. The obligation of the Owner of the Lot to which such membership pertains for the payment of Assessments shall be joint and several.

4.2 **Purpose of Assessments.** The Assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the Owners and Members, to enhance the quality of life within the Project, to preserve the value of the Property, to pay the costs of administration of the Association and all other Common Expenses, or to otherwise further the interests of the Association. The main purpose of Assessments is to fund repair of private roads within the subdivision, and fund repair and upkeep of drainage ways and ponding areas.

4.3 **Assessments.** Except as otherwise specifically provided herein, each Owner shall pay as his Assessment such Owner's Proportionate share of the Common Expenses. Except as otherwise specifically provided herein, payment of Assessment shall be in such amounts and at such times as may be provided in the Articles and Bylaws or as determined by the Association. The initial assessment for each lot will be \$40.00 per month and may be adjusted to meet reasonable Common Area expense from time to time. Members will be notified of any change in assessment.

4.4 **Date of Commencement of Assessments.** The Assessments shall commence as to each particular Owner on the first day of the month following the date of conveyance to the Owner of the Lot to which the Regular Membership pertains.

4.5 **Time and Manner of Payment; Late Charges and Interest.** Assessments shall be due and payable by the Owner in such manner and at such times as the Association shall designate. If not paid within ten days after its due date, each such Assessment shall have added to it a late charge equal to 15% of the amount delinquent. The Association may, in its discretion and without waiving the imposition of a late charge in any other instance, waive the late charge in any particular instance. A delinquent Owner shall also be liable for attorney's fees and other related costs incurred by the Association as a result of such delinquency, and if any suit, or arbitration proceeding is brought to collect any such Assessment of charge, then there shall be added to the amount thereof costs of suit and reasonable attorney's fees to be fixed by the court and included in any judgment or award rendered thereon.

4.6 **No Offset.** All Assessments shall be payable in the amount specified in the

Assessment or notice of Assessment and no offsets against such amount shall be permitted by any reason, including, without limitation, a claim that (a) the Association, the Board, the President or the Declarant is not properly exercising its duties and powers as provided in this Declaration; (b) Assessments for any period exceed Common Expenses; or (c) a Member has made, and elects to make, no use of the Common Areas.

4.7 **Homestead Waiver.** Each Owner, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, the benefit of any homestead or exemption laws of the State of New Mexico now in effect, or in effect from time to time hereafter.

4.8 **Certificate of Payment.** Any person or entity acquiring an interest in any Lot shall be entitled to a certificate from the Association setting forth the amount of due but unpaid Assessments relating to such Lot, if any, and such person shall not be liable for, nor shall any lien attach to the Lot in excess of, the amount set forth in the certificate, except for Assessments which occur or become due after the date thereof and any interest, costs, attorneys' fees, and any late charges related to such Assessments. Nothing herein shall be construed as requiring that the Association take any action required hereunder in any particular instance, but the failure of the Association to take such action at any time shall not constitute a waiver of the right to take such action at a later time or in a different instance.

4.9 **Enforcement of Lien.** The lien provided for in this Section 4 may be foreclosed by the Association in any manner provided or permitted for the foreclosure of realty mortgages or deeds of trust in the State of New Mexico.

4.10 **Pledge of Assessment Rights as Security.** The Association shall have the power to pledge the right to exercise its Assessment powers and rights provided for in this Declaration as security for any obligation of the Association, provided, however, that any such pledge shall require the prior affirmative vote or written consent of a majority of all Class A Members. The Association's power to pledge its Assessment powers shall include, but not be limited to, the ability to make an assignment of Assessments which are then payable to, or which will become payable to, the Association, which assignment may then be presently effective but shall allow said Assessment to continue to be paid to the Association and be used by the Association as set forth in this Declaration, unless and until the Association shall default on its obligation secured by said assignment.

4.11 **Exemption of Unsold Lots.** Notwithstanding anything in this Section 4 to the contrary, prior to the Turnover Date, no Assessments shall be levied upon any Lot owned by the Declarant, or an affiliate of the Declarant or any partner (or such partner's successors, heirs or devisees) of the Declarant to whom the Lot has been distributed by the Declarant (as distinguished from having been purchased by the partner), or by Declarant for any of the aforesaid persons, until such Lot has been conveyed by the Declarant (or said affiliate or partner) to a non-affiliated purchaser thereof or Declarant leases such Lot.

5. MAINTENANCE, REPAIRS, AND REPLACEMENTS.

- 5.1 Owners Responsibility. Each Owner shall furnish and be responsible for, at his own expense, all of the maintenance, repairs and replacements within his own Lot.

6. ARCHITECTURAL AND LANDSCAPE CONTROL.

6.1 Appointment of Architectural Control Committee. The Association shall have an Architectural Control Committee consisting of not less than one nor more than three persons as specified from time to time by resolution of the Board. The Declarant shall initially appoint the member of the Committee who is Dan Brown. The Declarant shall retain the right to appoint all members of the Committee until the Turnover Date. Thereafter, members of the Committee shall be appointed by the Board.

6.2 Architectural Guideline. The Committee shall establish reasonable procedural rules, regulations, restrictions, architectural standards and design guidelines (the "Architectural Guidelines"), which the Committee may, from time to time in its sole discretions, amend, repeal, or augment. A copy of the current Architectural Guidelines shall at all times be a part of the Association's records. The Architectural Guidelines may include, among other things, those restrictions and limitations set forth below:

6.2.1 Time limitation for the completion, within specified periods after approval, of the improvements for which approval is required pursuant to the Architectural Guidelines.

