

DECLARATION OF
PROTECTIVE COVENANTS, CONDITIONS,
AND RESTRICTIONS OF TUSCANY VILLAS

WHEREAS M&M A Partnership (hereinafter referred to as the "Declarant") has caused certain real property in Doña Ana County, New Mexico, described on Exhibit "A" annexed hereto and incorporated herein by this reference, to be surveyed, subdivided, and platted into lots as shown on the plat of the Tuscany Villas, the plat of Phase One having been filed for record in the real property records of Doña Ana County, New Mexico, the 10th day of March, 2003, in Plat Record Book 20, pages 271-272.

NOW, THEREFORE, the Declarant, the owner of all of the lands included in Tuscany Villas as so platted and described above, does hereby declare and acknowledge that all of the lands included within said Subdivision area shall hereafter be subject to all of the following covenants, conditions, and restrictions.

ARTICLE I
PURPOSE OF COVENANTS

1. General Requirements. It is the intention of the Declarant, expressed by its execution of this instrument, that the lands within Tuscany Villas be developed and maintained as a highly desirable residential area. It is the purpose of these covenants that both the natural and the man-made beauty of Tuscany Villas shall always be protected and preserved insofar as is possible in connection with the uses and structures permitted by this instrument. It is of primary intent that the privacy and views of each home site in the Subdivision shall be protected insofar as is possible.

ARTICLE II
DEFINITIONS

1. Lot or Lots shall mean and refer to one or more of the 18 individually numbered lots shown on the plat of Tuscany Villas.
2. Subdivision shall mean and refer to Tuscany Villas.
4. Common Areas shall mean and refer to all of the land within the Subdivision with the exception of the Lots; Common Areas include the ponds, and the drainage channels, all of which exist for the mutual benefit of the Owners of Lots in the Subdivision.
5. Right-of-Way shall mean and refer to both the paved and the unpaved portions of the public street located in the front of each Lot.
6. Committee shall mean and refer to the Design Control Committee of Tuscany Villas.

ARTICLE III
THE TUSCANY VILLAS NEIGHBORHOOD COUNCIL

1. Membership in the Tuscany Villas Neighborhood Council. All persons or other parties who own or acquire any of the Lots in Tuscany Villas, by whatever means acquired, shall be considered to be Owners and shall automatically become Members of Tuscany Villas Neighborhood Council in accordance with the Articles of Incorporation and the By-Laws of the Council, and as the same may be duly amended from time to time and filed or recorded in the Doña Ana County records.

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with the Design Controls for the Subdivision.

2. Appointment Duties. The Declarant shall appoint three persons to serve as the Design Control Committee for the Subdivision. The Design Control Committee shall have the duty and the power by the exercise of its best judgment to see that any construction on any Lot conforms to and harmonizes with the design theme of the Subdivision and abides by the Design Controls. At any time after the Inaugural Council Meeting, the Declarant may, at its sole discretion, transfer to the Tuscany Villas Neighborhood Council the responsibility to appoint the persons to serve as the Design Control Committee. Furthermore, if at any time the Declarant fails to appoint the persons to serve as the Design Control Committee, the Tuscany Villas Neighborhood Council shall, upon one week's written notice to the Declarant, assume the authority to appoint the persons to serve as the Design Control Committee.

3. Approval of Plans by the Design Control Committee. No improvements of any kind, including but not limited to houses, sheds, outbuildings, swimming pools, parking areas, fences, walls, garages, storage structures, patios, decks, carports, driveways, antennae, flagpoles, curbs, and walks, or additions or alterations thereto, shall be constructed or installed upon any lands within Tuscany Villas, nor may any landscaping be performed on any Lot, unless one complete set of plans for such construction or landscaping are submitted to the Design Control Committee and unless the plans are approved in writing by the Design Control Committee prior to the commencement of such work. In the event that the Design Control Committee fails to take any action within fifteen days after complete plans for such work have been submitted to it and a signed receipt issued, then all of such submitted plans shall be deemed to be approved. All submissions, approvals, and/or rejections shall be submitted in writing, shall be dated, and shall be signed for as proof of receipt. In the event that the Design Control Committee rejects any plans, the Committee is required to state the reason(s) for rejection. Upon resubmittal of plans, the Committee must respond within ten days.

Application to Doña Ana County for a Building Permit shall not be made prior to approval of plans by the Design Control Committee. The Design Control Committee shall reject any plans submitted to it that are not sufficient for it to exercise the judgment required of it by these Covenants.

