



MARIPOSA

NEW MEXICO

A High Desert Community

Mariposa Governance Documents

Memorandum describing Governance Structure of Mariposa Community Association
Community Charter for Mariposa Residential Property, recorded December 23, 2004
By-Laws of Mariposa Community Association, Inc., recorded December 23, 2004
Articles of Incorporation of Mariposa Community Association, Inc., filed June 22, 2004
Amended and Restated Community Covenant for Mariposa Assembly, recorded July 8, 2005
By-Laws of Mariposa Assembly, Inc., recorded July 8, 2005
Articles of Incorporation of Mariposa Assembly, Inc., filed March 7, 2005

Upon recording, please return to:

President

High Desert Investment Corporation

3791 Southern Boulevard, Suite 202

Rio Rancho, New Mexico 87124

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COMMUNITY CHARTER

FOR

MARIPOSA RESIDENTIAL PROPERTY



M A R I P O S A

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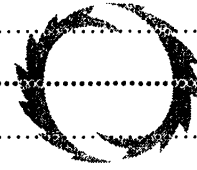
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TABLE OF EXHIBITS

<u>Exhibit</u>	<u>Title</u>	<u>Page First Men- tioned</u>
A	Initial Property	1
B	Expansion Property	7
C	Initial Rules	3
D	By-Laws of Mariposa Community Association, Inc.	1

COMMUNITY CHARTER

FOR MARIPOSA

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PREAMBLE

High Desert Investment Corporation, a New Mexico corporation, as the Founder of Mariposa, has established and recorded this Community Charter ("**Charter**") to provide a governance structure and a flexible system of standards and procedures for the overall development, expansion, administration, maintenance, and preservation of Mariposa as a master planned community. The Charter sets forth provisions regarding development, property ownership, operating methods, and the rights and responsibilities of the Association and owners. Attached as Exhibit "D" to the Charter is the Association's By-Laws, which are drafted in accordance with New Mexico non-profit corporation law and set forth the procedures for operating the Association.

The Founder intends to develop Mariposa as a mixed-use community while combining the traditions of the Southwest with a unique living experience. An integral part of Mariposa's development plan is the formation of Mariposa Community Association, Inc., a New Mexico nonprofit corporation whose membership consists of all owners of residential property in Mariposa (the "**Association**"). The Association's roles are to own, operate and/or maintain various common areas and community improvements and to administer and enforce this Charter and the other Governing Documents referenced in this Charter. In order to assure that Mariposa is developed, maintained, and preserved in a manner that is consistent with these goals, the Founder has recorded or intends to record the Community Covenant for Mariposa, which governs all of the property within Mariposa and institutes community building initiatives. In addition, the Founder has established this Charter to provide a governance structure and a flexible system of standards and procedures for the overall development, administration, maintenance, and preservation of certain residential components of Mariposa.

DECLARATION OF COVENANT

The "**Community**" referred to in this Charter consists of the property described in Exhibit "A" and any additional property made subject to this Charter in the future by amendment or supplement, as provided for in the following chapters. This Charter shall run with the title to such property, binding not only Mariposa Development Company, its successors and assigns (the "**Founder**"), but also the future owners of any portion of the property; their respective heirs, successors, successors-in-title, and assigns; and any other person or entity that now or hereafter has any legal, equitable, or beneficial interest in any portion of such property. This Charter shall also be binding upon the Association, its successors and assigns.

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PART ONE: INTRODUCTION TO THE COMMUNITY

To accomplish great things, we must not only act, but also dream; not only plan, but also believe.

Anatole France



M A R I P O S A

Chapter 1

Governing Documents

A community is guided and governed by certain principles that each owner and resident, by choosing to own property or reside in the community, agree to uphold. Those principles are set forth in the community's governing documents, which serve as a tie that binds the community together, give it structure, and provide guidance to all who participate in its growth and evolution.

as on anyone else that may now or in the future have an interest in any portion of the property comprising the Community. Such documents, referred to in this Charter as the "**Governing Documents**," include this Charter and the other documents described in Table 1.1, as they may be amended. All owners and occupants, as well as their tenants, guests, and invitees, are required to comply with the Governing Documents. All owners and occupants shall be held accountable and liable for the actions of their tenants, guests, and invitees.

1.1. Scope and Applicability

The Community has been established and is administered pursuant to various documents that have a legal and binding effect on all owners and occupants of property in the Community, as well

GOVERNING DOCUMENTS	
Community Charter: (recorded)	this Community Charter for Mariposa, which creates obligations that are binding upon the Association and all present and future owners of property in Mariposa
Supplement: (recorded)	a recorded Supplement to this Charter, which may submit additional property to this Charter; create easements over the property described in the Supplement; impose additional obligations or restrictions on such property; designate Neighborhoods, Service Areas, Election Districts, or Limited Common Areas; or any of the foregoing
Articles of Incorporation: (filed with the New Mexico Secretary of State)	the Articles of Incorporation of Mariposa Community Association, Inc., as they may be amended, which establish the Association as a nonprofit corporation under New Mexico law
By-Laws: (attached as Exhibit "D")	the By-Laws of Mariposa Community Association, Inc. adopted by its Board of Directors, as they may be amended, which govern the Association's internal affairs, such as voting, elections, meetings, etc. A copy of the By-Laws is attached as Exhibit "D"
Guidelines for Sustainability: (Founder adopts)	the design, architectural, and aesthetics standards, and sustainable development and environmental preservation guidelines adopted pursuant to Chapter 5, as they may be amended, which govern new construction and modifications to Units, including structures, landscaping, conservation, and other items on Units
Rules: (initial set attached as Exhibit "C")	the rules of the Association adopted pursuant to Chapter 7, which regulate use of property, activities, and conduct within Mariposa
Board Resolutions: (Board adopts)	the resolutions which the Board adopts to establish rules, policies, and procedures for internal governance and Association activities and to regulate the operation and use of the property which the Association owns or controls

Table 1.1 - Governing Documents

1.2. Additional Covenants

The owner of any property within the Community may impose additional covenants on such property with such approval as may be required pursuant to Section 17.3 and 20.6. If the provisions of any such additional covenants are more restrictive than the provisions of this Charter, the more restrictive provisions control. The Association shall have standing and the power, but not the obligation, to enforce any such additional covenants.

1.3. Conflicts/Severability

If there are conflicts between any of the Governing Documents and New Mexico law, New Mexico law shall control. If there are conflicts between or among any of the Governing Documents, then the Charter, the Articles, and the By-Laws (in that order) shall control. If there is a conflict between the Governing Documents and any additional covenants recorded on any property within the Community (or the rules or policies adopted pursuant to any such additional covenants), the Governing Documents will control.

Diagrams, tables, and text set apart in boxes, some with "key" icons, are used in the Governing Documents to illustrate concepts and assist the reader. If there is a conflict between any of these and the text of the Governing Documents, the text shall control. In addition, the quotations throughout this Charter are for information only and have no legal effect.

Space has been set aside throughout this Charter to allow the reader to make notes. Those spaces and the heading that denotes the spaces are not part of this Charter.

If any court determines that any provision of this Charter is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications of such provision in other instances.

1.4. Definitions

Capitalized terms used in the Governing Documents have the meaning described in the paragraph where they first appear in bold print. An index to defined terms may be found at the end of this Charter. All other terms used in the Governing Documents have their natural, commonly accepted definitions.

1.5. Interpretation of Certain References

Consent or Approval. All references in the Governing Documents to "**consent**" or "**approval**" shall refer to permission or approval, which unless otherwise expressly qualified in the specific provision, may be granted or withheld in the discretion of the Person whose consent or approval is required.

Discretion and Determination. All references in the Governing Documents to "**discretion**" or to the right to "**determine**" any matter shall refer to the sole and absolute power or right to decide or act. Unless otherwise expressly limited in the Governing Documents or by law, anyone authorized in the Governing Documents to exercise discretion or make a determination may do so without regard to the reasonableness of, and without the necessity of justifying, the decision, determination, action, or inaction.

Person. References in the Governing Documents to a "**Person**" or "**Persons**" shall refer to an individual, a corporation, a partnership, a limited liability company, or any other legal entity.

Notice. All references in this Charter to "**notice**" shall be deemed to refer to written notice by personal delivery, United States mail, private carrier, or, if the intended recipient has given its prior written authorization to use such method of delivery, facsimile or electronic mail with written confirmation of transmission.

Governing Documents

Notices shall be deemed to have been duly given and effective if:

(a) sent by United States mail, three days after deposited with the U.S. Postal Service, correctly addressed, with first class or higher priority postage prepaid;

(b) delivered personally or by private carrier, when actually delivered to the address of the intended recipient, as evidenced by the signature of the person at such address who accepts such delivery; or

(c) sent by facsimile or electronic mail, upon transmission, as evidenced by a printed confirmation of transmission.


Recording. All references in the Governing Documents to a "recorded" legal instrument, or to recordation or the recording of a legal instrument, shall refer to an instrument filed or the filing of a legal instrument in the official records of Sandoval County, or such other place designated as the official location for filing documents affecting title to real estate in Sandoval County in order to make them a matter of public record.

Community-Wide Standard. Where the Governing Documents require compliance with the "Community-Wide Standard," the standard to be applied is the highest of: (a) the standard of use, conduct, architecture, landscaping, or aesthetic matters generally prevailing in the Community, or (b) the minimum standards described in this Charter, the Community Covenant, the Guidelines for Sustainability, the Rules, and Board resolutions. The Community-Wide Standard may contain objective elements, such as specific maintenance requirements, and subjective elements, such as matters subject to the Board's, the Assembly's, or the Sustainability Review Board's discretion. The Community-Wide Standard may or may not be set out in writing. The Founder initially shall establish such standard; however, the Community-Wide Standard

may evolve as development progresses and as Mariposa changes.

Maintenance. All references in this Charter to "maintenance" shall refer to maintenance, repair, rehabilitation, and renewal.

1.6. Term and Termination

 There is an old concept of law known as the "Rule Against Perpetuities" that restricts how long covenants can affect the title to land. Many jurisdictions no longer observe such rule; however, where the rule applies, the term of the covenants cannot exceed 21 years after the death of a named person who is living at the time the covenants are recorded.

This Charter is intended to be of perpetual duration. However, if New Mexico law restricts the duration of covenants running with the land, any provision in this Charter affected by such law shall run with and bind the land for so long as permitted under the law, after which time the provisions shall be automatically extended for successive 10-year periods unless at least 75% of the then Owners and the Founder, for so long as it owns any property within Mariposa, sign a document stating that the Charter is terminated and that document is recorded within the year before any extension. In such case, this Charter shall terminate on the date specified in the termination document.

If any provision of this Charter is or becomes unlawful, void, or voidable by reason of any rule restricting the period of time that covenants can affect title to property, that provision shall expire 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

This section shall not permit termination of any easement created in this Charter without the consent of the holder of such easement.

Governing Documents

Government is a trust, and the officers of the government are trustees; and both the trust and the trustees are created for the benefit of the people. Henry Clay

NOTES AND THOUGHTS

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Chapter 2

Community Administration

Vibrant communities depend upon all of their stakeholders working together to uphold community standards and achieve the vision and goals for the community. The Founder, the Association, the owners, the builders, and others have a role in the functioning of the community and in helping to fulfill that vision. This chapter identifies these stakeholders and describes their roles in administering the Community.

2.1. The Founder

The Founder has established the vision for the Community and, through the Governing Documents, has set forth the founding principles that will guide the Community during the initial period of development and sale and thereafter. The Founder's proposed plan for development of the Community is described in the land use plan(s) for Mariposa approved by Sandoval County, New Mexico and adopted by the City of Rio Rancho, as it may be supplemented and amended from time to time, which encompasses all of the property described in Exhibit "A" and all or a portion of the property described in Exhibit "B" (the "**Master Plan**"). However, the Founder is not obligated to submit property shown on the Master Plan to this Charter. In addition, the Founder may submit property to this Charter that is not shown on the Master Plan.

Components of the Master Plan which are incorporated herein by reference are: (i) the Annexation and Development Agreement Between the City of Rio Rancho, the Albuquerque Academy, and High Desert Investment Corporation, dated February 13, 2002, as amended or supplemented from time to time; and (ii) all development or maintenance standards, ordinances, or modifications imposed against Mariposa by the City of Rio Rancho or other governmental agencies. Amendments to any of the above shall not

require an amendment to this Community Charter.

The Founder has reserved various rights in the Governing Documents with respect to development and administration of the Community. The Founder may exercise certain of these rights throughout the "**Development and Sale Period**," which is the period of time during which the Founder or any of its successors or assigns owns real property in the Community or has an unexpired option to expand the Community pursuant to Chapter 17.

Other rights may be exercised only during the "**Founder Control Period**," which is the period of time that the Founder is entitled to appoint a majority of the members of the Association's board of directors ("**Board**"). It begins on the date of the Association's incorporation and terminates upon the first of the following to occur:

- (a) when 75% of the total number of Units permitted by the Master Plan have certificates of occupancy issued thereon and have been conveyed to persons other than builders holding title for purposes of construction and resale;
- (b) 40 years after this Charter is recorded; or
- (c) when, in its discretion, the Founder so determines and declares in a recorded instrument.

The Founder has certain approval rights for a limited period as provided in the By-Laws after the termination of the Founder Control Period.

The Founder may assign its status and rights as the Founder under the Governing Documents to any person who takes title to any portion of the

Community Administration

property described in Exhibit "A" or "B" for the purpose of development and/or sale. Such assignment shall be made only in a recorded instrument signed by both parties.

2.2. The Association

The Founder has established the Association as the primary entity responsible for administering Mariposa in accordance with the Governing Documents. On most matters, the Association acts through the Board. However, in some instances the Governing Documents or applicable law limit the Board's ability to act without the approval of the Association's members. Unless the Governing Documents or New Mexico law specifically provide otherwise, the Board may exercise the Association's rights and powers without a vote of the membership.

The Association may exercise all rights and powers that the Governing Documents and New Mexico expressly grant to it, as well as any rights and powers that may reasonably be implied under the Governing Documents. It may also take any action reasonably necessary to effectuate any such right or privilege.

2.3. The Board

The Board is the body responsible for administration, management, and operation of the Association. The Board is selected as provided in the By-Laws and serves the same role as a board of directors under New Mexico corporate law.

The Board may institute, defend, settle, or intervene on behalf of the Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Area of Common Responsibility, enforcement of the Governing Documents, or any other civil claim or action. However, the Board has no legal duty to institute litigation or any other proceeding on behalf of or in the name of the Association or its members.

In exercising the Association's rights and powers, making decisions on the Association's behalf (including, without limitation, deciding whether to file a lawsuit or take other legal action under any circumstances) and conducting the Association's affairs, Board members and the Association's officers are required to comply with, and shall be judged by, the standards set forth in the By-Laws.

2.4. The Owners

Each Person that holds record title to a Unit is referred to in the Governing Documents as an "Owner." However, a Person who holds title merely as security for the performance of an obligation (such as a lender holding a mortgage or similar security instrument) is not considered an "Owner." If a Unit is sold under a recorded contract of sale, and the contract specifically so states, the purchaser (rather than the holder of fee simple title) will be considered the Owner. If a Unit has more than one Owner, all Co-Owners are jointly and severally obligated to perform the responsibilities of the Owner under the Governing Documents.

Every Owner has a responsibility to comply with the Governing Documents and uphold the community standards described in Part Two of this Charter. Each Owner also has an opportunity to participate in the administration of the Community through membership in the Association and through service to the Community in various committee and leadership roles, as described in Chapters 3 and 4 and in the By-Laws.