6.2.2 Designation of a "building envelope" within a Lot, thereby establishing the maximum developable area of the Lot.

6.2.3 Conformity of completed improvement to plans and specifications approved by the Architectural Control Committee; provided however, as to purchasers and encumbrancers in good faith and for value, unless notice of non-completion or nonconformance identifying the violating Lot and specifying the reason for the notice, executed by the Architectural Control Committee, shall be recorded with the County Recorder of Dona Ana County, New Mexico, and given to the Owner of such Lot within one year of the expiration of the time limitation described in Section 6.2.1 above, or, if later, within one year following completion of the improvement, or unless legal proceedings shall have been instituted to enforce compliance or completion within said one-year period, the completed improvements shall be deemed to be in compliance with plans and specifications approved by the Architectural Control Committee and in compliance with the architectural standards of the Association and this Declaration, but only with respect to purchasers and encumbrancers in good faith and for value.

6.2.4 All front yards must be landscaped subject to plans and have to be

submitted to Architectural Control Committee with the express consent of the Committee.

6.2.5 Residential structures built in Tuscan Ridge Villas shall be built with a minimum of 900 square feet of living space. Living space shall not include garages, porches, patios, exterior storage areas, or similar improvements.

6.2.6 Such other limitations and restrictions as the Board or Committee in its reasonable discretion shall adopt, including, without limitation, the regulation of all landscaping, construction, reconstruction, exterior addition, change or alteration to or maintenance of any building, structure, wall or fence, including, without limitation, the nature, kind, shape, height, materials, exterior color, surface texture, and location of any such improvement.

6.3 General Provisions:

6.3.1 The Architectural Control Committee may assess reasonable fees in connection with its review of plans and specifications.

6.3.2 The Committee may delegate its plan review responsibilities, except final review and approval as may be required by the Architectural Guidelines, to one or more of its members or architectural consultants retained by the Committee. Upon such delegation, the approval or disapproval of plans and specifications by such member or consultants shall be equivalent to approval or disapproval by the entire Committee.

6.3.3 The address of the Committee shall be the address established for giving notice to the Association, unless otherwise specified in the Architectural Guidelines.

6.3.4 The establishment of the Architectural Control Committee and the procedures herein for architectural approval shall not be construed as changing any rights or restrictions upon Owners to maintain or repair their Lots as may otherwise be specified in this Declarant, the Bylaws, or Association Rules.

6.3.5 The Committee shall approve or disapprove any plans and specifications submitted to it in accordance with the Architectural Guidelines within such period as may be specified in the Architectural Guidelines.

6.4 Approval and Conformity of Plans. No building, fence, wall or other structure or improvement of whatever type shall be commenced, erected or maintained upon the Property, nor shall there be any addition to or change to the exterior of any residence or other structure or improvement upon a Lot or the landscaping, grading or drainage thereof, including, without limitation, the painting (other than painting with the same color of paint as previously existed; provided such color had been approved by the Architectural Control Committee) of exterior walls, patio covers and fences, except in compliance with plans and specifications therefore which have been submitted to and approved by the Architectural Control Committee in accordance with the Architectural Guidelines as to harmony of external design and location in relation to surrounding structures and topography.

6.5 Non-Liability for Approval of Plans. Plans and specifications shall be approved by the Committee as to style, exterior design, appearance and location, and are not approved for engineering design or for compliance with zoning and building ordinances, and by approving such plans and specifications neither the Committee, the members thereof, the Association, any Member, its officers, the Board nor the Declarant assumes any liability or responsibility therefore, or for any defect in any structure constructed from such plans and specifications.

6.6 Inspection and Recording of Approval. Any member or authorized consultant or representative of the Committee, or any authorized officer, director, employee or agent of the Association, may at any reasonable time enter, without being deemed guilty of trespass, upon any Lot after reasonable notice as provided hereinto the Owner in order to inspect improvements constructed or being constructed on such Lot to ascertain that such improvements have been or are being built in compliance with the Architectural Guidelines and this Declaration.

6.7 Additional Powers of the Board. The Board may promulgate as a part of the Architectural Guidelines such additional architectural and landscape standards, rules and regulations as it deems to be appropriate and as are not in conflict with this Declaration.

7. USE AND OCCUPANCY RESTRICTIONS.

7.1 Residential Use. Each Lot may be used only for residential purposes and none other. No business or commercial building may be erected on any Lot and no business or commercial enterprise or other non-residential use may be conducted on any part thereof. No temporary buildings, structures or trailers may be erected, placed or maintained on any Lot except as expressly permitted by, and in compliance with, the Architectural Guidelines.

7.2 Signs. No sign of any kind shall be displayed to the public view or from any Lot or any Common Areas without the approval of the Association or the Architectural Control Committee except: a) such signs as may be used by Declarant in connection with the development and sale of Lots in the Project; b) such signs as may be required by legal proceedings, or the prohibition of which is precluded by law; or, c) such signs as may be required for traffic control and regulation of Common Areas. No "For Sale" or "For Rent" sign may be posted on any Lot, provided, however, an Owner may, in accordance with applicable provisions of the Association Rules, be permitted to post on "For Sale" or "For Rent" notice in a form approved by the Board in a location specified for that purpose by the Board.

7.3 Animals. No animals, including horses or other domestic farm animals, fowl or poisonous reptiles of any kind may be kept, bred, or maintained in or upon any Lot or in or upon any Common Area, except a reasonable number of commonly accepted household pets in accordance with the Association Rules. No animals shall be kept, bred or raised within the Project for commercial purposes. In no event shall any domestic pet be allowed to run free away from its owner's lot without a leash, or so as to create a nuisance.

7.4 Nuisances. No owner shall permit or suffer anything to be done or kept about or within his Lot, or on or about the Property, which will obstruct or interfere with the rights of other Owners, Occupants or Persons authorized to use and enjoy the Common Areas, or annoy them by unreasonable noises or otherwise, nor will Owner commit or permit any nuisance or commit or suffer any illegal act to be committed thereon. Each Owner or Member shall comply with the Association Rules, the requirements of all health authorities and other governmental authorities having jurisdiction over the Property.

7.5 Boats and Motor Vehicles. Except as specifically permitted by the Association Rules, a) no boats, trailers, buses, motor homes, campers or other vehicles shall be parked or stored in or upon the Common Areas or upon a Lot except within an enclosed garage as permitted by the Architectural Guidelines, b) no vehicle shall be repaired or rebuilt in any Lot or upon the Common Areas, and c) nothing shall be parked on the Private Streets except in such parking areas as may be designated by the Association. The Association may remove or cause to be removed, any unauthorized vehicle at the expense of the owner thereof in any manner consistent with law.