The Design Control Committee shall monitor all construction within the Subdivision to help see to it that trash and debris are disposed of properly and that no damage is done to the Common Areas or neighboring Lots during construction; and to this end the Committee shall, at the time of its approval of plans for construction on a Lot, collect a damage deposit of \$1000.00 to be used by the Committee at its sole discretion for clean up and/or repair made necessary by any construction. This deposit shall be held by the Committee and returned to the Owner of the Lot upon completion of construction, less any sums expended by the Committee for the clean up and/or repair referenced herein. In the event that the deposit is not sufficient to cover the cost of the clean up and/or repair, the Committee can require an additional damage deposit; or the Tuscany Villas Neighborhood Council may charge the balance of the cost of the clean up and/or repair to the Owner of the Lot as a special assessment against the Lot, to be collected in the manner of other assessments as provided in the By-Laws of the Tuscany Villas Neighborhood Council and by any rules and regulations passed by the Council. The Design Control Committee urges each Lot Owner to require contractors working for the Owner to control trash and debris during periods of construction. Specifically, these Covenants require that a trash dumpster and a portable toilet be located on each Lot—and not in the Common Areas or Right-of-Way—during construction of a house on the Lot. Furthermore, these Covenants strictly forbid the following practices: unloading or storing construction materials, including plants or landscaping materials of any kind, within any part of the Common Areas,

maintained as if it were a part of the Owner's Lot, except that no walls, boulders, signs, or large trees or shrubs shall be permitted within it. Upon failure of the Owner to maintain this area, the Board of Directors of the Tuscany Villas Neighborhood Council may, at its discretion, after giving the Owner thirty days written notice, have the area maintained. The cost of this maintenance may be charged to the Lot Owner as a special assessment against the property by the Tuscany Villas Neighborhood Council.

10. Sidewalks. There shall be no sidewalks running parallel with the public streets within Tuscany Villas.

11. On-Street Parking. The combined area of the garage(s) and driveway of each house in the Subdivision shall be sufficient to accommodate at least four motor vehicles. There shall be no overnight on-street parking of any motor vehicle, trailer, or the like, nor shall any motor vehicle, trailer, or the like ever be parked with the Common Areas. Short-term (up to twelve-hour) on-street guest parking shall be allowed, but not on regular basis, and only if no other motor vehicle(s) is parked on the opposite side of the Right-of-Way within 100 feet. The purpose of this provision is to try to ensure safe and convenient passage of motor vehicle traffic and pedestrians on the Right-of-Way.

12. Animals. The keeping of no more than three ordinary household pets shall be permitted in the Subdivision. When off the Owner's Lot, such pets must be kept on a leash and shall not be permitted to run at large. In addition, dogs shall not be permitted to bark outside to the extent that an average person would find annoying. The Tuscany Villas Neighborhood Council may enforce this provision by whatever means may be legally available to it.

13. Easements Reserved. The Declarant hereby reserves to itself and to other applicable parties and its successors in interest perpetual easements on the Common Areas for constructing, maintaining, operating, replacing, enlarging, and repairing electric, telephone, cable TV, water, irrigation, sewer, gas, and similar lines, pipes, wires, poles, ditches, and conduits. The Declarant may convey or grant by license, lease, deed, lien, deed of trust, mortgage, or otherwise any right, title, or interest in or to any and all easements and reservations contained within documents of conveyance, these Covenants, or the plat of Tuscany Villas to public utilities and governmental entities as may be reasonably necessary to effect the developmental and residential intentions as set forth in the plat and these Covenants.

14. Shared Walls. Pursuant to Article V of the Design Controls, privacy walls shall be built along the side property lines of each Lot. These side walls shall be built half on one side of the property line and half on the other side (that is, half shall be built on the adjoining lot) and shall extend along both sides of every Lot from the rear property line to a point approximately parallel with the front elevation of each house, except that no wall shall be built at the points occupied by a house on the zero lot side of a Lot. If at the time of construction of a house on a Lot, one or both of the side walls along the Lot have not been built, it shall be the responsibility of the Lot Owner whose house is under construction to build the side walls that have not yet been built, and that Lot Owner shall be reimbursed for one-half the cost of each side wall so constructed. This reimbursement shall be calculated based on a cost of \$3.50 per cubic foot of wall, including footings, regardless of the material utilized, with the amount to be reimbursed being one-half the result of said calculation. If the Declarant has sold the Lot or Lots that benefit from the construction of one or both side walls, then the Lot Owner(s) of such Lot(s) shall reimburse the Lot Owner(s) who build the wall(s) within a period of 30 days of completion of said construction and of written notification of the amount to be reimbursed. If the Declarant has not sold the Lot(s) that benefit from the construction of one or two side walls, then the Lot Owner(s) who build the side walls shall be reimbursed by the purchaser(s) of the Lot or Lots the benefit from the construction of one or both side walls, and this reimbursement

circumstances shall be required, without exception, to commence construction of a house on the Lot within three months of the new Owner's purchase of the Lot.