2.5. Builders

Much of the responsibility and credit for helping to create Mariposa rests with the "Builders" -- those Persons who purchase one or more unimproved lots or parcels of land within Mariposa for further subdivision or development and resale in the ordinary course of their business. The Builders have the same privileges and responsibilities as Owners during the time that they own

Community Administration

Units for construction and resale, including the privileges of membership in the Association. In addition, the Founder may extend to Builders it designates some of the rights it has reserved under the Governing Documents with respect to development, marketing, and sale of property in the Community.

The Founder recognizes the importance of Builders in the Community and considers each Builder to be an important representative of Mariposa. The Founder will often look to Builders to transfer Mariposa's community vision and mission to Owners. The Builders' role in the community is also vital to Mariposa's commitment to sustainable development and preservation of the environment, now and for years to come.

2.6. The Assembly

The Founder has created the Mariposa Assembly, Inc. ("Assembly") as a means of generating, enhancing, and pursuing a genuine sense of community within Mariposa. While the Association is primarily responsible for managing real property and enforcing Rules for Mariposa, the Assembly exists to empower, encourage, and provide a means for each Owner and occupant of Mariposa to participate in and benefit from environmental, educational, and community-oriented affairs, services, programs, and activities.

The Assembly has rights and responsibilities, which are described in and governed by the recorded Community Covenant for Mariposa ("Community Covenant") and its by-laws and articles of incorporation. The Association and all Owners are subject to the Community Covenant and the Assembly's jurisdiction. Unless otherwise indicated, any reference in the Governing Documents to approval or other action by the Assembly refers to action by the Assembly's board of directors ("Assembly Board"), as governed by the Assembly's governing documents.

In any event, the Assembly's approval shall not unreasonably be withheld, conditioned, or delayed. In the event of a conflict between the Governing Documents and the Assembly's governing documents with respect to the Assembly's rights and responsibilities, the Assembly's governing documents shall control. In the event of a conflict between the Governing Documents and the Assembly's governing documents with respect to the Association's rights and responsibilities, the Governing Documents shall control.

2.7. Neighborhood Associations

Portions of the Community may be developed under a condominium form of ownership or under other circumstances that require a separate owners association to administer additional covenants applicable to that particular area. Any such association is referred to as a "Neighborhood Association". However, nothing in this Charter requires the creation of a Neighborhood Association, and the jurisdiction of any Neighborhood Association shall be subordinate to that of the Association.

Neighborhood Associations, if any, are responsible for administering the additional covenants applicable to the property within their jurisdiction and for maintaining, in accordance with the Community-Wide Standard, any property which they own or which their respective covenants designate as being for the common benefit of their members.

2.8. Mortgagees

If a Unit is made subject to a mortgage or other form of security instrument affecting title to a Unit ("Mortgage"), then the holder or beneficiary of that Mortgage ("Mortgagee") also has an interest in the administration of the Community. The Governing Documents contain various provisions for the protection of Mortgagees, including those set forth in Chapter 16.

Community Administration

A community is like a ship; everyone ought to be prepared to take the helm. Henrik Ibsen

NOTES AND THOUGHTS

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Chapter 3

Community Structure and Organization

The Community consists of parcels of property, referred to as Units, which are intended for the exclusive use of the Owner and other occupants of such parcel, as well as property that is intended for common use. Units are grouped into Neighborhoods and Election Districts to facilitate voting on Association matters. Units are assigned to Service Areas to permit the Association to provide special services and benefits to, and at the expense of, particular areas of the Community.

3.1. Designations of Properties Comprising the Community

Units. The Governing Documents refer to the homes and home sites in Mariposa as "Units." A Unit is a portion of Mariposa, depicted in a recorded subdivision plat, survey, or condominium instrument, which may be independently owned and conveyed and is zoned or otherwise intended for development, use, and occupancy as a residence for a single family. The term "Unit" refers to the land, if any, which is part of the Unit as well as to structures or other improvements on the Unit. A parcel of land is considered a single Unit until such time as a subdivision plat or condominium instrument is recorded subdividing it into more than one Unit. The term "Unit" does not include Common Areas, as defined below, common property of any Neighborhood Association, or property dedicated to the public.

Common Area. Any property and facilities that the Association owns or in which it otherwise holds possessory or use rights for the common use or benefit or enjoyment of more than one Unit is referred to as "Common Area." The Common Area also includes any property

that the Association holds under a lease and any easements in favor of the Association.

Limited Common Area. Certain portions of the Common Area may be designated as "Limited Common Area" for the exclusive use or primary benefit of Units in specified portions of the Community. Limited Common Areas might include such things as entry features, recreational facilities, lakes, and landscaped medians and cul-de-sacs, among other things.

The Founder may designate property as Limited Common Area and assign it to particular Units on the recorded plat depicting such property, in the deed conveying such property to the Association, or in the Supplement by which the property is submitted to the terms of this Charter. At any time during the Development and Sale Period, the Founder may assign use of the same Limited Common Area to additional Units.

Area of Common Responsibility. All of the properties and facilities for which the Association has responsibility under the Governing Documents, or for which the Association otherwise agrees to assume responsibility, are collectively referred to in the Governing Documents as the "Area of Common Responsibility," regardless of who owns them. The Area of Common Responsibility includes all of the Common Area and may also include Units or portions of Units and property dedicated to the public, such as public rights-of-way. The initial Area of Common Responsibility is described in Chapter 9.

Community Structure and Organization

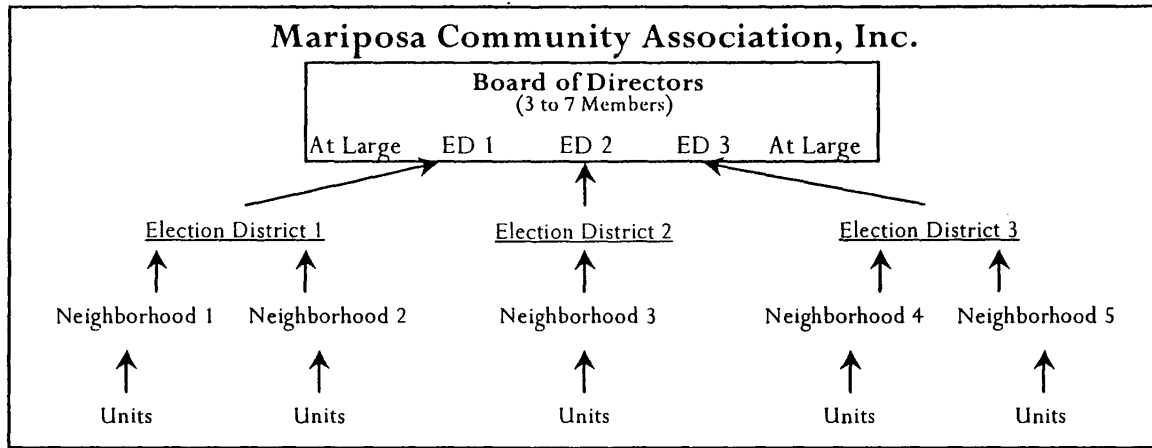


Diagram 3.1. The number of Neighborhoods and Election Districts shown is for illustrative purposes only; the actual number may vary. All Election Districts will vote for election of directors to fill any "at large" seats.

3.2. Neighborhoods

Units are grouped into "**Neighborhoods**" to facilitate a system of representative voting on matters as to which the Governing Documents require approval of the Association's membership. A Neighborhood may be comprised of any number of Units and may include Units of more than one housing type, as well as Units that are not contiguous to one another.

The Founder will initially assign Units to a specific Neighborhood (by name or other identifying designation) either in Exhibit "A" or in a Supplement. During the Development and Sale Period, the Founder may unilaterally record a Supplement, or an amendment to this Charter or any previously recorded Supplement, to designate or change Neighborhood boundaries. Thereafter, the Board may amend this Charter or any Supplement to re-designate Neighborhood boundaries; however, the Board may not combine two or more existing Neighborhoods without the consent of Owners of a majority of the Units in the affected Neighborhoods.

3.3. Election Districts

The Founder or the Board may designate "**Election Districts**," consisting of the Units within one or more Neighborhoods, for the purpose of electing directors to the Board. The method of establishing Election Districts and their role in elections are set forth in the By-Laws. The number of Election Districts shall not

exceed the total number of directors on the Board. The purpose of Election Districts is to provide for representation on the Board by groups with potentially dissimilar interests and to avoid a situation in which particular groups are able to elect the entire Board due to the number of votes they represent.

Diagram 3.1 illustrates the Association's organizational structure and the manner in which each Election District will elect representatives to the Board after the Founder Control Period.

3.4. Service Areas

Units may also be part of one or more "**Service Areas**" in which the Units share Limited Common Areas or receive special benefits or services from the Association that it does not provide to all Units within the Community. A Unit may be assigned to more than one Service Area, depending on the number and types of special benefits or services it receives. A Service Area may be comprised of Units of more than one housing type and may include Units that are not contiguous.

The Founder may initially designate Service Areas and assign Units to a particular Service Area either in Exhibit "A" or in a Supplement. During the Development and Sale Period, the Founder may unilaterally amend this Charter or any Supplement to change Service Area boundaries.

Community Structure and Organization

In addition, the Board may, by resolution, designate Service Areas and assign Units to them upon petition of Owners of at least 67% of the Units affected by the proposed designation pursuant to Section 10.2.

The Owners of Units within each Service Area may elect a "Service Area Committee" in accordance with the By-Laws to represent and act on behalf of the Owners with respect to the services and benefits that the Association provides to the Service Area. References to Service Areas in the Governing Documents shall also refer to such Service Area Committees, if appropriate from the context.

*Chaos is the law of nature; order is the dream
of men.
Henry Adams*

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Chapter 4

Association Membership and Voting Rights

The Association is a mechanism by which each Owner can participate in the governance and administration of Mariposa. While many powers and responsibilities are vested in the Board in order to facilitate day-to-day management and operation, the membership and voting rights vested in each Owner allow the Owners to participate in administration of the Community and influence the outcome of major decisions.

4.1. Membership

The Association initially has two classes of membership: the Owner membership, which is comprised of all Owners, including Builders, and the Founder membership, which consists solely of the Founder.

(a) **Owner Membership.** Every Owner is automatically a member of the Association. However, there shall be only one membership per Unit. Thus, if a Unit has more than one Owner, all co-Owners of the Unit shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth below and in the By-Laws. If an Owner is a corporation, a partnership, or other legal entity, its membership rights may be exercised by any officer, director, partner, or trustee, or by an individual the Owner designates from time to time in a writing to the Association's Secretary, except that only the individuals residing in the Unit shall be entitled to use any recreational facilities available for use by members.

(b) **Founder Membership.** The Founder holds the sole Founder membership. The Founder membership shall terminate two years after expiration of the Founder Control Period, or on such earlier date as the Founder determines and declares in a recorded instrument.

4.2. Voting

Each Unit is assigned one equal vote, except that no vote shall be exercised for any property exempt from assessment under Section 12.8. Further, during such time as there is a Founder membership, no vote shall be exercised for Units that the Founder owns; rather, the Founder's consent shall be required for various actions of the Board, the membership, and committees, as specifically provided elsewhere in the Governing Documents.

Due to the number of Units that may be developed in Mariposa, the Governing Documents provide for a representative system of voting. The Owners of Units in each Neighborhood elect a "Voting Delegate" in the manner provided in the By-Laws, to cast the votes of all Units in the Neighborhood on matters requiring a vote of the membership, except where the governing documents specifically require a vote of the Owners. However, until such time as the Board first calls for election of a Voting Delegate for a particular Neighborhood, each Owner of a Unit in such Neighborhood shall be considered a "Voting Delegate" and may personally cast the vote attributable to such Owner's Unit on any issue requiring a vote of the Voting Delegates under the Governing Documents.

The Voting Delegate attends Association meetings and casts all votes assigned to Units in that Neighborhood on any matters requiring a vote of the Association membership. A Voting Delegate may vote all votes it is entitled to cast in its discretion and may, but need not, poll the Owners of Units in the Neighborhood which he or she represents prior to voting. On any matter, other than election of directors, for which a Voting Delegate is entitled to cast more than one

Association Membership and Voting Rights

vote, the Voting Delegate may cast all such votes as a block or split them but shall not be entitled to fractionalize any single vote.

Voting Delegates are subordinate to the Board, and their responsibility and authority does not extend to policymaking, supervising, or otherwise being involved in Association governance beyond voting on matters put to a vote of the membership.

In any situation in which an Owner is entitled personally to exercise the vote for his or her Unit, if there is more than one Owner of such Unit, the vote shall be exercised as the co-Owners determine among themselves and advise the Association's Secretary in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

If you don't like something, change it. If you can't change it, change your attitude. Don't complain. Maya Angelou

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PART TWO: COMMUNITY STANDARDS

The price of greatness is responsibility.

Winston Churchill



M A R I P O S A

Chapter 5

Architecture, Landscaping and Aesthetic Standards

The Community derives its unique character from a mix of compatible architectural styles and from the cooperation of all Builders and Owners in upholding minimum design, landscaping, and environmental aesthetic standards. This chapter explains how those standards are established and how they are applied and maintained through a process requiring prior approval for construction on and exterior modifications to improvements on Units.

5.1. Purpose and Objective

In order to preserve the natural beauty of Mariposa and to establish a long-term, unifying design for Mariposa that assists in the preservation of that natural beauty and to ensure that Mariposa is a sustainable community (i.e., Mariposa's commitment to conservation, preservation, and the enhancement of the natural environment by reducing man's impact on the land), the Founder, and later the Sustainability Review Board ("Sustainability Review Board" or "SRB") shall promulgate and enforce Guidelines for Sustainability and review proposed improvements, alterations, and modifications to structures, landscaping, and natural areas on Units. Additionally, any improvement, alteration, or modification that has an environmental impact on or affects water supply and conservation is subject to review.

Design and environmental review is essential to Mariposa's development and to achieving the following purposes, without limitation, as more fully described in the Guidelines for Sustainability:

(a) Preventing excessive or unsightly grading, indiscriminate earth moving or clearing of property, or removal of trees and vegetation which could scar natural landforms;

(b) Ensuring that the location and configuration of structures are visually harmonious with the terrain and vegetation of the Units and with surrounding Units and structures and do not dominate unacceptably any area of Mariposa;

(c) Ensuring that the architectural design of structures and their massing, materials, and colors are visually harmonious with Mariposa's overall appearance and with natural landforms and native vegetations;

(d) Ensuring that plans for landscaping blend or co-exist harmoniously with the natural landscape; and

(e) Promoting sustainable building design and construction techniques that respond to energy conservation and environmental quality considerations.

5.2. General

All site work, landscaping, structures, improvements, and other items placed on a Unit in a manner or location visible from outside of any existing structures on the Unit and/or anything that may have an impact upon sustainability ("Improvements") are subject to standards for design, landscaping, and aesthetics adopted pursuant to this chapter ("Guidelines for Sustainability") and the approval procedures set forth in this chapter, except as this chapter or the Guidelines for Sustainability may otherwise specify.

No prior approval is necessary to repaint the exterior of structures on any Unit using the most recently approved color scheme or to rebuild or restore any damaged structures on a Unit in a manner consistent with the plans and specifications most recently approved for such structures. Generally, no approval is required for work done

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to the interior of a structure; however, modifications to the interior of screened porches, patios, and any other portions of a Unit visible from outside a structure do require prior approval.

Any dwelling constructed on a Unit shall be designed by and built in accordance with the approved plans unless the Founder or its designee, in its discretion, otherwise approves.

Approval under this chapter is not a substitute for any approvals or reviews required by City of Rio Rancho or any governmental agency or entity having jurisdiction over architectural or construction matters.

This chapter shall not apply to the Founder's design and construction activities or to the Association's design and construction activities during the Development and Sale Period.

5.3. Design and Environmental Review Authority

 Initially, the Founder reviews applications for proposed Improvements and determines whether they should be approved. Thereafter, the Board of Directors will appoint a Sustainability Review Board to review applications for proposed improvements. The Founder or the Sustainability Review Board is referred to as the "Reviewer." The Reviewer sets fees for reviewing applications.