7.6 Lights. No spotlights, flood lights, or other high intensity lighting shall be placed or utilized upon any Lot which in any manner will allow light to be directed or reflected on the Common Area or any part thereof, or any other Lot, except as may be expressly permitted by the Association Rules or the Architectural Guidelines.

7.7 Antennas. No radio, television or other antennas of any kind or nature, or device for the reception or transmission of televisions (except small television reception dishes), radio, microwave or other similar signals, shall be placed or maintained upon any Lot except as may be permitted by the Association Rules or in accordance with the Architectural Guidelines.

7.8 Garbage. No garbage container, garbage, or trash shall be kept, maintained or contained on any Lot so as to be visible from another Lot or the Common Areas. No incinerators shall be kept or maintained on any Lot. No refuse pile, garbage or unsightly objects shall be allowed to be placed, accumulated or suffered to remain anywhere on a Lot.

7.9 Mining. No portion of the Property shall be used in any manner to explore for or remove any oil or other hydrocarbons or minerals of any kind or earth substance of any kind.

7.10 Safe Condition. Without limiting any other provision in this Section, each owner shall maintain and keep his Lot at all times in a safe, sound and sanitary condition and repair and shall correct any conditions or refrain from any activity which might interfere with the reasonable enjoyment by other owners of their respective Lots or the Common Areas.

7.11 Fire. Other than barbecues, in properly constructed barbecue pits or grills, and fire pits in compliance with the Association Rules and the Architectural Guidelines, or as otherwise expressly permitted in the Association Rules, no open fires shall be permitted on the Lots nor shall any other similar activity or condition be permitted.

7.12 **Clothes Drying Area.** No portion of any Lot shall be used as a drying or hanging area for laundry of any kind, it being the intention hereof that all such facilities shall be provided within the buildings to be constructed on each Lot.

7.13 **No Further Subdivision: Compounds.** No Lot shall be replatted, divided or subdivided. A Person may own more than one Lot, but may not combine contiguous Lots into a single home site without the prior approval of the Architectural Control Committee. The Owners of contiguous Lots may not construct common recreational facilities on such Lots.

7.14 **No Obstruction to Drainage.** No Owner shall erect, construct, maintain, permit or allow any fence or other improvement or other obstruction which would interrupt the normal drainage of the land nor shall any Owner erect, construct, maintain, permit nor allow any fence or other improvement or other obstruction within any area designated on a Plat, or other binding document, as a "drainage easement", except that, with the prior consent of the Architectural Control Committee and any governing local municipal authority, if any, non-permanent structures, including fences, may be erected in those areas which contain only underground closed conduit storm drainage facilities.

7.15 **Rental of Lots.** An Owner who leases his Lot to any Person shall be responsible for assuring compliance by his lessee with all of the provisions of this Declaration, the Articles, Bylaws, Association Rules or Architectural Guidelines, all as amended and supplemented from time to time, and shall be jointly and severally responsible for any violations by his lessee thereof.

7.16 **Enforcement.** The Association or its authorized agents may enter any Lot in which a violation of these restrictions exists and may correct such violation at the expense of the Owner of such Lot. Such expenses, and such fines as may be imposed pursuant to the Bylaws, Association Rules or Architectural Guidelines, shall be a Special Assessment secured by a lien upon such Lot. All rights and remedies available at law or equity shall be available in the event of any breach by any Owner, Member, Occupant or other Person of any provision of this Section.

8. ANNEXATION OF ADDITIONAL PROPERTY.

Additional real property may be annexed to and become subject to this Declaration.

9. EXEMPTION OF DECLARANT FROM RESTRICTIONS

Notwithstanding anything contained in this Declaration or in the Association Rules to the contrary, none of the restrictions contained in this Declaration shall be construed or deemed to limit or prohibit any act of Declarant, its employees, agents and subcontractors, invitees or parties designated by it in connection with the construction, completion, sale or leasing of the Lots, Common Areas or the Property, including without limitation, the use of the Common Areas by any of the foregoing.

10. REMEDIES

10.1 **General Remedies.** In the event of any default by any Owner, Member, Occupant or other Person under the provisions of this Declaration, the Articles, Bylaws, Association Rules or Architectural Guidelines, the Association, or its successors or assigns, or its agents or the Declarant, shall have each and all of the rights and remedies which may be provided for in this Declaration, the Articles, Bylaws, Association Rules or Architectural Guidelines, or which may be available at law or equity, and may prosecute any action or other proceedings against such defaulting Owner, Member, Occupant or other Persons for an injunction, whether affirmative or negative, or for enforcement or foreclosure of the lien herein provided and the appointment of a receiver for the Lot, or for damages or specific performance, or for judgment for payment of money and collection thereof, or the right to take possession of the Lot and to rent the Lot and apply the rents received to payment of unpaid Assessments and interest accrued thereon, and to sell the same as hereinafter in this Section provided, or for any combination of remedies or for any other relief, all without notice and without regard to the value of the Lot or the solvency of such Owner or Member. The proceeds of any such rental or sale shall first be paid to discharge court costs, other litigation costs, including without limitation reasonable attorney's fees, and all other expenses of the proceeding and sale, and all such items shall be taxed against the defaulting Owner in a final judgment. Any balance of proceeds after satisfaction of such charges and any unpaid Assessments hereunder or any liens shall be paid to the Owner. Upon the confirmation of the sale, the purchaser thereupon shall be entitled to a deed to the Lot and to immediate possession of the Lot and may apply to the court for a writ of restitution for the purpose of acquiring such possession, and it shall be a condition of any such sale, and the judgment shall so provide, that the purchaser shall take the interest in the property sold subject to this Declaration.

