

DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
FAIRWAY TOWNHOMES

WHEREAS, the Fairway Townhomes, LLC, a New Mexico limited liability company ("Declarant") is the owner of Fairway Townhomes Subdivision, according to the recorded subdivision plat thereof ("Property"); and

WHEREAS, Declarant has re-subdivided said Property into twenty (20) parcels consisting of eighteen (18) single-family residential lots and two (2) common areas, and as more fully designated in the final plats for the re-subdivision of said Property, which plats have been or will be filed for record in the real property records of Doña Ana County, New Mexico;

WHEREAS, Declarant intends to construct eighteen (18) residential dwelling units, six (6) attached in three (3) buildings, on said eighteen residential lots; and

WHEREAS, Declarant desires to and does hereby establish a plan for the use and ownership of the two (2) common areas as estates in fee simple; and

WHEREAS, Declarant desires to protect and enhance the value, desirability and attractiveness of all of said property for all parties having or acquiring any right, title or interest in said property; and

WHEREAS, Declarant, in order to insure that the purposes of this Declaration are carried out, has caused the incorporation under the laws of the State of New Mexico of "Fairway Townhome Association, Inc." a nonprofit corporation with the power of administering and enforcing these Covenants, Conditions, and Restrictions and the collecting of funds as hereinafter set forth.

NOW THEREFORE, the Declarant hereby declares that all real property outside of the 18 individual lots, is and shall be held, transferred, sold, conveyed and occupied subject to the

following covenants, conditions, restrictions, easements, charges and liens, hereinafter sometimes referred to collectively as "covenants and restrictions", all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of said property. These covenants and restrictions shall run with said real property and shall be binding on all persons having or acquiring any right, title or interest in said property or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I DEFINITIONS

Section 1. "Association" shall mean and refer to the "Fairway Townhome Association, Inc.", a New Mexico nonprofit corporation.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Unit which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is all the property outside the 18 individual lots.

Section 5. "Lot" shall mean and refer to any of the eighteen (18) individually numbered lots shown on the recorded plat of Fairway Townhomes Subdivision.

Section 6. "Unit" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties and all improvements thereon with the exception of the Common Area.

Section 7. "Declarant" shall mean and refer to Fairway Townhomes, LLC, a New Mexico limited liability company.

Section 8. "Drainage Easements" shall mean and refer to any of the easements shown on the recorded Fairway Townhomes Subdivision Plat that exist for the mutual benefit of the property owners in the Subdivision for the purpose of channeling and ponding storm run-off.

Section 9. "Entry Sign" shall mean and refer to any sign and related landscaping and lighting installed at the entrance to the Subdivision.

ARTICLE II PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to charge reasonable fees for the use of the Common Area;
- (b) the right of the Association to suspend the voting rights and right to use of the Common Area by an Owner for any period during which any assessment against his Unit remains unpaid; and the use of the Common Area by any party, for a period not to exceed 60 days, for any infraction by that party of its published rules and regulations;
- (c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds of each class of members has been recorded.

(d) the Declarant hereby reserves to itself and to other applicable parties and its successors in interest perpetual easements as recorded on the final plat of the Fairway Townhomes Subdivision, for the Drainage Easements, the Entry Sign, and the Common Area, as well as constructing, maintaining, operating, replacing, enlarging, and repairing electric, telephone, water, irrigation, sewer, gas, and similar lines, pipes, wires, poles, ditches, and conduits.

(e) the right of the individual Owners to the exclusive use of parking spaces as provided in this article;

(f) reasonable rules and regulations governing use of the Common Area, enacted by the Association's Board of Directors.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Parking Rights. Ownership of each unit shall entitle the Owner or Owners thereof to the use of not less than 2 automobile parking spaces, which shall be in each Unit's garage, together with the right of ingress and egress in and upon said parking area. The Association may permanently assign vehicle parking spaces for each unit.

Section 4. Maintenance. The responsibility to maintain and repair the Drainage Easements, the Entry Signage, and the Common Areas shall reside with the Association. Such responsibility shall include but not be limited to the making of rules and regulations governing the use of these areas.

Section 5. Insurance. The Association shall carry liability insurance on all Common Areas. Each Owner shall carry a minimum of \$300,000 liability insurance on their Unit, and shall name the Association "Additionally Insured" on their individual policy.