(a) **Founder.** The Founder shall have exclusive authority to review and act upon all applications for review of proposed Improvements until the later of (i) the expiration of the Development and Sale Period, or (ii) such time as all Units planned for the property described in Exhibits "A" and "B" have been improved with dwellings for which a certificate of occupancy has been issued. The Founder may designate one or more persons to act on its behalf in reviewing any application. In reviewing and acting upon any request for approval, the Founder and its designee

act solely in the Founder's interest and owe no duty to any other Person.

From time to time, the Founder may delegate any or all of its rights under this chapter to other Persons or committees, including the SRB appointed pursuant to Section 5.2(b). Any such delegation shall be in writing, shall specify the scope of responsibilities delegated, and shall be subject to (i) the Founder's right to revoke such delegation at any time and reassume its prior control, and (ii) the Founder's right to veto any decision which it determines, in its discretion, to be inappropriate or inadvisable. So long as the Founder has any rights under this chapter, the jurisdiction of others shall be limited to such matters as the Founder specifically delegates.

(b) **Sustainability Review Board.** Upon the Founder's delegation of authority pursuant to Section 5.3(a), or upon expiration or termination of the Founder's rights under this chapter, the Board shall appoint a Sustainability Review Board to assume jurisdiction over matters within the scope of the delegated authority or this chapter, respectively. The SRB shall consist of at least three, but not more than seven, persons, who shall serve and may be removed and replaced in the Board's discretion unless appointed by the Founder. SRB members need not be Owners or representatives of Owners. The SRB may, but need not, include architects, engineers, or similar professionals. The Association may compensate SRB members in such manner and amount, if any, as the Board may determine appropriate.

Until expiration of the Founder's rights under this chapter, the SRB shall notify the Founder in writing within seven business days of any action (*i.e.*, approval, partial approval, or disapproval) it takes under this chapter. A copy of the application and any additional information the Founder may require shall accompany the notice. The Founder shall have 15 business days after receipt of such notice to veto any such action, in its sole discretion, by written notice to the SRB.

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Unless and until such time as the Founder delegates all or a portion of its reserved rights to the SRB or the Founder's rights under this chapter terminate, the Association shall have no jurisdiction over architectural matters.

(c) *Reviewer.* For purposes of this chapter, the entity having jurisdiction in a particular case shall be referred to as the "Reviewer."

(d) *Fees; Assistance.* The Reviewer may establish and charge reasonable fees for its review of applications and may require that such fees be paid in advance. Such fees may also include reasonable costs incurred in having professionals review any application. The Board may include the compensation of such persons in the Association's annual operating budget.

In addition, the Association may require a reasonable "Compliance Deposit." Such Compliance Deposit shall be held by the Association to ensure compliance by an Owner and/or its Builder to construct such improvements in accordance with the approval granted pursuant to this Chapter. If, after reasonable notice, an Owner and/or its Builder do not take steps to bring such improvements into compliance with the approval, the Association may use all or a portion of the Compliance Deposit to bring such improvements into compliance. The Association may pursue any and all remedies available under New Mexico law to enforce compliance. Any cost incurred by the Association shall constitute a lien on the violator's Unit.

5.4. Guidelines and Procedures



The purpose of the Guidelines for Sustainability is to maintain a consistent character and quality of appearance for the Improvements within the community to ensure that Improvements are constructed in an orderly manner, and to ensure environmental integrity. The Guidelines for Sustainability may describe what types of plants may be used for landscaping and what types of building materials and design elements are preferred and others that are discouraged. The Guidelines for Sustainability also provide a specific procedure for submitting applications for proposed Improvements and describe how to carry out the construction of the Improvements once approval has been received.

(a) *Guidelines for Sustainability.* The Founder shall prepare the initial Guidelines for Sustainability, which may contain general provisions applicable to all of Mariposa as well as specific provisions that vary among uses or locations within the Community. The Guidelines for Sustainability will address environmental concerns, including regulations for sustainable development, site planning, drainage management, landscape architecture and management, and water and energy conservation. The Guidelines for Sustainability are also intended to provide guidance to Owners and contractors regarding matters of particular concern to the Reviewer, including construction, and architecture. The Guidelines for Sustainability may incorporate provisions from the Master Plan or local, state, and federal law.

The Guidelines for Sustainability are not the exclusive basis for the Reviewer's decisions, and compliance with the Guidelines for Sustainability does not guarantee approval. Owners and/or Builders shall also be required to comply with City of Rio Rancho codes.

The Founder shall have sole and full authority to amend the Guidelines for Sustainability for so

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long as it has review authority under Section 5.3(a). The Founder's right to amend the Guidelines for Sustainability shall continue even if it delegates reviewing authority to the SRB, unless the Founder also delegates the power to amend to the SRB. Upon termination or delegation of the Founder's right to amend, the SRB may amend the Guidelines for Sustainability with the Board's consent.

Amendments to the Guidelines for Sustainability shall be prospective only. They shall not require modifications to or removal of any structures previously approved once the approved construction or modification has begun. However, any new work on such structures must comply with the Guidelines for Sustainability as amended. There shall be no limitation on the scope of amendments to the Guidelines for Sustainability Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Guidelines for Sustainability less restrictive and/or more restrictive.

The Reviewer shall make the Guidelines for Sustainability available to Owners and their contractors upon request. In the Founder's discretion, such Guidelines for Sustainability may be recorded, in which event the recorded version, as it may be amended from time to time, shall control in the event of any dispute as to which version of the Guidelines for Sustainability was in effect at any particular time.

(b) Procedures. Unless the Guidelines for Sustainability provide otherwise, no activities described in Section 5.2 may begin on any portion of Mariposa until a written application is submitted to and approved by the Reviewer. The application must be accompanied by plans and specifications and such other information as the Reviewer or the Guidelines for Sustainability require.

In reviewing each application, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of the pro-

posed external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that such determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular improvements.

The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and sustainability, and such determinations shall not be subject to review so long as they are made in good faith and in accordance with required procedures.

The Reviewer shall make a determination on each application after receipt of a completed application with all required information. The Reviewer may permit or require that an application be submitted or considered in stages, in which case a final decision shall not be required until after the final, required submission. The Reviewer may (i) approve the application with or without conditions; (ii) approve a portion of the application and disapprove other portions; (iii) disapprove the application; or (iv) defer the application.

The Reviewer shall notify the applicant in writing of the final determination on any application no later than 30 business days after its receipt of a completed application and all required submissions; however, with respect to any SRB determination subject to the Founder's veto right under Section 5.3(a), the Reviewer shall notify the applicant of the final determination within 40 business days after its receipt of the final determination and all required submissions.

If the Reviewer fails to respond in a timely manner, approval shall be deemed given. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with the Guidelines for Sustainability unless a written variance has been granted pursuant to Section 5.6.

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As part of any approval, the Reviewer may require that construction commence within a specified time period. If construction does not commence within the required period, the approval shall expire, and the Owner must reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within one year of commencement unless otherwise specified in the notice of approval or unless the Reviewer, in its discretion, grants an extension in writing. The Reviewer may exempt certain activities from the application and approval requirements of this chapter if such activities are undertaken in compliance with the Guidelines for Sustainability and the Community-Wide Standard.


(c) *Appeals Process.* After the appointment of the SRB by the Board, disapprovals of applications may be appealed by the applicant to the Board. To request an appeal, the applicant must submit to the Secretary of the Board a copy of the original application, the notification of the disapproval of the application, and a letter requesting an appeal no later than 15 days after the delivery of the notification of disapproval. The appeal request shall also contain a response to any specific concerns or reasons for disapproval, if any, listed in the notification of disapproval. The Board may (i) affirm the SRB's decision, (ii) affirm a portion and overturn a portion of the SRB's decision, or (iii) overturn the SRB's decision. The Board shall notify the applicant and the SRB in writing of its decision no later than 30 days after its receipt of the request for appeal with all required information. The Board's decision shall include a description of its reasons for overturning the SRB's decision. During the appeal process the Owner shall not commence any of the activities outlined in the application.

5.5. No Waiver of Future Approvals

The people reviewing applications under this chapter will change from time to time, and opinions on aesthetic matters, as well as interpreta-

tion and application of the Guidelines for Sustainability, may vary accordingly. It may not always be possible to identify objectionable features until work is completed. In such cases, the Reviewer may elect not to require changes to objectionable features. However, the Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans shall not constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

5.6. Variances

 In some circumstances, an Owner may find it difficult or impossible to comply with the requirements of the Guidelines for Sustainability. In that case, the Owner can file a request with the Reviewer to be excused from complying with the Guidelines for Sustainability. The Reviewer has the discretion to grant or deny the request.

The Reviewer may authorize variances from compliance with any of the Guidelines for Sustainability and any procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations justify a variance or if the Reviewer otherwise reasonably deems a variance to be appropriate under the particular circumstances; however, the Reviewer shall under no circumstances be obligated to grant variances. No variance shall (a) be effective unless in writing; (b) be contrary to this Charter or the Community Covenant; or (c) prevent the Reviewer from denying a variance in other circumstances. A variance requires the Founder's written consent during the Development and Sale Period and, thereafter, requires the Board's written consent.

5.7. Limitation of Liability

This chapter establishes standards and procedures as a mechanism for maintaining and enhancing the overall aesthetics and sustainability of

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Mariposa; they do not create any duty to any Person. Review and approval of any application pursuant to this chapter may be based purely on aesthetic considerations. The Reviewer is not responsible for the structural integrity or soundness of approved construction or modifications, for compliance with building codes and other governmental requirements, or for ensuring that all dwellings are of comparable quality, value, size, or design, or are aesthetically pleasing or otherwise acceptable to other Owners.

The Founder, the Association, its officers, the Board, any committee, and members of any of the foregoing shall not be liable for (a) soil conditions, drainage, or other general site work; (b) any defects in plans revised or approved hereunder; (c) any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents, whether or not the Founder has approved or featured such contractor as a Builder; or (d) any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Unit. In all matters, the Association shall defend and indemnify the Board, the SRB, and the members of each as provided in the By-Laws.

5.8. Certificate of Compliance

Any Owner may request in writing that the Reviewer issue a certificate of compliance confirming that there are no known violations of this chapter or the Guidelines for Sustainability. The Association shall either grant or deny such written request within 30 days after receipt and may charge a reasonable administrative fee. Issuance of such a certificate shall prevent the Association from taking enforcement action against an Owner for any condition known to the Association on the date of such certificate. Upon issuance of such a certificate, the Association shall promptly return any unused or unapplied portion of such Owner's Compliance Deposit.

5.9. Archeological Features

Archeological features exist at Mariposa. The presence of an archeological feature within or adjacent to a Unit may impact the manner in which an Owner is permitted to improve his/her Unit.

No Owner may disrupt, destroy, dismantle, damage, or remove any archeological features without the SRB's approval. The existence and location of any known archeological features of a Unit shall be considered by the Reviewer in evaluating an application for approval. In the event that any archeological features exist on the Unit, the Owner should, to the extent possible, avoid disruption of the archeological features.

*We shape our buildings and our
buildings shape us. Winston Churchill*

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Chapter 6

Maintenance, Repair and Replacement

One of the benefits of owning property in a planned community is the commitment among neighbors to maintain their property in a neat, attractive, and well-landscaped condition to enhance the overall beauty and aesthetic appeal of the community. This chapter describes the Owners' responsibilities for maintenance and repair of their Units and for insuring their Units against property damage so that funds will be available for repair and restoration if needed.

6.1. Maintenance of Units

Each Owner shall maintain his or her Unit, including all structures, landscaping, and other improvements comprising the Unit, in a manner consistent with the Governing Documents and the Community-Wide Standard, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a Neighborhood Association pursuant to this Charter, any Supplement, or by law. Such maintenance responsibility shall include (i) maintenance of all plantings and prompt removal of dead trees and plant material; and (ii) the obligation to remove encroachments by trees, shrubs, or other plant material located on the Unit onto property that is not part of the Unit, including sidewalks, streets, other Units, or the Common Area. In addition, each Owner shall maintain his or her Unit in compliance with the Community's master drainage plan, which the City of Rio Rancho and/or Sandoval County has approved.

Each Owner shall also be responsible, if shown on a plat or in a Supplement relating to such Owner's Unit, for maintaining and irrigating the landscaping within that portion of any adjacent Common Area or public right-of-way lying between the Unit boundary and any wall, fence, or curb located on the Common Area or public right-of-way within 10 feet of the Unit boundary. However, Owners may not remove trees,

shrubs, or similar vegetation from this area without prior approval pursuant to Chapter 5.

6.2. Maintenance of Neighborhood Property

A Neighborhood Association, if any, shall maintain its common property and any other property for which it has maintenance responsibility in a manner consistent with the Governing Documents, the Community-Wide Standard, and all applicable covenants.

Any Neighborhood Association shall also be responsible for maintaining and irrigating the landscaping within that portion of any adjacent Common Area or public right-of-way lying between the boundary of its common property and any wall, fence, or curb located on the Common Area or public right-of-way within 10 feet of its boundary. A Neighborhood Association shall not remove trees, shrubs, or similar vegetation from this area without prior approval pursuant to Chapter 5.

The Association may assume maintenance responsibility for property in any Neighborhood, either upon designation of the Neighborhood as a Service Area pursuant to Section 3.4 or upon the Board's determination, pursuant to Chapter 8, that the level and quality of maintenance then being provided is not consistent with the Community-Wide Standard. Such maintenance shall be assessable against all Units in the benefited Neighborhood as a Service Area Assessment, as provided in Section 12.2(c). The Association need not treat all similarly situated Neighborhoods the same.

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6.3. Responsibility for Repair and Replacement

Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement necessary to maintain the property to a level consistent with the Community-Wide Standard.

Each Owner shall carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible, unless either a Neighborhood Association (if any) or the Association carries such insurance (which they may but are not obligated to do). If the Association assumes responsibility for insuring a Unit, the premiums for such insurance shall be levied as a Specific Assessment against the benefited Unit and the Owner.

Within six months of any damage to or destruction of a structure on a Unit, the Unit's Owner shall promptly repair or reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved pursuant to Chapter 5 unless the Board, in its discretion, agrees in writing to extend such period. Alternatively, the Owner shall clear the Unit of debris and maintain it in a neat and attractive landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs that insurance proceeds do not cover.

Additional recorded covenants applicable to any Neighborhood or Service Area may establish additional insurance requirements and more stringent standards for rebuilding or reconstructing structures on Units and for clearing and maintaining the Units in the event the structures are not rebuilt or reconstructed.

This Section shall apply to a Neighborhood Association with respect to common property within the Neighborhood in the same manner as

if the Neighborhood Association was an Owner and the common property was a Unit.

6.4. Maintenance and Repair of Party Walls and Similar Structures

Each wall, fence, driveway, or similar structure built as part of the original construction on the Units that serves and/or separates any two adjoining Units shall be considered a party structure. The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who use the party structure.

If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

The right to and the obligation of contribution for party walls and similar structures between Owners, as provided in this Section, shall be appurtenant to the land and shall pass to such Owner's successor-in-title.

To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to any party structure. Any dispute concerning a party structure shall be subject to the provisions of Chapter 19.

Any proposed changes to a party structure shall be submitted for approval pursuant to Chapter 5 and agreed upon in a written agreement in recordable form by the Owners of all Units that are served or separated by the party structure.

Maintenance, Repair, and Replacement

*Any activity becomes creative when the doer
cares about doing it right, or doing it better.
John Updike*

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Chapter 7 Use and Conduct

In order to maintain a residential environment that encourages respect for and courtesy among neighbors and minimizes the potential for disputes, this chapter sets forth basic standards regarding use, occupancy, and transfer of interests in Units. In addition, it provides a procedure by which the Board and the membership can adopt and change rules regulating use, conduct, and activities within the Community to address particular needs and desires of the Community over time.