10.2 **Expenses of Enforcement.** All expenses of the Association or the Declarant, or other Person granted rights of enforcement hereunder, in connection with any action or /proceeding described or permitted by this Section 9, including court costs and reasonable attorney's fees and other fees and expenses, and all damages, liquidated or otherwise, shall be charged to and assessed against such defaulting Owner or other Person and shall be a Special Assessment against such Owner or other Person and the Association shall have a lien as provided in Section 4 therefore.

10.3 **Right to Cure.** In the event of any default by any Owner or other Person, the Association and the Declarant and the manager or managing agent of the Association, if so authorized by the President, shall have the authority to correct such default and to do whatever may be necessary for such purpose and all expenses in connection therewith shall be charged to and assessed against such defaulting Owner or other Person as a Special Assessment, which shall constitute a lien against the defaulting Owner's Lot as provided in Section 4. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Association or the Declarant.

10.4 **Legal Action.** In addition to any other remedies available under this Section if any Owner (either by his conduct or by the conduct of any Occupant of his Lot or family member, guest, invitee or agent) shall violate any of the provisions of this Declaration, or the Articles, Bylaws, Association Rules or Architectural Guidelines, as then in effect, then the

Association, the Declarant or any affected or aggrieved Owner, shall have the power to file an action against the defaulting Owner for judgment or injunction against the Owner requiring the defaulting Owner to comply with the provisions of this Declaration, or the Articles, Bylaws, Association Rules or Architectural Guidelines, and granting other appropriate relief, including money damages.

10.5 Effect on Mortgage. Anything to the contrary herein notwithstanding, any breach of any of the covenants, restrictions, reservations, conditions and servitude provided for in this Declaration, or any right of reentry by reason thereof, shall not defeat or adversely affect the lien or any Mortgage upon any Lot but, except as herein specifically provided, each and all or said covenants, restrictions, reservations and conditions shall be binding upon and effective against any lessee or Owner of a Lot whose title thereto is acquired by foreclosure, trustee's sale, sale, deed in lieu of foreclosure or otherwise.

10.6 Limitations on Declarant's Liability. Notwithstanding anything to the contrary herein, it is expressly agreed that neither the Declaring (including without limitation any assignee of the interest of the Declarant hereunder) nor any partner of Declarant (or of any such Assignee) shall have any personal liability to the Association, or to any Owner or other Person, arising under, in connection with, or resulting from (including without limitation resulting from action or failure to act with respect to) this Declaration except, in the case of the Declarant (or its assignee to the extent of its interest in the Property, and in the case of a partner of the Declarant or of any such as assignee), his interest in the Declaring (or such assignee), and in the event of a judgment against the Declaring (or any partner or assignee thereof), no execution or other action shall be sought or brought thereon against any other assets, nor be a lien upon such other assets, of the judgment debtor.

11. AMENDMENT.

11.1 Amendment to Declaration. Amendments to this Declaration shall be made by an instrument in writing entitled "Amendment to Declaration" which sets forth the entire amendment. Except as otherwise specifically provided for in this Declaration, any proposed amendment must be approved by a majority of the Board prior to its adoption by the Members. After having been so approved, amendments may be adopted at a meeting of the Members upon the approval thereof of two-thirds of all of the Members or without any meeting of all Members having been duly notified and if two-thirds of all of the Members consent in writing to such amendment. In all events, the amendment when adopted shall bear the signature of the President of the Association and shall be attested by the Secretary, who shall state whether the amendment was properly adopted, and shall be acknowledged by them as officers of the Association. Amendments once properly adopted shall be effective upon recording of the Amendment to Declaration in the same governmental offices where this Declaration shall have been recorded and in such other governmental offices as shall be required by law.

11.2 Effect of Amendment. It is specifically covenanted and agreed that any amendment to this Declaration properly adopted will be completely effective to amend any and all of the covenants, conditions, and restrictions contained herein which may be affected and any or all clauses of this Declaration or the Plat, unless otherwise specifically provided in the Section

being amended or the amendment itself.

11.3 Amendment of Plat. Except as otherwise provided herein, the Plat may be amended by revised versions or revised portions thereon referred to and described in an amendment to this Declaration adopted as provided for herein. Copies of any such proposed amendment to the Plat shall be made available for the examination of every Owner at the offices of the Association during reasonable times. Such amendment to the Plat shall be effective, once properly adopted, upon recordation in the appropriate governmental offices in conjunction with the Declaration amendment.

11.4 Required Approvals. Notwithstanding the provisions of the foregoing sections of this Section 11:

(a) If this Declaration or any applicable provision of law requires the consent or agreement of all Members and/or all Owners and/or all lien holders and all trustees and/or beneficiaries under trust deeds, or a specified percentage thereof, for any action specified in this Declaration, then any instrument changing, modifying or rescinding any provision of this Declaration with respect to such action shall be signed by all Owners and/or all the Members and/or all lien holders and trustees and/or beneficiaries under trust deeds, or the specified percentage thereof, as required by this Declaration or by said law.

(b) Until the Turnover Date, neither this Declaration nor the Plat may be amended by the Members without the written consent of the Declarant, which may be withheld for any reason, or for no reason.

11.5 Declarant's Right to Amend. Notwithstanding any other provision of this Section 11, until the Turnover Date, the Declarant reserves the right to amend this Declaration without the approval of the Board or the Members.

12. GENERAL PROVISIONS

12.1 Notices. Notices provided for in this Declaration, or the Bylaws or Association Rules, shall be in and shall be addressed to the Association at the following address: PO Box 981 Santa Teresa, New Mexico, 88008. The Association may designate a different address or addresses for notice by giving written notice of such change of address to all Owners at such time. All notices to Owners shall be to their respective Lots or to the last address shown on the records of the Association. Any Owner may designate a different address or addresses for notices to him by giving written notice of his change of address to the Association. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail, return receipt requested or when delivered in person with written acknowledgment of the receipt thereof.