In the event that the Owner of any Lot in the Subdivision fails to commence construction of a house as specified above and has not sold the Lot within six months of listing the Lot for sale as specified above, the Declarant or its successors or assigns shall have the right, but not the obligation, to repurchase the Lot at the original purchase price at which the Owner acquired the Lot, less cost of closing.

ARTICLE VII ENFORCEMENT

1. Enforcement Actions. The Declarant or the Design Control Committee shall have the right to prosecute any action to enforce the provisions of these Covenants by injunctive relief, on behalf of itself and all or part of the Owners of Lots within Tuscany Villas. In addition, each Owner of a Lot within Tuscany Villas, as well as the Tuscany Villas Neighborhood Council, shall have the right to prosecute any action for injunctive relief and for damages by reason of any violation of these Covenants. Any Owner of a Lot determined to be in violation of these Covenants by a court of appropriate jurisdiction agrees to pay the reasonable attorneys' fees incurred by the person(s) or entity bringing such successful action.

ARTICLE VIII GENERAL PROVISIONS

1. Covenants to Run. All of the Covenants contained in this instrument shall be a burden on the title to all of the lands in Tuscany Villas, and the benefits thereof shall inure to all Lot Owners in Tuscany Villas, and the benefits and burdens of all said Covenants shall run with the title to all of the lands in Tuscany Villas.

2. Termination of Covenants. The Covenants contained in this instrument shall remain in full force and effect for thirty years after the date of execution of this instrument and shall thereafter automatically be renewed for successive ten-year periods without limitation. Except for the provisions dealing with the Design Controls, the annual assessments, and the maintenance and repair of the Common Areas, all of which provisions shall not be altered, these Covenants may be amended by a vote of two-thirds of the votes cast by the members of the Tuscany Villas Neighborhood Council at annual or special meetings thereof, said vote to be cast at any meeting of the members duly held in accordance with the Articles of Incorporation and the By-Laws of the Tuscany Villas Neighborhood Council, provided a properly certified copy of the resolution of amendment be placed on record in Doña Ana County upon adoption.

3. Proximity of Subdivision to Golf Course. Each party acquiring ownership to any Lot(s) in the Subdivision acknowledges that said Lot(s) are adjacent to the Picacho Hills Country Club (golf course). Each Lot(s) owner acknowledges that there are inherent risks (including but not limited to golf ball damage) to all improvements and structures installed on the Lot(s), and agrees to accept any and all responsibility for damage caused to their improvements because of this proximity.

4. Indemnification. The Association shall indemnify every officer and director against any and all expenses, including counsel fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and

DESIGN CONTROLS FOR TUSCANY VILLAS

ARTICLE I STATEMENT OF INTENT

The goal of these Design Controls is to achieve a harmony of design within the Subdivision so that the reasonable expectations of Lot Owners regarding improvement and beautification of all property can be fulfilled for the benefit of all Lot Owners. To that end, all new houses, walls, and front-yard landscaping, as well as alterations or additions thereto, within the Subdivision shall be built by a licensed contractor approved by the Design Control Committee, which approval shall not be unreasonably withheld; and the design of all new houses, walls, and front-yard landscaping, as well as alterations or additions thereto, within the Subdivision shall be performed by a designer, or architect approved by the Design Control Committee, which approval shall not be unreasonably withheld.

ARTICLE II DESIGN REVIEW

No construction of a new house, walls, or landscaping on any Lot in the Subdivision, and no alterations or additions of any kind thereto, shall commence without adherence to the process of approval set forth in the provisions of Article IV of the Declaration of Protective Covenants, Conditions, and Restrictions of Tuscan Villas. Lot Owners should note that, although this process of approval requires only one submittal of one complete set of plans, it is advisable and strongly recommended that a preliminary design conference be held with a representative of the Design Control Committee so that the party submitting plans can get an initial reaction to the proposed design prior to going to the expense of creating a complete set of plans. At the preliminary review stage, it is sufficient to provide only one copy of plans showing the conceptual design of the exterior elevations, the floor plan, and site plan.