7.1. Use, Occupancy, and Transfer of Interests in Units

(a) **Residential and Related Uses.** Units may be used only for residential and related purposes, except as the Founder may otherwise authorize with respect to construction, marketing, and sale activities of the Founder and Builders it designates. A business activity shall be considered "related" to a residential use and thus permitted under this Section only if conducted by a person or persons residing in the Unit and only if the business activity

(i) is discrete and not apparent or detectable by sight, sound, or smell from outside of a permitted structure;

(ii) complies with applicable zoning requirements;

(iii) does not involve regular visitation of the Unit by employees who do not reside in the Unit, clients, customers, suppliers, or other business invitees, or door-to-door solicitation within the Community;

(iv) is consistent with Mariposa's residential character and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of others, as the Board determines in its discretion.

"Business" shall have its ordinary, generally accepted meaning and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves providing goods or services to Persons other than the family of the producer and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether (i) such activity is engaged in full or part time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required. Additionally, examples of "discrete business activities" include, but are not limited to, computer-based telecommunications and literary, artistic, or craft activities. The Board may restrict any business activities that interfere with the enjoyment of residential property in its sole and absolute discretion.

Leasing a Unit for residential purposes shall not be considered a "business" within the meaning of this subsection, provided that the Owner and any other Owners with whom such Owner is affiliated do not collectively lease or offer for lease more than one Unit at any time. This provision shall not preclude an institutional lender from leasing a Unit upon taking title following foreclosure of its security interest in the Unit or upon acceptance of a deed in lieu of foreclosure. For purposes of this Charter, the terms "Lease" and "Leasing" shall refer to the regular, exclusive occupancy of a Unit by any Person other than the Owner, for which the Owner receives any consideration or benefit.

(b) **Leasing.** Any dwelling that is leased shall be leased only in its entirety; separate rooms, floors, or other areas within a dwelling may not be separately leased.

All leases shall be in writing and shall disclose that the tenants and all occupants of the leased Unit are bound by and obli-

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gated to comply with the Governing Documents. However, the Governing Documents shall apply regardless of whether such a provision is specifically set forth in the lease.

Within 10 days of a lease being signed, the Owner of the leased Unit shall notify the Board or the Association's managing agent in writing of the lease and provide any additional information the Board may reasonably require. The Owner must give the tenant copies of the Governing Documents. In addition to, but consistent with this sub-section, the Association or the Board may adopt Rules governing leasing and subleasing.

(c) *Transfer of Title.* Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least seven days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The Person transferring title shall continue to be responsible jointly and severally with the Person accepting title for all obligations of the Owner, including assessment obligations, until the date upon which the Board receives such notice, notwithstanding the transfer of title.

(d) *Subdivision and Combination of Units.* No Person other than the Founder and Builders authorized by the Founder shall subdivide or change the boundary lines of any Unit or combine Units without the Board's prior written approval. Any such action that the Board approves shall be effective only upon recording of a plat or other legal instrument reflecting the subdivision or new boundaries of the affected Unit(s). In the absence of such recorded instrument, adjacent Units owned by the same Owner shall continue to be treated as separate Units for purposes of voting and assessment, even though such Units may be improved with a single dwelling; therefore, the Owner of such Units shall be

responsible for the separate assessments for each of such Units.

(e) *Timesharing.* No Unit shall be used for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years, unless such program is established by the Founder or with the Founder's prior written approval.

7.2. Rulemaking Authority and Procedures

The Governing Documents establish a framework of covenants and conditions that govern the Community. The initial Rules attached as Exhibit "C" are a part of that framework. However, within that framework, the Association must be able to respond to unforeseen issues and changes affecting the Community. Therefore, the Board and the Voting Delegates are authorized to change the Rules in accordance with the following procedures, subject to the limitations set forth in Section 7.3.

(a) *Board Authority.* Subject to the notice requirements in subsection (c) and the Board's duty to exercise judgment and reasonableness on behalf of the Association and its Members, the Board may adopt new Rules and modify or rescind existing Rules by majority vote of the directors at any Board meeting.


(b) *Membership Authority.* Subject to the notice requirements in subsection (c), the Voting Delegates representing a majority of the votes in the Association may also adopt new Rules and modify or rescind existing Rules at any meeting of the Association duly called for such purpose, regardless of the manner in which the original Rule was adopted. However, as long as the Founder membership exists, any such action shall also be subject to the Founder's approval.

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(c) *Notice.* The Board shall send notice to all Owners concerning any proposed Rule change at least five business days prior to the meeting of the Board or the Voting Delegates at which such action is to be considered. At any such meeting, Voting Delegates shall have a reasonable opportunity to be heard before the proposed action is put to a vote.

This notice requirement does not apply to administrative and operating policies that the Board may adopt relating to the Common Areas, such as hours of operation of a recreational facility, and the method of allocating or reserving use of a facility (if permitted) by particular individuals at particular times, notwithstanding that such policies may be published as part of the Rules.

(d) *Effective Date.* A Rules change adopted under this Section shall take effect 30 days after the date on which written notice of the Rules change is given to the Owners.

 Since it is impossible to foresee all potential situations and problems that may arise within the community, the Board has the authority to adopt and modify rules as needed to address these changing circumstances.

(e) *Conflicts.* No action taken under this Section shall have the effect of modifying or repealing the Guidelines for Sustainability or any provision of this Charter other than the Rules. In the event of a conflict between the Guidelines for Sustainability and the Rules, the Guidelines for Sustainability shall control. In the event of a conflict between the Rules and any provision of this Charter (exclusive of the Rules), the Charter shall control.

7.3. Protection of Owners and Others

Except as may be set forth in this Charter (either initially or by amendment) or in the initial Rules set forth in Exhibit "C," all Rules shall comply with the following provisions:

(a) *Similar Treatment.* Similarly situated Units shall be treated similarly; however, the Rules may vary by Neighborhood or Service Area.

(b) *Displays.* No Rule shall abridge an Owner's right to display political, religious, or holiday symbols and decorations on his or her Unit of the kinds normally displayed in single-family residential neighborhoods, nor shall any Rule regulate the content of political signs. However, the Association may adopt time, place, and manner restrictions with respect to signs, symbols, and displays visible from outside structures on the Unit, including reasonable limitations on size and number.

Owners shall be entitled to display one flag on a pole of Board-approved size located on the Unit; provided, the Association may adopt time, place, and manner restrictions with respect to flag displays.

(c) *Household Composition.* No Rule shall interfere with an Owner's freedom to determine household composition, except that the Association may impose and enforce reasonable occupancy limitations and conditions based on Unit size and facilities and its fair share use of the Common Area.

(d) *Activities Within Dwellings.* No Rule shall interfere with the activities carried on within a dwelling, except that the Association may prohibit activities not normally associated with residential property. It may also restrict or prohibit activities that create monetary costs for the Association or other Owners, that create a danger to anyone's health or safety, that generate excessive noise, traffic, or odors, that create unsightly conditions visible from outside the dwelling, or that are an unreasonable source of annoyance.

(e) *Allocation of Burdens and Benefits.* No Rule shall alter the allocation of financial burdens among the various Units or rights to use the

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Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Area available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who are delinquent in paying assessments, abuse the Common Area, or violate the Governing Documents. This provision does not affect the right to increase the amount of assessments as provided in Chapter 12.

(f) *Leasing and Transfer of Units.* No Rule shall prohibit leasing or transfer of any Unit or require approval prior to leasing or transferring a Unit; however, the Rules may require a minimum lease term of up to 12 months. Minimum lease terms may vary by Neighborhoods or Service Areas. The Rules may also require that Owners use Board-approved lease forms (or include specific lease terms), and may impose a reasonable review or administrative fee in connection with the Board's review of a lease.

(g) *Abridging Existing Rights.* No Rule shall require that an Owner dispose of personal property kept in or on a Unit in compliance with the Rules in effect at the time such personal property was brought onto the Unit. This exemption shall apply only during the period of such Owner's ownership of the Unit and shall not apply to subsequent Owners who take title to the Unit after adoption of the Rule.



This provision protects the existing personal property of Owners. It is intended to prevent a situation in which an Owner is forced to get rid of an item that was allowed prior to a change in the Rules. For example, if basketball hoops are allowed in driveways and then a Rule is passed prohibiting basketball hoops, the Board cannot force the Owners who have basketball hoops at that time to remove them. However, the Board can enforce this Rule against any other Owner desiring to install one. In addition, if an Owner sells his or her Unit and takes down the basketball hoop, the new Owner cannot install another.

(h) *Reasonable Rights to Develop.* No Rule may unreasonably interfere with the Founder's ability to develop, market, and sell property in Mariposa.

(i) *Interference with Easements.* No Rule may unreasonably interfere with the exercise of any easement.

7.4. Owners' Acknowledgment and Notice to Purchasers

By accepting a deed, each Owner acknowledges and agrees that the use, enjoyment, and marketability of his or her Unit is limited and affected by the Rules, which may change from time to time. All Unit purchasers are hereby notified that the Association may have adopted changes to the Rules and that such changes may not be set forth in a recorded document. A copy of the current Rules and all administrative policies are available from the Association upon request. The Association may charge a reasonable fee to cover its production cost.


Peace rules the day when reason rules the mind.
Wilkie Collins

Chapter 8

Compliance and Enforcement

The covenants, standards, and rules set forth in the Governing Documents are for the benefit of all Owners and occupants of the Community. However, if they are to have any real meaning, there must be a commitment by the stakeholders in the Community to comply with them and there must be a mechanism in place to enforce that compliance in the event that someone fails or refuses to do so. This chapter sets forth the obligation to comply and the remedies available to the Association for noncompliance.

8.1. Compliance

 All Owners and occupants of a Unit, as well as their tenants, guests, and other visitors, must abide by the Governing Documents and are subject to various penalties including fines and the loss of the right to use the Common Areas if they fail to do so.

Every Owner, occupant, and visitor to a Unit must comply with the Governing Documents and shall be subject to sanctions for violations as described in this chapter. In addition, each Owner shall be responsible for, and may be sanctioned for, all violations of the Governing Documents by the occupants of or visitors to their Units and for any damage to the Area of Common Responsibility that such occupants or visitors cause.

8.2. Remedies for Non-Compliance

The Association, the Founder, and every affected Owner shall have the right to file suit at law or in equity to enforce the Governing Documents. In addition, the Board may impose sanctions for violation of the Governing Documents, including those listed below and any others described elsewhere in the Governing Documents.

(a) Sanctions Requiring Prior Notice and Hearing. After written notice and an opportu-

nity for a hearing in accordance with the By-Laws, the Board may:

(i) impose reasonable monetary fines, which shall constitute a lien upon the violator's Unit. In the event that any occupant, guest, or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine may, but need not, first be assessed against the violator; provided, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board);

(ii) suspend an Owner's right to vote (except that no notice or hearing is required if the Owner is more than 90 days delinquent in paying any Base or Special Assessment);

(iii) suspend any Person's right to use any Common Area facilities (A) for any period during which any charge against such Owner's Unit remains delinquent, and (B) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation (except that no notice or hearing is required if the Owner is more than 60 days delinquent in paying any assessment or other charge owed the Association); provided, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit;

(iv) suspend services the Association provides (except that no notice or hearing is required if the Owner is more than 60 days delinquent in paying any assessment or other charge owed to the Association);

(v) exercise self-help or take action to abate any violation of the Governing Documents in a non-emergency situation (including remov-

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ing personal property that violates the Governing Documents);

(vi) without liability to any Person, preclude any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of Chapter 5 and the Guidelines for Sustainability from continuing or performing any further activities in Mariposa;

(vii) levy Specific Assessments to cover costs the Association incurs in bringing a Unit into compliance with the Community-Wide Standard or other requirements under the Governing Documents; and

(viii) record a notice of violation or non-compliance with respect to any Unit on which a violation exists.

(b) *Other Remedies.* In addition to those actions set forth above, the Board may take the following actions to obtain compliance with the Governing Documents without prior notice or a hearing:

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(i) exercise self-help or take action to abate a violation on a Unit in any situation that requires prompt action to avoid potential injury or damage or unreasonable inconvenience to other persons or their property (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations)

(ii) exercise self-help or take action to abate a violation on the Common Area under any circumstances;

(iii) require an Owner or a Neighborhood Association, at its own expense, to perform maintenance or to remove any structure or improvement on such Owner's Unit or on the Neighborhood Association's property, respectively, that is in violation of the Community-Wide Standard or other requirements under the

Governing Documents and to restore the property to its previous condition;

(iv) enter the property and exercise self-help to remove or cure a violating condition if an Owner or Neighborhood Association fails to take action as required pursuant to subsection (iii) above within 10 days after receipt of written notice to do so, and any such entry shall not be deemed a trespass; or

(v) bringing suit at law for monetary damages or in equity to stop or prevent any violation, or both.

(c) *Additional Powers Relating to Neighborhood Associations.* In addition to the foregoing remedies, the Association shall have the power to veto any action that a Neighborhood Association proposes to take if the Board reasonably determines the proposed action to be adverse to the interests of the Association or its Members or inconsistent with the Community-Wide Standard. The Association also shall have the power to require specific action to be taken by any Neighborhood Association in connection with its obligations and responsibilities, such as requiring specific maintenance or repairs or aesthetic changes to be effectuated and requiring that a proposed budget include certain items and that expenditures be made therefor.

A Neighborhood Association shall take appropriate action required by the Association in a written notice within the reasonable time frame set by the Association in the notice. If the Neighborhood Association fails to comply, the Association shall have the right to effect such action on behalf of the Neighborhood Association and levy Specific Assessments to cover the costs, as well as an administrative charge and sanctions.

8.3. Board Decision to Pursue Enforcement Action

The decision to pursue enforcement action in any particular case shall be left to the Board's dis-

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cretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. For example, the Board may determine that, in a particular case:

(a) the Association's position is not strong enough to justify taking any or further action;

(b) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;

(c) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(d) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

A decision not to enforce a particular provision shall not prevent the Association from enforcing the same provision at a later time or prevent the enforcement of any other covenant, restriction, or rule.

8.4. Attorneys Fees and Costs

In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs reasonably incurred in such action.

8.5. Enforcement of Ordinances

The Association, by contract or other agreement, may enforce applicable city and county and other governmental entities' ordinances. In addition, Sandoval County or the City of Rio Rancho may enforce ordinances within Mariposa.

People need to be reminded more often than they need to be instructed. Samuel Johnson

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PART THREE: ASSOCIATION OPERATIONS

Do what you can, with what you have, where you are.

Theodore Roosevelt



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Chapter 9

Property Management

One of the Association's primary functions is maintaining and operating property and facilities for the common benefit of the Owners and residents of Mariposa. This chapter establishes the Association's obligation to accept property that the Founder designates as Common Area or Limited Common Area and to maintain, operate, and insure it, along with certain other properties, for the benefit of Mariposa.

9.1. Acceptance and Control of Association Property

(a) *Transfers and Conveyances by the Founder.* The Founder and its designees may transfer or convey to the Association interests in real or personal property within or for the benefit of the Community, and the Association shall accept such transfers and conveyances. Such property may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests.

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Upon the Founder's written request, the Association shall reconvey to the Founder any unimproved real property that the Founder originally conveyed to the Association for no payment, to the extent conveyed in error or needed to make minor adjustments in property lines or accommodate changes in the development plan.

(b) *Management and Control.* The Association is responsible for management, operation, and control of the Common Area subject to any covenants set forth in the deed or other instrument transferring the property to the Association. The Association may enter into leases, licenses, or operating agreements with respect to portions of the Common Area, for payment or no payment, as the Board deems appropriate. The Association may permit use of Common Area facilities by persons other than Owners and occupants of Units and may charge use fees, in

such amount as the Board may establish, for such use.