12.2 Severability. If any provision of this Declaration, the Articles, Bylaws, Association Rules or Architectural Guidelines, or any section, clause, sentence, phrase or word,

or the application of any such provision section, sentence, clause, phrase or word in any other circumstances, shall not be affected thereby, and the remainder of this Declaration, the Articles, Bylaws, Association Rules, or Architectural Guidelines shall be construed as if such invalid part were never therein.

12.3 **Rule Against Perpetuities.** If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue until 21 years after the death of the survivor of the now living descendants of the President of the United States, George W. Bush.

12.4 **Mortgage of Lots.** Each Owner shall have the right, subject to the provisions hereof, to make separate Mortgages for his respective Lot. No Owner shall have the right or authority to make or create or cause to be made or created any Mortgage, or other lien or security interest, on or affecting the Property or any part thereof, except only to the extent of his Lot.

12.5 **Power of Attorney.** Whenever the Association is granted rights, privileges or duties in this Declaration, the President shall have the authority to act for the Association, unless such right and power is herein expressly reserved to the Board. Further, unless otherwise specifically restricted by the provisions of this Declaration, wherever the Association is empowered to take any action or do any act, including but not limited to action or acts in connection with the Common Areas or sale thereof, which may at any time be deemed to require the act of an Owner or Member, the Owners and Members and each of them hereby constitute and appoint the Association as their attorney-in-fact, as may be appropriate, for the purposes of taking such action or doing such acts including but not limited to executing, acknowledging and delivering any instruments or documents necessary, appropriate or helpful for such purposes. It is acknowledged that this power of attorney is irrevocable and coupled with an interest and by becoming a Member of the Association or by the acceptance of a deed for a Lot or by signing a contract for purchase of a Lot or by succeeding in any other manner to the ownership of a Lot, or any interest therein, or a Membership in the Association, each Owner shall be deemed and construed to have ratified and expressly granted the above power of attorney.

13. RIGHTS AND OBLIGATIONS

Each grantee of Declarant, by the acceptance of a deed of conveyance, or each purchaser under any contract for such deed of conveyance, or each purchaser under any agreement of sale, or each Person acquiring a Membership in the Association, and the heirs, successors and assigns of the foregoing persons, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and equitable servitude, and shall bind any Person having at any time any interest or estate in said land, and shall inure to the benefit of any such Person in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance, purchase contract or instrument evidencing or creating such interest.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed.

TUSCAN RIDGE VILLAS

TUSCAN VALLEY PROPERTIES, INC.

BY: [Signature]
Dan Brown President

SUBSCRIBED and sworn to before me on this 9th day of February, 2015

Shawna C. Blount
Notary Public
State of New Mexico



OFFICIAL SEAL
SHAWNA C. BLOUNT
NOTARY PUBLIC - STATE OF NEW MEXICO

My commission expires: 4/18/15

ARCHITECTURAL GUIDELINES

TUSCAN RIDGE VILLAS

ARCHITECTURAL GUIDELINES

FOR

TUSCAN RIGE VILLAS

These Architectural Guidelines are effective as of January 1, 2014. They are promulgated pursuant to Section 6.2 of the Declaration of Covenants, Conditions and Restrictions for Tuscan Ridge Villas.

1. GUIDELINES BINDING

These Guidelines are binding upon all persons who at any time construct, alter or make any improvements upon the property or make any change in any existing service, drainage, or plant life thereof. These Guidelines are administered and enforced by the Architectural Control Committee in accordance with the Declaration and the procedures herein. These Guidelines may be amended from time to time, and it is the responsibility of each Owner or other person to obtain a copy of the most recently revised Guidelines.

2. LANSCAPE AND ARHITECTURAL STANDARDS

2.1.1 Lot Restrictions. No more than one single family residence together with a garage and such accessory buildings as shall be permitted by the Architectural Control Committee may be constructed on any Lot. No multi-family residences or any building used for non-residential purposes shall be permitted.

2.1.2 Parking Spaces. Each lot shall contain parking space for at least two automobiles in an enclosed garage either attached to or detached from the main structure of the residence. Additional parking is encouraged to accommodate guest parking. No overnight on-street parking will be permitted.

2.1.3 No Visible Storage Tanks. All fuel tanks, water tanks, or storage facilities shall either be constructed or shielded from view by walls or structures, or shall be installed or constructed underground.

2.1.4 Site Drainage and Grading. Lots must be landscaped with erosion control vegetation within 60 days of being cut or filled. Lot grading shall conform to the County and City of Sunland Park approved grading and drainage plan. Site grading shall not cause storm water to flow to the adjoining lots, or open spaces unless lot or open spaces are designated as ponding area or drainage easement.

2.1.5 Setbacks. Lots shall have a minimum twenty foot (20) front and fifteen (15) foot rear setback from the property line or any street. Side yards shall have a setback of five (5) feet on each side measured at the front setback line. Corner lots shall have a minimum ten (10) foot side setback from the corner measured at the front setback line and a five (5) foot side setback from the neighboring property.

2.1.6 Natural Drainage. Natural drainage ways should not be obstructed, and improvements on grade should be sited to avoid obstruction .

Control Committee.

2.1.7 **Swimming Pools.** Swimming pools are allowed but may not be constructed above ground level. All improvements must be constructed according to laws, ordinances and regulations of applicable municipalities.

2.1.8 **Signage.** No signage will be permitted, except temporary construction signs, real estate signs, or others as permitted by the Declarations and approved by the Architectural Control Committee.

2.2 Architectural Standards.

2.2.1 **No Reflective Finishes.** No highly reflective finishes (other than glass which may not be mirrored) shall be used on exterior surfaces (other than surfaces on hardware fixtures), including without limitation the exterior of any of the following: roofs, all projections from roofs, retaining walls, doors, trim, fences, pipes, equipment and mailboxes.

2.2.2 **Height of Structures.** Residences of not more than one stories shall be permitted on all lots. Height limits of twenty (20) feet shall apply.