Drawings submitted for final review shall be in the form of one complete set and include the level of detail required for obtaining a building permit from the applicable governmental regulatory department, plus details relating to texture and color of all exterior surfaces.

A site plan drawing showing; site contours, retaining and garden walls, driveways and walks. Landscape plan showing details of plant materials (with indication of size), rocks or pebbles, boulders, ground cover, lawns, paths, decks or patios, swimming pool or spa, driveway, walls, fences, exterior lighting, and any other relevant features that may be applicable.

Neither the Declarant nor the Design Control Committee seeks to restrict individual preferences but does want to avoid harsh contrasts within the Subdivision and to encourage careful design so that there is harmony between buildings and their sites, and among buildings themselves. To this end, the Declarant has established a general design theme for the Subdivision that can best be described as traditional Southwest adobe, featuring such exterior elements as rounded corners, stepped walls, interior courtyards and patios, carved wood entry doors, canales, thick walls, deep set windows, in general a sculptural look. Colors are to be selected from traditional red, brown and yellow earth tones with stronger variations acceptable. Examples of styles and features that will not be approved include extreme contemporary styles, styles common to other regions, styles that the Committee believes bear little resemblance to

signals, the Committee has adopted the following guidelines for the Subdivision: none of the aforementioned equipment shall be installed within the front yard (that is, the street-side yard) of any house; no satellite dish more than one meter in diameter shall be installed anywhere in the Subdivision; all houses shall be equipped with conduit for the purpose of directing the installation of a satellite dish or an antenna to the least obtrusive—yet still effective—location on the roof of a house; this being the preferred location for such installation in the view of the Committee.

Ham radio antennas and towers, as well as any other antennas and towers that are not covered by the FCC rules cited above, shall not be installed anywhere in the Subdivision.

8. Outbuildings and Temporary Structures. No used or previously erected or temporary house, structure, house trailer, or permanent or nonpermanent outbuilding shall ever be placed, erected, or allowed to remain on any Lot, except during construction periods and only then with written approval of the Design Control Committee. No building shall be occupied in any manner prior to its completion.

9. Exterior Lighting. A non-obtrusive front-yard exterior light fixture shall be installed for every residence in the Subdivision at the time of construction of each residence. Exterior lighting fixtures shall be horizontal cut-off type. No flood lights are allowed. It shall be the responsibility of the Owner of each Lot to maintain said fixture. Use of other than white or pale white exterior lights shall be allowed only with specific approval of the Committee. Holiday lighting during the Christmas season shall be allowed only from November 22nd through January 3rd and only in moderation. The Design Control Committee shall be the sole arbiter in deciding whether or not holiday lighting is excessive.

10. Utilities. All secondary utility extensions (from trunk lines to individual structures) must be underground.

11. Solar Panels. No roof-mounted solar panels are allowed unless screened (must fit within height restrictions of the subdivision). Ground mounted solar panels are not permitted.

12. Roof Color. Flat roof color shall match (as closely as possible) the color of the stucco.

13. Driveways. All driveways in the Subdivision shall be concrete, stone or brick pavers (colors are to be approved). Colored concrete may be used in a driveway with the approval of the Design Control Committee regarding the color to be used.

ARTICLE V LANDSCAPING AND WALLS

In order to achieve an attractive and harmonious appearance of landscaping throughout the Subdivision, use of plants native to the region is required. The use of exotic plants foreign to the region, except those proven over time as viable and appropriate, shall not be permitted. Scale, selection, and placement of plants and landscaping materials should be such that one senses the plants and materials have been integrated with the overall design theme of the Subdivision rather than contrast with or overpower it. In particular, because of the zero-lot-line design of the Subdivision, no tree or shrub shall be planted close enough to the adjacent property that is likely to cause damage to the zero-lot-line wall of the house on the adjacent Lot. Furthermore, no Lot shall contain any tree or shrub that, upon reaching maturity, is likely to obstruct the views from any other Lot(s). Any Owner of a Lot who believes his view is being obstructed by a tree or shrub on another Lot can bring the matter to the attention of the Design Control Committee, which has the authority to require the Owner of the Lot containing the tree or shrub to trim it to eliminate the obstruction. In addition, the landscaping of each Lot shall be substantially completed prior to first occupancy of a house on each Lot.