9.2. Maintenance of Area of Common Responsibility

The Association shall maintain the Area of Common Responsibility in accordance with the Community-Wide Standard. The Area of Common Responsibility includes, but is not limited to:

(a) the Common Area;

(b) any private streets situated upon the Common Area. However, the obligation to maintain private streets shall not include landscaping of the area in the private right-of-way between the edge of each Unit's property line and the curb. The maintenance of such private right-of-way shall be the responsibility of the Owner of each Unit abutting a private street. If the Association disturbs such landscaping in connection with its maintenance of the private streets, it shall restore and repair such landscaping;

(c) landscaping within public rights-of-way within or abutting Mariposa and areas designated as natural amenities; and

(d) such portions of any additional property as may be dictated by the Founder, this Charter, any Supplement, or any covenant or agreement for maintenance entered into by, or otherwise binding on the Association;

(e) any property and facilities that the Founder owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members. The Founder shall identify any such property and facilities by written notice to the Association, and they shall remain part of the Area of Common

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Responsibility until the Founder revokes such privilege of use and enjoyment by written notice to the Association; and

(f) the structural features and surfaces of those portions of perimeter walls, fences, and other boundary controls within the Community that face open space, public rights-of-way, Common Area, or the Area of Common Responsibility. This responsibility shall include the rebuilding of walls, fences, and other boundary controls after structural damage and restuccoing or other resurfacing of wall surfaces including the tops of walls, but shall not include (i) general maintenance, restuccoing, or resurfacing of the surfaces of the surfaces of such perimeter walls, fences, or other boundary controls that face Units, which shall be the responsibility of the Owners of such Units; or (ii) any damage (structural or otherwise) to any portion of a wall caused by the Owner of a Unit, or such Owner's agents, representatives, or contractors, which damage and the repair of such damage shall be the sole responsibility of such Owner.

The Association shall also be responsible for proper functioning of certain portions of the stormwater drainage system serving the Community, including maintenance, repair and replacement, as needed, of pipes, culverts, and other structures and equipment comprising the system, except to the extent that such responsibility rests with the City of Rio Rancho or SSCAFCA. It shall have no responsibility for landscaping or other maintenance of Units burdened by stormwater drainage easements unless otherwise specifically set forth in a Supplement or in a recorded agreement or plat.

The Association may maintain other property it does not own, including, without limitation, Units, property dedicated to the public, or property owned or maintained by a Neighborhood Association if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. The Association shall not be liable for any damage or injury oc-

curing on, or arising out of the condition of, property it does not own except to the extent that it has been negligent in performing its maintenance responsibilities.

9.3. Discontinuation of Operation

The Association shall maintain the Common Area facilities in continuous operation unless the Founder, during the Development and Sale Period, and Voting Delegates representing at least 75% of the total votes in the Association consent in writing to discontinue such operation. If the property is Limited Common Area, any discontinuation shall also require the approval in writing of at least 75% (or such higher percentage as a Supplement may require) of the Owners to whom such Limited Common Area is assigned. This paragraph shall not apply to temporary closures or interruptions in operation as the Board may determine appropriate to perform maintenance or repairs.

9.4. Restoring Damaged Improvements

This provision ensures that desirable Common Area improvements will be replaced if destroyed, but it also makes it possible *not* to repair or rebuild if the Owners who benefit from the Common Area do not want it anymore.

In the event of damage to or destruction of portions of the Area of Common Responsibility for which the Association has insurance responsibility, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially its condition prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

The Association shall repair or reconstruct damaged Common Area improvements unless the Founder, during the Development and Sale Period, and Voting Delegates representing at

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least 75% of the total votes in the Association, decide within 60 days after the loss not to repair or reconstruct. If the damage is to Limited Common Area or Units within a Service Area, any decision not to restore the damaged improvements shall also require the approval of at least 75% of the Owners of Units in the affected Service Area. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. No Mortgagee shall have the right to participate in determining whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If a decision is made not to restore the damaged improvements and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive condition consistent with the Community-Wide Standard.

The Association shall retain and place in a capital improvements account for the benefit of all Owners, or the Owners of Units within the affected Service Area, as appropriate, any insurance proceeds remaining after paying the costs of repair or reconstruction or after such settlement as is necessary and appropriate. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Voting Delegates, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 11.4.

9.5. Relationships with Other Properties, Including Nonresidential Properties

The Association may contract with the owner of any neighboring property or public entity to provide for sharing of costs associated with (a) maintenance and operation of mutually beneficial properties or facilities, or (b) provision of mutually beneficial services.

Adjacent to or in the vicinity of the Community, there will be nonresidential areas, which may include apartment homes, retail, and other business uses. *These nonresidential areas are not subject to this Charter.* The Association may enter into cost sharing agreements with a nonresidential property owner or any association organized to oversee the nonresidential areas.

9.6. Cooperation with the Assembly

The Association shall cooperate with the Assembly on all matters involving the Assembly's obligations and responsibilities under the Community Covenant. For example, to the extent reasonably feasible, the Association shall permit reasonable use of Common Area facilities by the Assembly, "charter clubs," and other volunteer groups for offices, programs, activities, and services. The Board, to the extent is reasonably appropriate and financially feasible, shall incorporate the Assembly's suggestions for community operations, which may come from Assembly surveys and focus groups or otherwise.

*We cannot escape the responsibility of tomorrow
by evading it today. Abraham Lincoln*

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Chapter 10

Provision of Services

In addition to its property management role, the Association is a vehicle for providing a variety of services for the benefit of the Community at large and individual Units. This chapter describes some of the services the Association may provide and the mechanism by which it may provide varying levels and types of services to different areas of the Community.

10.1. Provision of Services to Units

The Association may arrange for or provide services to Owners and their Units, directly or through contracts with the Founder or other third parties. The Association may enter into bulk service agreements by which a particular service is provided to all Units, or it may offer various services at the option of each Owner, or both. By way of example and not limitation, such services might include such things as fiber optic cable communications network, cable television, utilities, transportation, fire protection, security, trash collection, landscape maintenance, pest control, caretaker services, and technology services.

Any Association contract for services may require individual Owners or occupants to execute separate agreements directly with the Persons providing components or services in order to gain access to or obtain specified services. Such contracts and agreements may contain terms and conditions that, if violated by the Owner or occupant of a Unit, may result in termination of services provided to such Unit. Any such termination shall not relieve the Owner of the continuing obligation to pay assessments for any portion of the charges for such service that are assessed against the Unit as a Common Expense or Service Area Expense pursuant to Chapter 12.

In its discretion, the Board may discontinue offering particular services and may modify or

cancel existing contracts for services, subject to the contract terms and any provision that may exist elsewhere in the Governing Documents requiring the Association to provide such services.

10.2. Provision of Services to Service Areas

(a) *Service Areas Designated by the Founder.* The Association shall provide services to Units within any Service Area designated by the Founder pursuant to Section 3.4 as required by the terms of any Supplement applicable to the Service Area.

(b) *Service Areas Designated by Board.* In addition to Service Areas which the Founder may designate pursuant to Section 3.4, any group of Owners may petition the Board to designate their Units as a Service Area for the purpose of receiving from the Association (i) special benefits or services which are not provided to all Units, or (ii) a higher level of service than the Association otherwise provides. Any such petition shall be signed by Owners of a majority of the Units within the proposed Service Area. Upon receipt of such petition, the Board shall investigate the terms upon which the requested benefits or services might be provided and notify the Owners in the proposed Service Area of such terms and the initial fees for providing the requested service, which may include a reasonable administrative charge. If Owners of at least 67% of the Units within the proposed Service Area approve the proposal in writing, the Board shall designate the Units as a Service Area and include the fees for such service as a line item in the Service Area budget pursuant to Section 12.2(c).

Provision of Services

10.3. Community Technology

(a) Community Systems. Without limiting the generality of Sections 10.1 and 10.2, the Association is specifically authorized to provide, or to enter into contracts with other Persons to provide, in addition to services the Assembly provides, central telecommunication receiving and distribution systems (e.g., cable television, high speed data/Internet/intranet services, and security monitoring) and related components, including associated infrastructure, equipment, hardware, and software, to serve the Community ("Community Systems"). Any such contracts may provide for installation, operation, management, maintenance, and upgrades or modifications to the Community Systems as the Board determines appropriate. The Association shall have no obligation to utilize any particular provider(s). However, except for cause (as defined by written agreement with the provider), the Association may not, without the Founder's consent, terminate or refuse to renew any contract entered into during the Founder Control Period.

(b) Opportunities for Community Interaction. The Association may make use of computers, the Internet, and expanding technology or may cooperate with the Assembly to facilitate community interaction and encourage participation in Association activities. For example, the Association may sponsor a community cable television channel, create and maintain a community intranet or Internet home page, maintain an "online" newsletter or bulletin board, and offer other technology-related services and opportunities for Owners and residents to interact and participate in Association-sponsored activities. To the extent New Mexico law permits, and unless otherwise specifically prohibited in the Governing Documents, the Association may send notices by electronic means, hold Board or Association meetings and permit attendance and voting by electronic means, and send and collect assessment and other invoices by electronic means.

I think there is a world market for maybe five computers.
Thomas Watson, Chairman of IBM, 1943

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Chapter 11 Association Insurance

The Association is responsible for insuring against various types of risks, including property damage, personal injury, and liability. This chapter describes the minimum types and amounts of coverage that the Association must obtain, the specific requirements for such policies, and the handling of deductibles and premiums for such insurance.

11.1. Required Coverages

The Association shall obtain and maintain in effect the following insurance coverage, if reasonably available, or if not reasonably available, the most nearly equivalent coverage as is reasonably available:

(a) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on

(i) the Common Area;
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(ii) other portions of the Area of Common Responsibility, to the extent that the Association has responsibility for repair or replacement in the event of a casualty; and

(iii) any Service Area, to the extent specified or authorized by any applicable Supplement.

If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. The limits of Association property insurance policies shall be sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes.

In addition, if a Supplement so specifies, the Association shall obtain and maintain property insurance on the insurable improvements within

a Service Area, which insurance shall comply with the above requirements.

(b) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage shall have a limit of at least \$3,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage. Such coverage may be provided through a combination of primary and umbrella policies. However, if additional coverage and higher limits are available at reasonable cost that a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits;

(c) Workers compensation insurance and employers liability insurance, if and to the extent required by law;
P O S A

(d) Directors and officers liability coverage; and

(e) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's business judgment but not less than an amount equal to one-sixth of the annual Base Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation.

The Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replace-

Association Insurance

ment costs in the metropolitan Rio Rancho area. In the exercise of its business judgment, the Board may obtain additional insurance coverage and higher limits than this Section requires.

11.2. Deductibles



Persons who cause damage to insured improvements can be charged for the insurance deductible amount by the Board. This ensures that the Association need not pay for such damages.

The Association's policies may contain a reasonable deductible, which shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 11.1. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Service Area Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Units as a Specific Assessment.

11.3. Policy Requirements



Subrogation is a legal concept which means the substitution of one person in the place of another with respect to a certain lawful claim, demand, or right so that the person who is substituted stands in the place and receives the rights of the other person in relation to the claim, demand, or right. For example, insurance companies generally have the right to step into the shoes of the party whom they compensate and sue any party whom the compensated party could have sued.

All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Owner.

To the extent available at reasonable cost and terms, all Association insurance shall:

(a) be written with a company authorized to do business in New Mexico which satisfies the requirements of the Federal National Mortgage Association or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(b) be written in the name of the Association as trustee for the benefited parties. All policies shall be for the benefit of the Association and its members, except that policies on Limited Common Area shall be for the benefit of the Owners of Units within the Service Area to which the Limited Common Area is assigned and their Mortgagees, as their interests may appear;

(c) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

(d) contain an inflation guard endorsement;

(e) include an agreed amount endorsement if the policy contains a co-insurance clause;

(f) provide that each Owner is an insured person with respect to liability arising out of such Owner's status as a member of the Association;

(g) provide a waiver of subrogation against any Owner or household member of an Owner; and

(h) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any act or omission of one or more Owners, unless acting on the Association's behalf within the scope of their authority, or on account of any curable defect or violation, without prior written demand

Association Insurance

to the Association and allowance of a reasonable time to cure the defect or violation.

In addition, the Board shall use reasonable efforts to secure insurance policies that list the Owners as additional insureds and provide:

(a) a waiver of subrogation as to any claims against the Association's directors, officers, employees, and manager;

(b) a waiver of the insurer's right to repair and reconstruct instead of paying cash;

(c) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(d) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(e) a cross liability provision; and

(f) a provision vesting in the Board exclusive authority to adjust losses. However, Mortgagees having an interest in such losses may not be precluded from participating in the settlement negotiations, if any, related to the loss.

11.4. Insurance Premiums

Premiums for all Association insurance shall be a Common Expense, except that premiums for property insurance on Units within, or Limited Common Areas assigned to, a particular Service Area shall be a Service Area Expense, unless the Board reasonably determines that other treatment of the premiums is more appropriate.

NOTES AND THOUGHTS

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M A R I P O S A

Chapter 12

Association Finances

This chapter provides for various types of funding to cover expenses that the Association incurs or expects to incur in exercising its authority and performing its responsibilities under the Governing Documents. The primary source of funding is the assessments which this chapter authorizes the Association to levy against the Units and collect from the Owner of each Unit. Assessments are secured by a lien on each Unit as described in this chapter.

12.1. Association Expenses

(a) **Common Expenses.** Except as the Governing Documents otherwise specifically provide, all of the expenses that the Association incurs, or expects to incur, in connection with the ownership, maintenance, and operation of the Area of Common Responsibility, and otherwise for the general benefit of the Owners, are considered "**Common Expenses.**" Common Expenses include such operating reserves and reserves for repair and replacement of capital items within the Area of Common Responsibility as the Board finds necessary or appropriate.

Common Expenses shall not include any expenses incurred during the Founder Control Period for initial development or original construction costs unless Voting Delegates (other than Founder appointees) representing a majority of the total vote in the Association approve such expenditure. Payments due under leases of capital improvements shall not be considered an initial development or original construction cost.

The characterization of a particular expense as a "Common Expense" shall not preclude the Association from seeking reimbursement for, or a contribution toward, such expenses from other Persons who may be responsible for the expenses incurred or for sharing such expenses pursuant to

this Charter, any Supplement, or any other recorded covenants or agreements.

(b) **Service Area Expenses.** All expenses that the Association incurs or expects to incur in connection with the ownership, maintenance and operation of Limited Common Areas, or in providing other benefits and services to a Service Area, including any operating reserve or reserve for repair and replacement of capital items maintained for the benefit of the Service Area, are considered "**Service Area Expenses.**" Service Area Expenses may include a reasonable administrative charge in such amount as the Board deems appropriate, provided that any such administrative charge is applied at a uniform rate per Unit among all Service Areas receiving the same service.

(c) **Assembly Expenses.** The Association shall collect from each Unit Owner such Unit Owner's proportionate share of the Assembly's annual expenses allocated pursuant to the Community Covenant.

12.2. Budgeting for and Allocating Association Expenses.

(a) **Preparation of Budget.** At least 90 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year. In addition, the Board shall prepare a separate budget for each Service Area reflecting the estimated Service Area Expenses that the Association expects to incur for the benefit of such Service Area in the coming year.

The estimated expenses in each budget shall include, in addition to any operating reserves, a reasonable contribution to a reserve fund for repair and replacement of any capital items to be

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maintained as a Common Expense or as a Service Area Expense of the Service Area for which the budget is prepared, as applicable. In determining the amount of such reserve contribution, the Board shall take into account the number and nature of replaceable assets, the expected useful life of each, the expected repair or replacement cost, and the contribution required to fund the projected needs by annual contributions over the useful life of the asset.