2.2.4 **Roofs.** All roofs shall be of material, color and texture approved by the Architectural Control Committee. Parapet should extend at least 2 feet above roof line. Tile is required where sloped roofs are used. The overall appearance of the residence will be an important consideration. The color of the roofs must be approved by the Architectural Control Committee. Reflective roof surfaces, which cause excessive glare, are not permitted.

2.2.5 **Color.** The color of external materials must generally be subdued to enhance the colors of the natural landscape. Muted tones are recommended, although accent colors which are used with restraint may be permitted.

2.2.6 **Materials - Exterior Surfaces.** Exterior surfaces will generally be of natural materials that blend and are compatible with the natural landscape. Masonry, stucco, or traditional adobe are to be painted surfaces. Exteriors should reflect southwestern Mediterranean styles and materials used must be approved by Architectural Control Committee.

2.2.7 **Building Projections.** All projections from a residence or the structure including, but not limited to chimney flues, vents, gutters, downspouts, utility boxes, porches, railings, and exterior stairways shall be consistent with the color of the surface from which they project, or shall be of approved color.

2.2.8 No Antennae. There shall be no installation or maintenance of any antennae of any sort or any device for, the reception or transmission of television (except small television reception dishes), radio, microwave or other similar signals, including without limitation, satellite dishes, which are visible from other Lots or the Common Areas, except as expressly permitted by the Architectural Control Committee, in its sole and absolute discretion.

2.2.9 Patios and Courtyards. Patios and courtyards should be designed as an integral part of the architecture of the residence.

2.2.10 Energy Conservation Devices. No unsightly finishes, reflective surfaces or exposed piping and wiring shall be permitted on any solar energy collector panels or attendant hardware or other energy conservation equipment constructed or installed on any residence or other structure.

2.2.11 Landscaping. Within sixty (60) days of completion of any residence or any other building, structure or improvement, each lot shall be landscaped, and such landscaping shall be restored and/or maintained following any reconstruction, alteration or maintenance of any such residence, building, structure or improvement. If any residence is not landscaped within sixty 60 days of such completion, Developer and/or Homeowners Association shall have the right to install acceptable landscape thereon and shall bill property owner for the cost thereof. Where grass is absent, preapproved gravel or "chat" must be used with proper weed barriers. Retaining prominent existing plant materials such as mesquite and greasewood bushes in front yards is encouraged where possible. Landscape plan must be approved by the Architectural Control Committee.

2.2.12 Privacy & Party Walls. Walls must be constructed of stucco, rockwall, and wrought iron and may be used for accent, privacy or screening for cars and service areas of the residence. The color of the walls must conform to the same color standards as described above for other structures and must be approved by the Architectural Control Committee.

(a) Walls shall be party walls if placed on the common property line between two (2) lots, and shall not be removed by either property owner without the written consent of the other party and the Architectural Control Committee

(b) Party walls may be constructed on the lot property lines such that rear yards and side yards are enclosed, subject to other limitations contained herein and any zoning ordinance. The party walls shall be no more than six (6) feet in height, or as approved by the Architectural Control Committee.

(c) Proper weep holes or drainage shall be provided in all retaining walls.

(c) No wall or fence may be erected or allowed to remain nearer the street than the front of the dwelling unless specifically approved by the Architectural Control Committee.

(c) No wall may be erected, placed, altered, relocated or removed without the express written consent of the Architectural Control Committee.

(c) In the event any such party wall which does not form a structural part of a dwelling or garage is damaged or destroyed by some cause (including ordinary wear and tear and deterioration from lapse of time),

other than the act of one of the adjoining owners, then the adjoining owners shall proceed forthwith to rebuild or repair the wall to as good condition as formerly at their joint and equal expense, and each property owner shall maintain adequate insurance to protect against damage to said party wall.

(g) The rights and responsibilities of any owner to any other owner under this article shall be appurtenant to the land and shall pass to such owner's successors in title.

(h) In addition to meeting other requirements of the Restrictive Covenants and of any building code or similar regulations or ordinances, any owner proposing to modify, make additions to, or rebuild his party wall in any manner shall first obtain the written consent of the adjoining owner.

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

2.2.13 Service Yard. Walls are required as screening for any outdoor maintenance and service facilities which are not otherwise enclosed.

2.2.14 Foundations. All exterior wall materials must continue down to within three (3) inches of finish grade.

2.2.15 Additional Construction and/or Exterior Changes. Any changes to the approved plans before, during, or after the construction of an improvement must first be submitted to and approved by the Architectural Control Committee.

3. ARCHITECTURAL REVIEW PROCEDURES

3.1 Submission of Plans. Plans and specifications shall be submitted to the Architectural Control Committee in accordance with the following submittal and Review procedures.

3.2 Review of Plans. The Architectural Control Committee shall conduct reviews of plans during its regular meetings or at such other times as it is deemed appropriate. Owners, architects, or builders shall have no right to attend any meeting of the Architectural Control Committee unless specifically requested by the Committee. Plans submitted will be marked "APPROVED" or "DISAPPROVED," whichever the case may be and dated as of the date of approval or disapproval. At least one copy of such plans shall be returned to the submitting Owner within 10 working days after the review (but no later than 30 days after a submittal is complete), provided that the plans are in accordance with the requirements outlined in these Guidelines. Each set of plans that has been disapproved shall be accompanied by a detailed explanation of the reason or reasons for disapproval and, where appropriate, suggestions for revisions necessary for obtaining approval.

3.3 Submittal. Plans including all of the materials outlined below, are to be submitted to the Architectural Control Committee.

3.3.1 All plans shall be dated and clearly marked with the name of the Owner submitting such plans and with the address of the lot for which such plans are being submitted. Additionally, all plans submitted shall include:

(a) Site plan (at a scale of no less than 1" = 20') showing the location of the residence and all buildings or other structures and improvements, driveway and parking areas, a grading plan, including existing and proposed topography, showing all elevations and cut and fill slopes and direction and point of discharge of all drainage following completion of construction, the location of all existing utility lines and proposed utility hook-ups and tap-ins, utility depth, locations and connections and finished floor elevations, including garage.