Section 6. Common Area Landscaping. The Association shall maintain the landscaping and irrigation system for all Common Area. A separate water meter has been installed for irrigation purposes. The power for the irrigation timer has been connected to Units

101, 201, and 301. The Owner of these Units shall receive a \$5.00 credit on their monthly Association Dues as compensation for these hookups.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Unit which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from Ownership of any Unit which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Unit owned. When more than one person holds an interest in any Unit, all such persons shall be members. The vote for such Unit shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Unit.

Class B. The Class B member shall be the Declarant and shall be entitled to two votes for each Unit owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (b) on August 1, 2005, whichever first occurs.

Section 3. Voting by mail. The articles of incorporation and bylaws of the Association may provide for voting by mail by a member, including establishment of time limits and other procedural matters which are consistent with this declaration.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each developed Unit owned within the Properties, hereby covenants, and each Owner of any Unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) normal assessments or charges, (2) special assessments for capital improvements, and (3) working capital assessments, such assessments to be established and collected as hereinafter provided. These assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the unit against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such unit at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties, and for the improvement and maintenance of the Common Area, and of the improvements situated upon the properties.

Section 3. Maximum Normal Assessment. Until January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum normal assessment shall be \$75.00 per month.

(a) From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum normal assessment may be increased each year not more than 10% above the maximum normal assessment for the previous year without a vote of approval by 3/4 of the eligible votes of the membership.

(b) The Board of Directors may fix the normal assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the normal assessments authorized above, the Association may levy, in any assessment year, a special

assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, or for exterior maintenance provided that any such assessment in excess of \$2,000.00 shall have the assent of 3/4 of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Section 3 and 4.

Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 45 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting. In the alternative, voting on these issues may be conducted by mail, if such voting by the association membership is provided for in the articles of incorporation and/or the bylaws.

Section 6. Uniform Rate of Assessment. Both normal and special assessments must be fixed at a uniform rate for all Units and may be collected on a monthly or a quarterly basis. For the undeveloped units for which the Declarant is exercising voting rights, the Declarant shall be assessed one-quarter of the normal assessment rate for each unit. The Declarant shall pay the full normal assessment when the dwelling has received a Certificate of Occupancy.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The normal assessments provided for herein shall commence as to all units on the first day of the month following the conveyance of the Common Area. The Board of Directors shall fix the amount of the normal assessment against each Unit at least thirty days in advance of each normal assessment period. Written notice of the normal assessment shall be sent to every Owner

subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the association setting forth whether the assessments on a specified Unit have been paid. A properly executed certificate of the Association as to the status of assessments on a unit is binding upon the Association as of the date of its issuance.

Section 8. Exterior Maintenance. In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Unit which is subject to assessment hereunder, as follows: landscaping and irrigation in Common Areas, replacement and care of roofs, gutters, downspouts, and exterior building surfaces. Such exterior maintenance shall not include glass surfaces, tree, shrubs, and landscaping on individually owned lots.

Section 9. Working Capital Assessment. The Association shall have the power to levy a working capital assessment uniformly on all units, in an amount of \$100.00, payable at the time of purchase and refundable within 30 days from sale of property, of the Owner involved, subject to the deduction for any obligations owed by that Owner to the Association.

Section 10. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty days after the due date shall bear interest from the due date at the rate of 18 percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the lien against the unit. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Unit. The Association shall be entitled to recover its reasonable attorney's fees in any legal actions brought concerning nonpayment of assessments.

Section 11. Subordination of the Lien to Mortgages. The lien of the assessments provide for herein shall be subordinate to the lien of any first mortgage and superior to all other liens except as may otherwise be provided by law. Sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to mortgage foreclosure

or any proceeding in lieu thereof, shall not extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Unit from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V

ARCHITECTURAL CONTROL

No building, fence, wall, antenna, satellite or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three or more representatives appointed by the Board. No fence, antenna or satellite dish may be placed on the Properties without the prior consent of the Board of Directors. In the event said Board, or its designated committee, fails to approve or disapprove any other design and location within thirty days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE VI

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the units upon the Properties and placed on the dividing line between the Units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who made use of the wall, in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, so the right of any such Owners to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, any Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protections against such elements.

Section 5. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

ARTICLE VII

UNIT USE AND ACCESS

Section 1. Subdivision. Unless all other Owners agree, no Unit shall be further subdivided, nor shall the Common Area be partitioned. The developer has the right to change lot lines and add utility easements to conform with the actual location of the improvements of the other Phases.