In addition, each budget shall also include contributions to the Assembly as a line item.

Each budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Units (including amounts to which the Association is entitled pursuant to any covenant or agreement to share costs), and the amount to be generated through the levy of Base Assessments and Service Area Assessments pursuant to subsections (b) and (c).

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(b) *Calculation of Base Assessments.* The total budgeted Common Expenses and any income anticipated from sources other than assessments against the Units, shall be allocated equally among all Units subject to assessment under Section 12.6 and levied as a "Base Assessment."

The Founder may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a shortfall (in addition to any amounts paid by the Founder under Section 12.6(b)). Any such shortfall payment may be treated as a contribution, an advance against future assessments due from the Founder, or a loan, in the Founder's discretion. Any such subsidy and the characterization thereof shall be conspicuously disclosed as a line item in the income portion of the budget. Payment of such subsidy in any year shall not obligate the Founder to continue payment of such subsidy in future years

unless otherwise provided in a written agreement between the Association and the Founder.

(c) *Calculation of Service Area Assessments.* The total Service Area Expenses budgeted for each Service Area shall be allocated among all Units in the Service Area that are subject to assessment under Section 12.4 and levied as a "Service Area Assessment." Unless otherwise specified in any Supplement applicable to a Service Area, Service Area Assessments shall be set at a uniform rate per Unit in the Service Area, except that any portion of the assessment intended for exterior maintenance of structures, insurance on structures, or replacement reserves which pertain to particular structures may be levied on each of the benefited Units in proportion to the benefit received, as the Board may reasonably determine.

All amounts the Association collects as Service Area Assessments shall be held for and expended solely for the benefit of the Service Area for which they were collected and shall be accounted for separately from the Association's general funds.

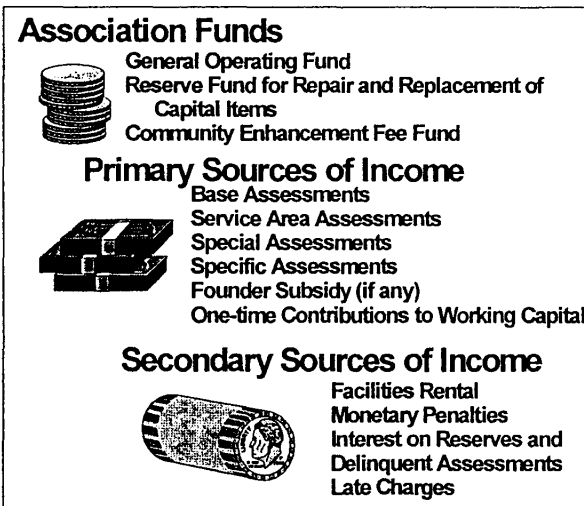
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(d) *Notice of Budget and Assessment; Right to Disapprove.* The Board shall send a copy of each applicable budget, together with notice of the amount of the Base Assessment and any Service Area Assessment to be levied pursuant to such budgets, to each Owner at least 30 days prior to the due date of the assessments to be levied pursuant to such budget. The Common Expense budget shall automatically become effective unless disapproved at a meeting by Voting Delegates representing at least 75% of the total votes in the Association and by the Founder Member, if such exists. Each Service Area budget shall automatically become effective unless disapproved at a meeting by Owners of at least 67% of the Units within the Service Area, except that the right to disapprove a Service Area budget shall apply only to those line items which are attributable to services or benefits requested by the Service Area and shall not apply to any

Association Finances

item which the Governing Documents require to be assessed as a Service Area Expense.

There shall be no obligation to call a meeting for the purpose of considering any budget except, in the case of the Common Expense budget, on petition of the Voting Delegates as provided for special meetings in the By-Laws, and in the case of a Service Area budget, on petition of Owners of at least 2/3 of the Units within the Service Area. Any such petition must be presented to the Board within 10 days after delivery of the budget and notice of any assessment.

If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect, increased by 10%, shall continue in effect until a new budget is determined.



(e) *Budget Revisions.* The Board may revise the budget and adjust the Base Assessment or Service Area Assessments anytime during the year, subject to the same notice requirements and rights to disapprove set forth in subsection (d) above.

12.3. Specific Assessments

The Association may levy "Special Assessments" to cover Common Expenses or Service Area Expenses that are non-routine, unantic-

pated, or in excess of those anticipated in the applicable budget. Except as otherwise specifically provided in this Charter, any Special Assessment for Common Expenses shall require the affirmative vote or written consent of Voting Delegates representing more than 50% of the votes attributable to Units subject to assessment under Section 12.6 and shall be allocated equally among all such Units. Any Special Assessment for Service Area Expenses shall require the affirmative vote or written consent of Owners representing more than 50% of the total votes allocated to Units in the benefited Service Area and shall be allocated in the same manner as Service Area Assessments under Section 12.1(c). In addition, as long as the Founder membership exists, any Special Assessment shall also be subject to the Founder's written consent. Special Assessments shall be payable in such manner and at such times as the Board determines and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

12.4. Specific Assessments

The Association may levy Specific Assessments against a particular Unit as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to the Unit upon request of the Owner pursuant to any menu of optional services which the Association may offer (which might include the items identified in Section 10.1). Specific Assessments for optional services may be levied in advance of the provision of the requested service;

(b) to cover costs incurred in bringing the Unit into compliance with the Governing Documents or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; however, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing in accordance with the By-Laws, before levying any Specific Assessment under this subsection (b); and

Association Finances


(c) to cover the Unit's pro rata share of any costs that the Association incurs in bringing the Neighborhood of which the Unit is a part into compliance with the provisions of the Governing Documents; however, the Board must give prior written notice to the Owners of Units in the Neighborhood and an opportunity for such Owners to be heard before levying any such assessment.

12.5. Authority to Assess Owners; Time of Payment

The Founder hereby establishes and the Association is hereby authorized to levy assessments as provided for in this Chapter and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to each Unit on the first day of the month following: (a) on the date of conveyance of a Unit to a Person other than the Founder or its successors or assigns; or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Chapter, whichever is later. The first annual Base Assessment and Service Area Assessment, if any, levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment and any Service Area Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require the outstanding balance on all assessments to be paid in full immediately.

12.6. Obligation for Assessments

 By buying a Unit in Mariposa each Owner agrees to pay all assessments levied against his or her Unit. If the Owner does not pay on time, that Owner will be charged late fees on all past due amounts. Owners may not claim a reduction in their assessments due to action or inaction by the Association.

In some instances, the Founder may choose to pay the difference between the Association's budgeted and actual expenses, rather than paying assessments on the Units it owns. The Founder is free to do so only during the Founder Control Period.

(a) *Personal Obligation.* By accepting a deed or entering into a recorded contract to purchase any Unit, each Owner covenants and agrees to pay all assessments authorized in the Governing Documents and the Community Covenant. All assessments, together with interest (computed from its due date at a rate of 10% per annum or such higher rate as the Board may establish, subject to the limitations of New Mexico law), late charges as determined by Board resolution, costs, and reasonable attorneys fees, shall be the personal obligation of each Owner and a lien upon each Unit until paid in full. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

The Board's failure to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments and Service Area Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfall.

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No Owner may exempt himself or herself from liability for assessments by non-use of Common Area, abandonment of his or her Unit, or non-use of services provided to all Units or to all Units within the Service Area to which the Unit is assigned. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.


Upon written request, the Association shall furnish to any Owner liable for any type of assessment a certificate signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

(b) Founder's Financial Obligations to Association. The Founder shall be liable for assessments on any Units it owns that are subject to assessment under this Section, except that during the Founder Control Period, the Founder may satisfy its obligation to pay Base Assessments and Special Assessments for Common Expenses on Units it owns either by paying such assessments in the same manner as any other Owner, or by paying (i) any shortfall under the Common Expense budget resulting from events other than failure of other Owners to pay their assessments, and (ii) any budgeted contributions to reserves and the Assembly in accordance with the Common Expense budget. Unless the Founder otherwise notifies the Board in writing at least 60 days before the beginning of each fiscal year, the Founder shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. After termination of the Founder Control Period, the Founder shall pay Base Assessments on any Units it owns

that are subject to assessment under Section 12.6 in the same manner as any other Owner liable for such assessments.

Regardless of the Founder's election under this Section, any of the Founder's financial obligations to the Association may be satisfied in the form of cash or by "in kind" contributions of services, or materials or by a combination of these.

12.7. Lien for Assessments

 In order to insure that each Owner pays assessments, the Association has a lien against the Units when assessments are not paid in a timely fashion. This means that if an Owner does not pay his or her assessments on time, the Association could foreclose the lien, thus causing the Owner's Unit to be sold to pay the past due assessments. Alternatively, the Association may sue an Owner in court to recover past due assessments.

(a) Existence of Lien. The Association shall have a lien against each Unit to secure payment of assessments as well as interest, late charges (subject to the limitations of New Mexico law), and costs of collection (including attorneys fees and expenses). Such lien shall be superior to all other liens, except (i) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (ii) the lien or charge of any recorded Mortgage made in good faith and for value having first priority over any other Mortgages on the Unit. The Association may enforce such lien, when delinquent, by suit, judgment and/or foreclosure.

Although no further action is required to create or perfect the lien, the Association may, as further evidence and notice of the lien, execute and record a document setting forth as to any Unit the amount of the delinquent sums due the Association at the time such document is executed and the fact that a lien exists to secure the repayment thereof. However, the failure of the

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Association to execute and record any such document shall not affect the validity, enforceability, or priority of the lien.

(b) *Enforcement of Lien.* The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (i) no right to vote shall be exercised on its behalf; (ii) no assessment shall be levied on it; and (iii) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same, in addition to pursuing any and all remedies allowed by law to enforce the lien.

(c) *Effect of Sale or Transfer.* Sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to the Mortgagee's foreclosure. The subsequent Owner of the foreclosed Unit shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 12.6, including such acquirer and its successors and assigns.

12.8. Exempt Property

The following property shall be exempt from payment of Base Assessments, Service Area Assessments, and Special Assessments:

(a) All Common Area and such portions of the property owned by the Founder as are included in the Area of Common Responsibility;

(b) Any property dedicated to and accepted by any governmental authority or public utility; and

(c) Property owned by any Neighborhood Association for the common use and enjoyment of its members or owned by the members of a Neighborhood Association as tenants-in-common.

In addition, the Association may, by resolution, grant exemptions to certain Persons qualifying for tax-exempt status under Section 501(c) of the Internal Revenue Code so long as such Persons own property subject to this Charter for purposes listed in Section 501(c) of the Internal Revenue Code.

12.9. Capitalization of Association

The first Owner of each Unit other than the Founder or a Builder designated by the Founder shall make a contribution to the working capital of the Association in an amount equal to one-sixth of the annual Base Assessment per Unit for that year. This amount shall be in addition to, not in lieu of, the annual Base Assessment and any Service Area Assessment levied on the Unit and shall not be considered an advance payment of such assessments. This amount shall be due and payable to the Association immediately upon transfer of title for its use in covering initial start-up expenses, operating expenses, and other expenses that it incurs pursuant to this Charter and the By-Laws.

12.10. Use and Consumption Fees

The Board may charge use and consumption fees to any Person using Association services or facilities and may determine the amount and method of determining such fees. Different fees may be charged to different classes of users (*e.g.*, Owners and non-Owners).

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PART FOUR: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY

You don't get harmony when everybody sings the same note.

Doug Floyd



M A R I P O S A

Chapter 13

Easements

The easements created in this chapter establish the rights of Owners to use the Common Area and create various rights for the benefit of owners, the Founder, the Association, and others over property within the Community. Some of these rights are related to development and construction within the Community and on adjacent property, while others relate to the rights of the Association to come upon property of others to fulfill its responsibilities and the interrelationships between the Community and the owners of adjacent property.

13.1. Easements in Common Area



An easement is one person's right to go onto the property of another.

The Founder grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common Area, subject to:

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- (a) The Governing Documents and any other applicable covenants;
 - (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
 - (c) The Board's right to:
 - (i) adopt rules regulating Common Area use and enjoyment, including rules limiting the number of guests who may use the Common Area, and to charge use fees for such use;
 - (ii) suspend an Owner's right to use Common Area facilities;
 - (iii) dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Charter;

- (iv) impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Area;

- (v) rent any portion of any clubhouse or other Common Area recreational facilities on an exclusive or non-exclusive short-term basis to any Person;

- (vi) permit use of any recreational facilities situated on the Common Area by the general public, which use may be subject to admission charges, membership fees, or other user fees established in the Board's discretion; and

- (vii) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; and

- (d) Certain Owners' rights to the exclusive use of those portions of the Common Area designated "Limited Common Area," subject to easements for cross-drainage described in Section 13.8.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable Board regulation. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease.

13.2. Easements of Encroachment



An encroachment occurs when a person's home, fence, or structure of any kind is placed on his or her neighbor's property. This section provides that minor, inadvertent encroachments are permitted.

Easements

The Founder grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units. A permitted encroachment is a structure or fixture that extends unintentionally from one person's property onto another's a distance of less than one foot, as measured from any point on the common boundary along a line perpendicular to such boundary. An encroachment easement shall not exist if the encroachment results from willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

13.3. Easements for Utilities and Other Infrastructure

(a) *Installation and Maintenance.* During the Development and Sale Period, the Founder reserves for itself and grants to the Association and all utility providers, perpetual non-exclusive easements throughout Mariposa (but not through a structure) to the extent reasonably necessary to:

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(i) install utilities and infrastructure to serve Mariposa, other Community Systems, security and similar systems, and drainage systems;

(ii) install walkways, pathways and trails; street lights; and signage on property the Founder or the Association owns or within public rights-of-way or easements reserved for such purpose on a recorded plat or separate document;

(iii) inspect, maintain, repair, and replace the utilities, infrastructure, and other improvements described above; and

(iv) access and read utility meters.

Notwithstanding the above, the Founder reserves the right to deny access to any utility or

service provider, to the extent permitted by law, or to condition such access on negotiated terms.

(b) *Specific Easements.* The Founder also reserves for itself the non-exclusive right and power to grant and record such specific easements as it deems necessary to develop the property described in Exhibits "A" and "B." The location of the easement shall be subject to the written approval of the burdened property Owner, which approval shall not unreasonably be withheld, delayed, or conditioned.



Before the Founder can grant a new right to enter property, if someone else owns that property, the Founder must get that Owner's permission.

(c) *Minimal Interference.* All work associated with the exercise of the easements described in subsections (a) and (b) of this Section shall be performed so as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to the condition existing prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

13.4. Easements to Serve Additional Property


The Founder hereby reserves for itself and its duly authorized agents, successors, assigns, and Mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit "B," whether or not such property is made subject to this Charter. This easement includes, but is not limited to, a right of ingress and egress

Easements

over the Common Area for construction of roads and for connecting and installing utilities on such property. The Person exercising such easement rights shall be responsible for any damage caused to the Common Area as a result of their actions in connection with development of such property.

If the above easement grants permanent access to any property that is not submitted to this Charter, the Founder, or its successors or assigns, shall enter into a reasonable agreement with the Association to share the cost of maintenance that the Association provides for the benefit of the easement holder. The shared maintenance costs may include maintenance to or along any roadway providing access to the benefited property.

13.5. Easements for Maintenance, Emergency, and Enforcement

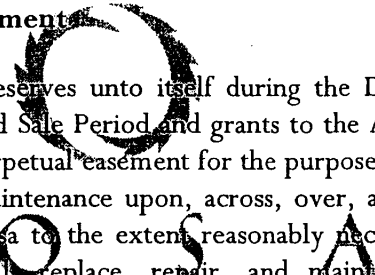
 The Association may come onto the exterior portions of your Unit to do maintenance or to address violations of the covenants. This Section describes the extent of the Association's right in this regard.