(b) Any Owner submitting plans for approval to the Architectural Control Committee shall be responsible for the verification and accuracy of all lot dimensions, grade elevations, and the location of the natural terrain and drainage easements. Each Owner shall certify to the accuracy thereof before the Architectural Control Committee will undertake its review.

(c) All roof plans and floor plans (at no less than 1/8"=1'D") which shall include a summary of calculations of square footage with limitations prescribed in Sections 2.2.3 and 2.2.4 of these Guidelines and a construction cross section showing floor and elevation at highest point of roof.

(d) Exterior elevations with both existing and proposed grade lines in same scale as floor plans.

(e) Indication of all proposed exterior materials and colors.

(t) Any other drawings, materials, or samples requested by the Architectural Control Committee.

3.4 Applicable Governmental Certifications and Permits. Obtaining all applicable governmental certifications and permits including, without limitation, engineering certification of foundations, necessary building permits and, upon completion of construction, an occupancy permit, is the responsibility of the Owner. Construction documents (working drawings and specifications) are to be in accordance with the final design and plans approved by the Architectural Control Committee. Construction shall not commence until all of the above requirements are satisfied.

3.5 Subsequent Changes. Additional construction, landscaping, or other improvements to a residence, other building or structure and/or any changes after completion of an approved structure must be submitted to the Architectural Control Committee for approval prior to making such changes and/or additions.

3.6 Resubmittal of Plans. In any event of disapproval by the Architectural Control Committee of either a preliminary or final submission, a resubmission of plans should follow the same procedures as the original submittal.

3.7 Work in Progress Inspection. The Architectural Control Committee may inspect all work in progress and give notice of non-compliance. Any such non-compliance shall be promptly remedied by the

Owner at his or her sole expense. Absence of such inspection and notification during the construction period does not constitute either approval of the Architectural Control Committee with work in progress or compliance with these Guidelines or the Declaration.

3.8 Right of Waiver. The Architectural Control Committee reserves the right to waive or vary any of the procedures or standards set forth herein at its discretion.

3.9 Commencement of Construction. Upon receipt of final approval from the Architectural Control Committee the Owner shall, as soon as practicable, satisfy all conditions thereof, if any, and diligently proceed with the commencement and completion of all construction, reconstruction, refinishing, alterations, and excavations pursuant to the approved plans. The Owner shall satisfy all conditions and commence the construction, reconstruction, refinishing, alterations, or other work pursuant to the approved plans within one year from the date of such approval. If the Owner shall fail to commence construction within the time period herein provided, any approval given shall be deemed revoked unless, upon the written request of the Owner made to the Architectural Control Committee prior to the expiration of said one-year period, the time for such commencement is extended in writing by the Architectural Control Committee. Such extension may be granted or denied at the sole discretion of the Architectural Control Committee. The Owner shall in any event complete the construction, reconstruction, refinishing or alteration of the foundation and all exterior surfaces (including roof, exterior walls, windows, and doors) of any improvement on his or her lot within one year after commencing construction thereof, except and for so long as such completion is rendered impossible or would result in great hardship to the Owner due to strikes, fire, national emergencies, or natural calamities. If any Owner fails to complete construction as set forth herein, the Architectural Control Committee shall notify the Declarant or Association of such failure, and the Declarant or Association, at their option, shall either complete the exterior in accordance with the approved plans or remove the improvement, and the Owner shall reimburse the Declarant or Association for all expenses incurred in connection therewith.

4. ARCHITECTURAL CONTROL COMMITTEE

4.1 Architectural Control Committee Membership Organization. The initial Architectural Control Committee shall consist of one member approved by Declarant. This approved member is **DAN BROWN**.

4.2 Appointment of Members.

4.2.1 Until the Turnover Date as defined in the Covenants, Conditions and Restrictions for Tuscan Ridge Villas, the right from time to time to appoint and remove all members of the Architectural Control Committee shall be, and is hereby, reserved to and vested solely in Declarant.

4.2.2 The right from time to time to appoint and remove members of the Architectural Control Committee on and after the Turnover Date shall be reserved to and vested in the Homeowner's Association. If the Declarant fails to exercise its rights of appointment as hereinabove provided or records an instrument waiving such rights, the Association shall thereupon and thereafter have the right to appoint and remove all members of the Architectural Control Committee.

4.3 Resignation of Members. Any member of the Architectural Control Committee may resign at any time from the Committee upon written notice delivered to Declarant or to the Association, whichever then has the right to appoint and remove members.

4.4 Duties. It shall be the duty of the Architectural Control Committee to consider and act upon such proposals or plans from time to time submitted to it pursuant to these Guidelines, to perform such other duties from time to time delegated to it by the Declarant or the Association, and to amend the Guidelines when and in the manner deemed appropriate or necessary by the Committee.

4.5 Meetings. The Architectural Control Committee shall meet from time to time as necessary to properly perform duties hereunder. The vote or written consent of a majority of the members shall constitute an act by the Architectural Control Committee unless the unanimous decision of its members is otherwise required by the Declaration or these Guidelines. The Architectural Control Committee shall keep and maintain a record of all action from time to time taken by the Committee at such meetings or otherwise.

4.6 Compensation. Unless authorized by the Declarant or Association, the members of the Architectural Control Committee shall not receive any compensation for services rendered. All members shall be entitled to reimbursement for reasonable expenses incurred by them in connection with the performance of any Architectural Control Committee function or duty. Professional consultants retained by Architectural Control Committee shall be paid such compensation as is agreed to by Committee. Such compensation shall be a Common Expense of the Association.

4.7 Amendment of Guidelines. The Architectural Control Committee may, from time to time and in its sole discretion, adopt, amend, and repeal by majority vote, rules and regulations, to be incorporated into, or amendments of these Guidelines, which, among other things, interpret, supplement, or implement the provision of these Guidelines. All such rules and regulations or amendments, as they may from time to time be adopted, amended, or repealed, shall be amended to and made a part of the Guidelines and shall thereupon have the same force and effect as if they were set forth herein. Each owner is responsible for obtaining from the Architectural Control Committee a copy of the most recent Guidelines.