Section 2. Improvements. Except pursuant to Article V, and unless all other Owners agree, no Owner shall remove or materially change the exterior improvements placed on a unit by the Declarant, unless they have been destroyed or so damaged that repair is impractical. In case the improvements on a unit are so destroyed or damaged, the only improvements which can be placed on the unit shall be a reasonable reproduction of what was damaged or destroyed.

Section 3. Residential Use. The properties shall be used only for residential purposes, unless prior approval is given by the Association Board of Directors and any governmental body with jurisdiction in the matter.

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The Declarant, its successors and assigns and its employees, representatives, agents and contractors may maintain a business office, construction facilities and yards, equipment, parking areas, display facilities, advertising signs and displays, and other developer's facilities reasonably necessary, appropriate or customarily used or required during the construction development and sales periods.

Section 4. Appearance and Condition. Owners shall refrain from acts or omissions which detract from the appearance or condition of the properties.

Section 5. Landscaping. The unimproved portion of each lot shall be properly landscaped by the Owner within 90 days of closing. Landscaping shall not be allowed to encroach on neighboring property, and the Owner is encouraged to use xeriscape landscaping materials to limit water consumption.

Section 6. Clothes Lines and Storage. No clothes lines, drying yards, service yards, wood piles, or storage areas shall be so located as to be visible from a street and/or public view.

Section 7. Garbage and Refuse Disposal. No garbage, refuse, rubbish or cuttings shall be deposited on any street or common area, and not near any Unit. Garbage cans or trash bags will not be permitted outside dwelling units except when placed outside for trash collection purposes. Garbage cans and trash bags will be covered or sealed when placed outside for trash before anticipated trash collection. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

Section 8. Animals. The keeping of animals shall be limited to domestic-household pets, provided, that said animals are well kept and provided for and do not become a health hazard or nuisance to the neighborhood. The keeping of animals may be further restricted by a vote of 3/4 of the eligible votes of the membership.

Section 9. No Mining, Drilling, or Quarrying. No mining, quarrying, tunneling, excavating, or drilling for any substances within the earth, including oil, gas, minerals, gravel, sand, rock and earth, shall ever be permitted within the properties.

Section 10. Access. The Association or its agents may enter upon units and their improvements for the purpose of making repairs or renovations, and for taking steps necessary to preserve the properties and the health, safety and welfare of the Owners. Whenever possible, an Owner whose unit or improvements are to be subject to such action shall be given reasonable prior notice, and an opportunity to arrange for a mutually convenient time for effecting such action.

Section 11. Zoning Regulations. No lands within the Fairway Townhomes Subdivision shall be occupied or used for any purpose or in any manner that is contrary to the applicable zoning regulations, validly in force from time to time, except as the same may be allowed under said regulations as a non-conforming use.

Section 12. Signs. With the exception of two "For Sale" signs (not to be larger than 36 x36 inches) per Lot and the Entry Sign, no advertising signs, billboards, unsightly objects, or nuisances shall be erected, altered, or permitted to remain on any Lot in the Fairway Townhomes Subdivision. A construction sign (not to be larger than 48 x 96 inches) identifying contractors and owner may be placed on a Lot for the duration of construction, not to exceed six months. These restrictions regarding signs shall not apply to the Lot containing the Declarant's model home/office.

Section 13. Commercial Vehicles, Campers, or Trailers. No campers, recreational vehicles, boats, trailers, commercial-type vehicles, or trucks shall be stored or parked on any Lot except in a closed garage, nor parked on any street, road, or easement except while engaged in transport to or from a dwelling. For the purposes of this restriction, a truck having a three-quarter-ton manufacturer's rated capacity, commonly known as a pick-up truck, shall not be deemed to be a commercial vehicle or a truck.

ARTICLE VIII
GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. The Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of 25 years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten years. This Declaration may be amended during the first 25 year period by approval of not less than ninety percent of the Unit Owners, and hereafter by an instrument signed by not less than seventy-five percent of the Unit Owners. Any amendment must be recorded in the records of the Doña Ana County Clerk. The method of determining approval of the Unit Owners may be the same as provided in The Articles of Incorporation and Bylaws for voting by members of the Association.

Done this _____ day of _____, 1999.

Fairway Townhomes, LLC.
a New Mexico limited liability company

By _____
Harold G. Denton,
Managing Member

STATE OF NEW MEXICO)
)
COUNTY OF DOÑA ANA) ss

The foregoing was acknowledged before me this _____ day of _____, 1999, by Harold G. Denton, as Managing Member for Fairway Townhomes, LLC.

My commissions expires

Notary Public