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By this Charter, the Founder grants to the Association easements over Mariposa as necessary to enable the Association to fulfill its maintenance responsibilities under Section 6.2 and its enforcement rights under Section 8.2. The Association shall also have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance, to inspect for compliance with the Governing Documents, and to enforce the Governing Documents. Any member of the Board and its duly authorized agents and assignees and all emergency personnel in the performance of their duties may exercise such right. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

13.6. Easement to Inspect and Right to Correct.

Founder reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the Community, including Units, and a perpetual, nonexclusive easement of access throughout the Community to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Unit shall be only after reasonable notice to the Owner, and no entry into a residence shall be permitted without the Owner's consent. The person exercising this easement shall promptly repair, at such person's own expense, any damage resulting from such exercise.

13.7. Easement for Installation, Maintenance, and Repair of Solar Power Equipment


Founder reserves unto itself during the Development and Sale Period and grants to the Association a perpetual easement for the purpose of access and maintenance upon, across, over, and under Mariposa to the extent reasonably necessary to install, replace, repair, and maintain photovoltaics, solar collector panels, equipment, conduits, lines, and anything else necessary for the production and generation of electricity from solar energy. The Founder and/or the Association may assign these rights to any company to provide, install, or otherwise maintain such solar power equipment.

This easement shall entitle the holders to construct or install any such solar power equipment on a Unit, including any structure situated on the Unit. Any damage to a Unit resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

Easements

13.8. Easement for Cross-Drainage

Every Unit and the Common Area shall be burdened with easements for drainage of storm water runoff from other portions of Mariposa; provided, however, no Person shall alter the drainage on any Unit so as to materially increase the drainage of storm water onto adjacent portions of Mariposa without the consent of the Owner of the affected property. Each Unit and the Common Area shall be burdened with such easements for drainage of storm water runoff as may be shown on plats relating to such Unit or Common Area, as applicable, recorded in the Office of the County Clerk of Sandoval County, New Mexico.

13.9. Easement for Walls or Fences

Founder reserves for itself, the Association, their employees and agents, an easement upon, over, and across each Unit affected for reasonable ingress, egress, installation, replacement, maintenance, and repair of perimeter walls, fences, or other boundary controls. Except in an emergency, entry onto a Unit shall be only after reasonable notice to the Owner, and no entry into a residence shall be permitted without the Owner's consent.

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Chapter 14

Environment and Transportation

Mariposa intends to be a model community committed to preserving the integrity of the environment and the natural beauty of the land. In addition to the sustainable development methods discussed in the Guidelines for Sustainability, environmental conservation measures will be an integral part of Mariposa's quality of life standards. The Founder has made environmental preservation of Mariposa its first priority; each Owner is encouraged to do the same. The Founder is also committed to providing transportation opportunities at Mariposa.

14.1. Water Conservation

Water conservation is essential to Mariposa's development and standard of living. Founder desires to create opportunities to maximize the efficient use of Mariposa's water supply, such as using treated effluent for common landscape irrigation. The Guidelines for Sustainability shall address water conservation standards and techniques.

14.2. **M A R I** Open Space and Natural Arroyos

Mariposa's open space network will be one of the community's signature characteristics. Founder may designate approximately 3,700 acres as open space and park area for owners and visitors to enjoy. Natural Arroyos are indigenous to the high desert and essential to preservation of natural land forms. The arroyos will provide natural boundaries and a framework for Mariposa's open space network and trails. Owners, Occupants, and visitors of Mariposa shall not disturb the natural arroyos.

Additionally, most of the natural arroyos within Mariposa are being preserved as natural amenities. The natural arroyos provide a unique setting of natural land forms and associated natural vegetation consisting of native plant riparian communities. From an environmental perspec-

ive, the preservation of natural arroyos allows for the retention of natural plant communities, the resulting wildlife habitat and corridors, open space, and natural land forms.

14.3. Community Recycling Programs

The Founder may establish a recycling program and recycling center, and, in such event, the Association shall maintain such recycling program and center. All Owners and occupants of property within Mariposa shall support such program by recycling, to the extent reasonably practical, all materials which the recycling program or center is set up to accommodate. The Association may, but shall have no obligation to, purchase recyclable materials in order to encourage participation, and any income received as a result of such recycling efforts shall be used to defray the costs of new programs.

14.4. **P O S A** Transportation System

(a) *Responsibility and Authority.* Founder may, but is not required to, establish and implement programs, services, and activities designed to address transportation issues within Mariposa and work in conjunction with the local and state government to address transportation issues for the region. Such authority may include, but need not be limited to, a public transit system which includes (i) a transit station; (ii) connections with public transportation systems serving points outside Mariposa; (iii) use of alternative fuel vehicles; and (iv) organizing and promoting such activities as van pools, ridesharing, and the use of bicycle and pedestrian trails and paths (hereafter generally referred to as the "Transportation System"). The Founder may establish committees, create subsidiary entities, or contract with third parties for the operation and administration of

Environment and Transportation

the Transportation System. The Association shall assume such authority after the expiration of the Control Period or as such authority is delegated by the Founder.

(b) *Funding of Operation and Maintenance.* The Transportation System will be available to all Owners, and the costs of operating and maintaining the Transportation System may be funded by the imposition of user fees for the use of any component, other than bicycle and pedestrian trails or paths, of the Transportation System; by payments from Mariposa's governmental entities; and by grants and contributions. The Founder and the Assembly may seek subsidies or contributions from private or public sources to reduce costs. The Founder, or its assigns shall be authorized to enter into commercially reasonable agreements with any Person to operate all or any portion of the Transportation System on a commercial basis throughout Mariposa.

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Chapter 15

Disclosures and Waivers

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This chapter discloses some important information about the Community for the benefit of prospective purchasers of property in the Community. Each Owner, by accepting a deed to property in the Community, also accepts and agrees to the matters set forth in this chapter.

15.1. Facilities and Services Open to the Public

Certain facilities and areas within Mariposa may be open for use and enjoyment of the public. Such facilities and areas may include, by way of example: greenbelts, trails and paths, parks, and other neighborhood spots conducive to gathering and interaction, roads, sidewalks, and medians. Additional designated sites may include fire, police, utility facilities, public schools, a library, and other public facilities. The Founder may designate such facilities and areas as open to the public at the time the Founder makes them a part of the Area of Common Responsibility, or the Board may so designate at any time thereafter.

15.2. Safety and Security

Each Owner and occupant of a Unit, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in Mariposa. The Association may, but shall not be obligated to, maintain or support certain activities within Mariposa designed to promote or enhance the level of safety or security that each person provides for himself or herself and his or her property. However, neither the Association nor the Founder shall in any way be considered insurers or guarantors of safety or security within Mariposa, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including security monitoring systems or any mechanism or system for limiting access to Mariposa, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing its tenants and all occupants of its Unit that the Association, its Board and committees, and the Founder are not insurers or guarantors of security or safety and that each Person within Mariposa assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

15.3. Changes in Master Plan

Each Owner acknowledges that Mariposa is a master planned community, the development of which is likely to extend over many years, and agrees that neither the Association nor any Neighborhood Association shall engage in, or use Association funds to support, any protest, challenge, or other form of objection to (a) changes in uses or density of property within Mariposa, or (b) changes in the Master Plan as it relates to property outside Mariposa, without the Founder's prior written consent, which consent may be granted or withheld in the Founder's discretion.

15.4. View Impairment

Neither the Founder nor the Association guarantee or represent that any view over and across the Units, any open space within the Community, or natural amenity will be preserved with-

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out impairment. The Founder and its successors or assigns, the Association shall not be obligated to relocate, prune, or thin trees or other landscaping except to maintain the Community-Wide Standard or as otherwise required under a separate covenant or agreement. The Association (with respect to the Common Area) has the right to add trees and other landscaping from time to time subject to landscaping requirements set forth in the Guidelines for Sustainability, the Master Plan, and applicable law. There shall be no express or implied easements for view purposes or for the passage of light and air.

15.5. Notices and Disclaimers as to Community Systems and Services

Each Owner acknowledges that interruptions in cable television and other Community Systems and Services will occur from time to time. The Founder or any of its successors or assigns shall not be liable for, and no Community System or Service user shall be entitled to refund, rebate, discount, or offset in applicable fees for, any interruption in Community Systems and Services, regardless of whether or not such interruption is caused by reasons within the service providers control.

15.6. Notices and Disclaimers as to Future Building Activity

Each Owner acknowledges that building activity may take place in Mariposa in the future. In the course of such building activity, sights, odors, and noises, including, but not limited to, those generated by machinery and equipment, may emanate from the property. Neither the Founder nor the Association shall not have any duty to take action to abate such sights, smells, or noise and shall not have any liability for personal injury or property damage resulting from such building activity or entry into such areas.

15.7. Northwest Loop

The Northwest Loop is a dedicated right-of-way shown on plats of the Community, including the Master Plan. The Founder makes no guarantees or representations that the Northwest Loop will remain in its present location. The Founder retains the right to move such right-of-way to another location within Mariposa.

In addition, there may be construction of a road associated with the Northwest Loop right-of-way. Neither the Founder nor the Association shall not have any duty to take action to abate such sights, smells, or noise and shall not have any liability for personal injury or property damage resulting from such construction.

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Chapter 16

Rights of Lenders

In order to enhance each Owner's ability to obtain financing for the purchase of his or her Unit, this chapter sets forth various provisions for the benefit of lenders who make mortgage loans and for the benefit of those agencies which guarantee and insure mortgage loans made by institutional lenders.

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in Mariposa. The provisions of this Chapter apply to both this Charter and to the By-Laws, notwithstanding any other provisions contained therein.

16.1. Notices of Action

An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of Mariposa or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder; and

(b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Unit or the Owner or occupant which is not cured within 60 days.

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

16.2. Special FHLMC Provision

If a condominium exists within any portion of the Community, and so long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least 67% of the first Mortgagees or Voting Delegates representing at least 67% of the total votes in the Association consent, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Area which the Association owns, directly or indirectly, (the granting of easements for utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this subsection);

(b) Change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Unit (a decision, including contracts, by the Board or provisions of any declaration subsequently recorded on any portion of Mariposa regarding assessments for Service Areas or other similar areas shall not be subject to this provision where such decision or subsequent declaration is otherwise authorized by this Charter);

(c) By act or omission change, waive, or abandon any scheme of regulations or enforcement pertaining to architectural design, exterior appearance, or maintenance of Units and the Common Area (the issuance and amendment of architectural standards, procedures, rules and

Rights of Lenders

regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision);

(d) Fail to maintain insurance, as required by this Charter; or

(e) Use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such property.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

16.3. Other Provisions for First Lien Holders

To the extent not inconsistent with New Mexico law:

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(a) Any restoration or repair of Mariposa after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Charter and the original plans and specifications unless the approval is obtained of the Eligible Holders of first Mortgages on Units to which more than 50% of the votes of Units subject to Mortgages held by such Eligible Holders are allocated.

(b) Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible Holders of first Mortgages on Units to which more than 50% of the votes of Units subject to Mortgages held by such Eligible Holders are allocated.

16.4. Amendments to Documents

The following provisions do not apply to amendments to the governing documents or termination of the Association as a result of destruction, damage, or condemnation pursuant to Section 16.3(a) and (b), or to the addition of land in accordance with Chapter 17. If a condominium has been established in any part of the Community, then:

(a) The consent of Voting Delegates representing at least 67% of the total votes in the Association and of the Founder, so long as it owns any land subject to this Charter, and the approval of the Eligible Holders of first Mortgages on Units to which at least 67% of the votes of Units subject to a Mortgage appertain, shall be required to terminate the Association.

(b) The consent of Voting Delegates representing at least 67% of the total votes in the Association and of the Founder, so long as it owns any land subject to this Charter, and the approval of Eligible Holders of first Mortgages on Units to which more than 50% of the votes of Units subject to a Mortgage appertain shall be required materially to amend any provisions of the Charter, By-Laws, or Articles of Incorporation, or to add any material provisions thereto which establish, provide for, govern, or regulate any of the following:

- (i) voting;
- (ii) assessments, assessment liens, or subordination of such liens;
- (iii) reserves for maintenance, repair, and replacement of the Common Area;
- (iv) insurance or fidelity bonds;
- (v) rights to use the Common Area;
- (vi) responsibility for maintenance and repair of Mariposa;

Rights of Lenders

(vii) expansion or contraction of Mariposa or the addition, annexation, or withdrawal of Properties to or from the Association;

(viii) boundaries of any Unit;

(ix) leasing of Units;

(x) imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer, or otherwise convey his or her Unit;

(xi) establishment of self-management by the Association where professional management has been required by an Eligible Holder; or

(xii) any provisions included in the Governing Documents which are for the express benefit of holders, guarantors, or insurers of first Mortgages on Units.

16.5. No Priority

No provision of this Charter or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

16.6. Notice to Association

Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

16.7. Failure of Mortgagee to Respond

Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within 30 days of the date of the Association's request, provided such request is delivered to the Mortgagee by

certified or registered mail, return receipt requested.

16.8. Construction of Chapter 16

Nothing contained in this Chapter shall be construed to reduce the percentage vote that must otherwise be obtained under this Charter, the By-Laws, or New Mexico law for any of the acts set out in this Chapter.

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PART FIVE: COMMUNITY DEVELOPMENT

The rung of a ladder was never meant to rest upon, but only to hold a man's foot long enough to enable him to put the other somewhat higher.

Thomas Henry Huxley



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Chapter 17

Expansion of the Community

Due to the need to pace development to the needs of Mariposa and demand for Units or Common Areas, the initial property submitted to the Charter may be expanded by the Founder or the Association.

17.1. Expansion by Founder

From time to time, the Founder may submit to the terms of this Charter all or any portion of the property described in Exhibit "B" by recording a Supplement describing the additional property to be submitted. The Founder may record such a Supplement without the consent of any Person except the owner of such property, if not the Founder.

The Founder's right to expand Mariposa under this Section expires when all property described in Exhibit "B" has been submitted to this Charter or 50 years after this Charter is recorded, whichever is earlier. Until then, the Founder may transfer or assign this right to any Person who is the developer of at least a portion of the real property described in Exhibit "A" or "B." Any such transfer shall be described in a recorded instrument executed by the Founder.

Nothing in this Charter shall require the Founder or any successor to submit additional property to this Charter or to develop any of the property described in Exhibit "B" in any manner whatsoever.

17.2. Expansion by the Association

The Association also may submit additional property to this Charter by recording a Supplement describing the additional property. Any Supplement which the Association records must be approved by Voting Delegates representing more than 50% of the total votes in the Association at a meeting duly called for such purpose and by the owner of the property to be submitted. In

addition, during the Development and Sale Period, the Founder's consent is required. The Association's President and Secretary, the owner of the property, and the Founder, if the Founder's consent is required, shall sign the Supplement.

17.3. Additional Covenants and Easements

Any Supplement that the Founder records may impose additional covenants and easements on the property described in such Supplement, such as covenants obligating the Association to maintain and insure such property and authorizing the Association to recover its costs through Service Area Assessments. Such provisions may be included in a Supplement submitting new property to this Charter or may be set forth in a separate Supplement applicable to property previously submitted to this Charter. If someone other than the Founder owns the property, then the Supplement must be signed by such owner evidencing such owner's consent. Any Supplement may add to, create exceptions to, or otherwise modify the terms of this Charter as it applies to the property described in the Supplement, in order to reflect the different character and intended use of such property.

17.4. Effect of Filing Supplement

A Supplement shall be effective upon recording unless otherwise specified in the Supplement. On the effective date of the Supplement, any additional property made subject to this Charter shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Charter.

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Expansion of the Community

17.5. Condominium Conversions

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 Because apartments are commercial concerns they were not submitted to this Charter. However, if an apartment building or buildings become a residential condominium, the interests of the condominium owners will be more like the interests of those owners already subject to this Charter. For that reason, for the good of the Community, any condominium project should be submitted to the terms of this Charter, even if it was not initially designated as property that could be submitted in Exhibit "B."