4.8 Non-Liability of the Architectural Control Committee and Declarant. Neither the Architectural Control Committee, any member thereof, nor the Declarant shall be liable to the Association or to any Owner or other person for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of plans, drawings, and specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications, (c) the development of any property within the Project, or (d) the execution and filing of an estoppel certificate whether or not the facts therein are correct, provided, however, that such member or where applicable, the Declarant, has, with the actual knowledge possessed by him or her, acted in good faith.

Neither the Architectural Control Committee, any member thereof, nor the Declarant or their respective successors or assigns shall be liable in damages to anyone submitting plans to them for approval, or to any Owner or other Person by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any plans and specifications. Every Owner or other Person who submits plans to the Architectural Control Committee for approval agrees, by submission of such plans and specifications, that he or she will not bring any action or suit against the Architectural Control Committee, any member thereof, or Declarant to recover damages. Approval by the Architectural Control Committee, any member thereof, or the Declarant shall not be deemed to be a representation or warranty that the Owner's plans or specifications or the actual construction of a residence or other improvement complies with the applicable governmental ordinances or regulations, including but not limited to zoning ordinances and local building codes, nor that the proposed residence or other improvements will be located on a lot owned by

the Person submitting the plans and specifications. It shall be the sole responsibility of the Owner or the other Person submitting the plans to the Architectural Control Committee or performing any construction to comply therewith.

4.9 Enforcement. These Guidelines may be enforced by the Architectural Control Committee, the Association, or Declarant as provided herein or in the Declaration.

5. CONSTRUCTION REGULATIONS

The following construction regulations shall be enforced during the construction period. These regulations shall be made part of the construction contract, document specifications for each residence or other improvements on a lot and aU builders, Owners, and other Persons shall be bound by these regulations. Any violation by a builder shall be deemed to be a violation by the Owner of the lot.

5.1 Occupational Safety and Health Act Compliance (OSHA) All applicable OSHA regulations and guidelines must be strictly observed at all times.

5.2 Construction Trailers, Portable Field Offices, etc... Any Owner who desires to bring a construction trailer, field office, or the like to the Project shall first apply for and obtain written approval from the Architectural Control Committee. Such temporary structures shall be located only in a location approved by the Architectural Control Committee and shall be removed upon completion of construction.

5.3 Debris and Trash Removal Owners and builders shall clean up all trash and debris on the construction site at the end of each day. One dumpster for every 2 lots shall be provided by Builder and will be placed prior to construction. Trash and debris shall be removed from each construction site at least once a week to a dumping site located off the project. Lightweight material, packaging, and other items shall be covered or weighted down to prevent wind from blowing such material off construction site. Owners and builders are prohibited from dumping or burning trash anywhere on the lot or in the Project, except in areas, if any, expressly designated by the Architectural Control Committee. During the construction period, each construction site shall be kept neat and shall be properly policed to prevent it from becoming a public eyesore, or affecting other lots or the Common Areas. Any clean-up costs incurred by the Architectural Control Committee or the Association in enforcing these requirements will be billed to the Owner. Dirt, mud, or debris resulting from activity on each construction site shall be promptly removed from public or private roads, open spaces, and driveways or other portions of the Project.

5.4 Sanitary Facilities. Each Owner and builder shall be responsible for providing adequate sanitary facilities for his or her construction workers. Portable toilets or similar temporary toilet facilities shall be located only on the site itself or in areas approved by the Architectural Control Committee.

5.5 Vehicles and Parking Areas. Construction crews will not park on, or otherwise use, other lots or the Common Areas. All vehicles will be parked so as not to inhibit traffic, and within designated areas so as not to damage the natural landscape.

5.6 Excavation Materials. Excess excavation materials must be hauled away from the Project.

5.7 Blasting. No blasting will be permitted.

5.8 Restoration or Repair of Other Property Damaged. Any damage to property, including, but not limited to, open space, other lots, roads, driveways, and/or other improvements must be repaired and/or restored promptly at the expense of the Person causing the damage to the Owner of the lot. Upon completion of construction, each Owner and Builder shall clean its construction site and repair all property which was damaged including, but not limited to, restoring grades, planting shrubs and trees as approved or required by the Architectural Control Committee, and repair of streets, driveways, drains, culverts, ditches, signs, lighting, and fencing.

5.9 Miscellaneous and General Practices. All Owners will be absolutely responsible for the conduct and behavior of their agents, representatives, builders, contractors, and subcontractors. The following practices are prohibited:

5.9.1 Changing oil on any vehicle or equipment on the site itself or other than at a location designated for that purpose by the Architectural Control Committee.

5.9.2 Allowing concrete suppliers and contractors to clean their equipment other than at locations designated by the Architectural Control Committee.

5.9.3 Removing any rocks, plant material, topsoil, or similar items from any other property within the Project, including construction sites.

5.9.4 Using disposal methods or units other than those approved by the Architectural Control Committee.

5.9.5 Careless disposal methods for cigarettes and other flammable material.

5.10 Dust and Noise. The contractor shall be responsible for controlling dust and noise from the construction site.

5.11 Signage. Temporary construction signs shall be limited to one sign per site not to exceed sixteen (16) square feet of total surface area. In addition, one 4' x 8' sign shall be allowed at entrance to the Subdivision (Project) by each participant Builder.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed.

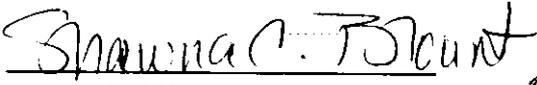
TUSCAN RIDGE VILLAS

TUSAN VALLEY PROPERTIES

BY: 

DAN BROWN PRESIDENT

SUSCRIBED and sworn to before me on this 9th day of February, 2105



Notary Public
State of New Mexico



OFFICIAL SEAL
SHAWNA C. BLOUNT
NOTARY PUBLIC - STATE OF NEW MEXICO

My commission expires: 4/18/15