In the event that any property now or hereafter made subject to a Nonresidential Charter recorded against Mariposa's non-residential components is withdrawn from such charter, the owner of such property may submit such property to the provisions of this Charter by recording a Supplement describing the property and specifically submitting it to the terms of this Charter. Such Supplement Charter shall not require the consent of the Association, but shall require the signature of an officer of the Association acknowledging it. In addition, the Founder's prior written consent shall be necessary so long as the Founder owns any property described in Exhibit "A" or "B."



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Chapter 18

Additional Rights Reserved to the Founder

This chapter reserves various rights to the Founder in order to facilitate the Founder's development and sale of property in the Community, to enable the Founder to respond to Owners' concerns, and to protect various property rights and other interests of the Founder.

18.1. Withdrawal of Property

During the Development and Sale Period, the Founder may amend this Charter to remove any unimproved portion of Mariposa from the coverage of this Charter, provided such withdrawal does not reduce the total number of Units then subject to the Charter by more than 10%. "Unimproved" means that no permanent structure has yet been completed on the property. Such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if not the Founder. If the property is Common Area, the Association shall consent to such withdrawal.

18.2. Marketing and Sales Activities

Notwithstanding anything in the Governance Documents to the contrary, the Founder and its designees or assigns may construct, use, and maintain upon portions of the Common Area and other property they own, such facilities and activities as, in the Founder's opinion, may reasonably be required, convenient, or incidental to the construction or sale of Units. Such permitted facilities and activities shall include business offices, signs, flags (whether hung from flag poles or attached to a structure), model homes, sales offices, holding or sponsoring special events, and exterior lighting features or displays. In addition, if reasonably required, convenient, or incidental to construction or sales activities, the Founder and its employees, agents, and designees may park vehicles only in designated areas, including

within courtyards enclosed by building frontages or in parking courts. The rights of any Founder designee or assign under this Section are subject to the Founder's approval.

18.3. Right to Develop

The Founder and its employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Common Area for the purpose of making, constructing, and installing such improvements to the Common Area and to the Exhibit "B" property as it deems appropriate.

In addition, during the Development and Sale Period, the Founder may replat property that it owns and convert Units it owns into Common Area.

18.4. Right to Approve Changes in Mariposa Standards

During the Development and Sale Period, no amendment to or modification of any Rules or Guidelines for Sustainability shall be effective without prior notice to and the written approval of the Founder.

18.5. Exclusive Rights to Use Name of Development

No Person shall use the name "Mariposa" or any derivative of such name or any logo or depiction associated with Mariposa in any printed or promotional material without the Founder's prior written consent. However, Owners may use the name "Mariposa" in printed or promotional matter where such term is used solely to specify that particular property is located within Mariposa,

Additional Rights Reserved to Founder


and the Association shall be entitled to use the word "Mariposa" in its name.

18.6. Community Systems

The Founder reserves for itself, its successors or assigns, the Assembly, and their respective successors and assigns, a perpetual right and easement to install and operate within Mariposa such Community Systems as the Founder, in its discretion, deems appropriate to service the buildings and the structures within any Lot or other portion of the Community. Such right shall include, without limitation, the Founder's right to select and contract with companies licensed to provide telecommunications, cable television, and other Community Systems services in the region. The Founder also has the right to charge individual users a reasonable fee not to exceed the maximum allowable charge for such service, as from time to time is defined by the laws, rules, and regulations of the relevant government authority, if applicable.

Notwithstanding the above, there is no guarantee or representation that any particular Community system will be made available.

18.7. Easement to Inspect and Right to Correct



The Founder, or someone it may designate, may enter any Owner's property to inspect and correct improvements on the Unit. To do so, the Founder must give the Owner of the Unit prior notice, and if entering a dwelling or other enclosed structure on the Unit is necessary, the Owner's consent is also necessary before the Founder or its designee can enter. However, if there is an emergency, the Founder may enter without the notice or consent.

The Founder reserves for itself and others it may designate the right, but not the obligation, to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which

may exist on any portion of the property within Mariposa, including Units, and a perpetual non-exclusive easement of access throughout Mariposa to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Unit shall be only after reasonable notice to the Owner, and no entry into an enclosed structure shall be permitted without the Owner's consent. The person exercising this easement shall promptly repair, at such person's own expense, any damage he or she causes. Nothing in this paragraph shall relieve an Owner of the responsibility for the maintenance and repair of his or her Unit.

18.8. Right to Notice of Design or Construction Claims

No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within Mariposa in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless the Founder and any builder involved in the design or construction have been first notified in writing and given an opportunity to meet with the Owner of the property to discuss the owner's concerns and conduct their own inspection.

18.9. Right to Transfer or Assign the Founder's Rights

Any or all of the Founder's special rights and obligations set forth in this Charter or the By-Laws may be transferred in whole or in part to other Persons. However, such a transfer shall not reduce an obligation or enlarge a right beyond that which Founder has under this Charter or the By-Laws. No such transfer or assignment shall be effective unless it is in a recorded instrument the Founder signs. The foregoing sentence shall not preclude the Founder from permitting other Persons to exercise, on a one-time or limited basis, any right reserved to the Founder in this Charter where the Founder does not intend to transfer such right in its entirety. In such case,

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Additional Rights Reserved to Founder

it shall not be necessary to record any written assignment unless necessary to evidence the Founder's consent to such exercise.

18.10. Rights to Stormwater Runoff and Water Reclamation.

The Founder reserves for itself and its designees, the right to all rain water, surface water, and storm water runoff over the Community; and each Owner agrees, by acceptance of a deed to a Unit, that the Founder and its designees shall retain all such rights. Such right shall include an easement over Mariposa for access and for installation and maintenance of facilities and equipment to capture and transport such water and runoff. No Person other than the Founder and its designees shall claim, capture, or collect rain water, surface water, or storm water runoff within Mariposa without the prior written consent of the Founder or its designees.

The Founder or its designees may establish programs for reclamation of storm water runoff and waste water for appropriate uses within or outside the Community and may require Owners and occupants of Units to participate in such programs to the extent reasonably practical. No Owner or occupant of a Unit shall have any right to be compensated for water claimed or reclaimed from his or her Unit. The Board shall have the right to establish restrictions on or prohibit outside use of potable water within the Community.

18.11. Founder's Right to Obtain Water Use Information.

The Founder has the right to obtain water use information relating to Mariposa from any public or private entity during the Control Period. Upon the expiration of the Control Period, the Association, in cooperation with the Assembly, shall obtain and monitor Mariposa's water use and consumption. Such information shall be used to regulate Mariposa's water conservation initiatives.

18.12. Termination of Rights

The rights contained in this Chapter shall be perpetual unless otherwise limited to the Development and Sale Period. The Founder may voluntarily terminate any of its rights by recording a written statement specifying such intent to terminate.

The very essence of leadership is that you have to have a vision. Theodore Hesburgh

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PART SIX: PROCEDURES FOR AND LIMITATIONS ON CERTAIN ACTIONS

There are many ways of going forward, but only one way of standing still.

Franklin D. Roosevelt



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Chapter 19

Dispute Resolution and Limitation on Litigation

From time to time, disputes may arise between owners or between an owner and the Association, the Founder, or others involved in the Community. This chapter establishes the commitment of the parties to any such dispute to work together in an attempt to resolve the dispute without litigation in order to facilitate the prompt resolution of such disputes in a manner that respects and builds upon the relationships between the parties. It also requires substantial support of the Association's membership before the Association can engage in certain types of litigation that could result in significant legal and emotional costs to the Community.

19.1. Agreement to Encourage Resolution of Disputes Without Litigation

(a) Bound Parties. The Founder, the Association and its officers, directors, and committee members, all Persons subject to this Charter, and any Person not otherwise subject to this Charter who agrees to submit to this Chapter (collectively, "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 19.2 in a good faith effort to resolve such Claim.

(b) Claims. As used in this Chapter, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to:

(i) the interpretation, application, or enforcement of the Governing Documents;

(ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or

(iii) the design or construction of improvements within the Community, other than matters of aesthetic judgment or sustainability under Chapter 5, which shall not be subject to review.

(c) Exceptions. The following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 19.2:

(i) any suit by the Association to collect assessments or other amounts due from any Owner;

(ii) any suit by the Association to obtain a temporary restraining order or injunctive relief and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Part Two of this Charter (relating to creation and maintenance of community standards);

(iii) any suit that does not include the Founder or the Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Governing Documents;

(iv) any dispute which affects the material rights or obligations of a party who is not a Bound Party and has not agreed to submit to the procedures set forth in Section 19.2; and

(v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 19.2(a), unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim's statute of limitations to comply with this Chapter.

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Dispute Resolution and Limitation on Litigation

19.2. Dispute Resolution Procedures

(a) *Notice.* The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice ("Notice") by mail or personal delivery to each Respondent and to the Board, stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;

(ii) the legal basis of the Claim (*i.e.*, the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss, in good faith, ways to resolve the Claim.

(b) *Negotiation.* The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) *Mediation.* If the parties have not resolved the Claim through negotiation within 30 days of the date of the Notice (or within such other agreed upon period), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Rio Rancho area. Each Bound Party shall present the mediator with a written summary of the Claim.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Bound Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall pay an equal share of the mediator's fees.

(d) *Settlement.* Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to comply again with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys fees, and court costs.

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Chapter 20

Changes in the Common Area


Various influences and circumstance within and outside the Community may give rise to a need or desire to make changes in the ownership of or rights to use Common Area. This chapter explains the procedures for dealing with matters such as changing use rights in Common Area or Limited Common Area, partition of the Common Area, and condemnation.

20.1. Assignment and Reassignment of Limited Common Area

The Board may designate a portion of the Common Area as Limited Common Area, and may reassign Limited Common Area, upon approval of the Board and the vote of Voting Delegates representing a majority of the total votes in the Association, including a majority of the votes attributable to Units to which the Limited Common Area is proposed to be assigned or reassigned. During the Development and Sale Period, any such assignment or reassignment shall also require the Founder's written consent.

Upon approval of a majority of Owners of Units to which any Limited Common Area is assigned, the Association may permit Owners of other Units to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the Service Area Expenses attributable to such Limited Common Area.

20.2. Condemnation

 A public entity such as a town, county, or state has the power to condemn property for its own uses and generally has to pay the value of the property to do so.


If any part of the Common Area is taken by any authority having the power of condemnation or eminent domain or conveyed by the Associa-

tion in lieu of and under threat of condemnation with such approval as may be required under Section 20.4, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking the Founder, during the Development and Sale Period, and Voting Delegates representing at least 75% of the total votes in the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 9.4 regarding funds for restoring improvements shall apply.

If the taking or conveyance does not involve any improvements on the Common Area, if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be treated in the same manner as proceeds from the sale of Common Area under Section 20.4.

20.3. Partition

 Partition is a legal action in which a party requests to have a portion of one interest in property split off so that the party can possess that portion or interest separately from other parties who have rights in the property.

Changes in the Common Area

Except as permitted in this Charter, the Common Area shall remain undivided, and no Person shall bring any action to partition any portion of the Common Area without the written consent of all Owners and Mortgagees. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property or from acquiring and disposing of real property that may or may not be subject to this Charter, with such approval as may be required under Section 20.4.

20.4. Transfer or Dedication of Common Area

The Association may dedicate portions of the Common Area to Sandoval County, New Mexico, the City of Rio Rancho, or to any other local, state, or federal governmental or quasi-governmental entity, may subject Common Area to a security interest, or may transfer or convey Common Area as follows:

(a) if Common Area other than Limited Common Area, upon the written direction of Voting Delegates representing at least 75% of the total votes in the Association and the Founder during the Development and Sale Period; or

(b) if Limited Common Area, upon written approval of Owners of at least 75% of the Units to which such Limited Common Area is assigned.

The proceeds from the sale or mortgaging of Common Area other than Limited Common Area shall be an asset of the Association to be used as the Board determines. The proceeds from the sale or mortgaging of Limited Common Area shall be disbursed in the manner approved by the Owners of Units to which the Limited Common Area is assigned at the time such sale or mortgage is authorized.

No conveyance or encumbrance of Common Area may deprive any Unit of rights of access or support.

20.5. Public Gardens and Common Area

The Board may establish gardens within the Common Area or designate spaces within the Common Area for the establishment of gardens to promote public awareness of and participation in conservation, management, and enhancement of native vegetation, soils, and geology and may establish programs to promote an understanding of the natural desert landscape and environment.

20.6. Additional Covenants and Restrictions

During the Development and Sale Period, no one other than the Founder may record any additional covenants or restrictions affecting any portion of the Community without the Founder's written consent. Thereafter, the Board must consent. Any instrument recorded without the required consent shall be void and of no force and effect.

Anyone who has never made a mistake has never tried anything new. Albert Einstein

P O S A
NOTES AND THOUGHTS

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Chapter 21

Amendment of Community Charter

As the Community matures and grows, the rules by which it is governed must be flexible enough to adapt to changes in the development plan as well as to changes in the needs and desires of the Community that inevitably will occur. This chapter sets out procedures by which either the Founder or the Owners as a group may amend this Charter to address such changes.

21.1. By the Founder

In addition to specific amendment rights granted elsewhere in this Charter, until conveyance of the first Unit to a Person other than a Builder, the Founder may unilaterally amend this Charter for any purpose.

Thereafter, the Founder may unilaterally amend this Charter if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Units; (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Units; or (d) to satisfy the requirements of any local, state, or federal governmental agency. However, any amendment under this paragraph shall not adversely affect the title to any Unit unless the Owner shall consent in writing.

In addition, during the Development and Sale Period, the Founder may unilaterally amend this Charter for any other purpose, provided the amendment has no material adverse effect upon the rights of more than 2% of the Owners.

21.2. By Owners

Except as otherwise specifically provided above and elsewhere in this Charter, this Charter may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Delegates representing 75% of the total votes in the Association, including 75% of the total votes held by Owners other than the Founder. In addition, during the Development and Sale Period, any such amendment shall also require the Founder's written consent.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

21.3. Validity and Effective Date

No amendment may remove, revoke, or modify any right or privilege of the Founder or the Founder Member without the written consent of the Founder or the Founder Member, respectively (or the assignee of such right or privilege). In addition, the approval requirements set forth in Chapter 16 shall be met, if applicable.

If an Owner consents to any amendment to this Charter or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be

Amendment of Community Charter

presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Charter.

21.4. Exhibits

Exhibits "A" and "B" are incorporated by this reference, and this Chapter shall govern amendment of those exhibits. Exhibit "C" is incorporated by this reference and may be amended under Chapter 7 or pursuant to Sections 21.1 and 21.2. All other exhibits are attached for informational purposes and may be amended as provided in those exhibits or in the provisions of this Charter, which refer to such exhibits.

*Don't ever take a fence down until you know
why it was put up. Robert Frost*

NOTES AND THOUGHTS

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M A R I P O S A

THIS COMMUNITY CHARTER is made this 17 day of December, 2004, by High Desert Investment Corporation, a New Mexico corporation ("Founder"). In witness whereof, the undersigned Founder has executed this Charter the date and year first written above.

By: Douglas H. Collier
Name: Douglas H. Collier
Title: President

By: Robert L. Bovinette
Name: Robert L. Bovinette
Title: Secretary

State of New Mexico)
) ss
County of SANDOVAL)

This instrument was acknowledged before me on 12/17/04 by ROBERT BOVINETTE [Secretary] and DOUGLAS COLLIER [President] of High Desert Investment Corporation

[SEAL]

Lauder J. Smith
Notary Public
My Commission Expires: 11/11/06

5266.01/Mariposa Community Charter/Final/121504/kas-wsh
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EXHIBIT "A"

Land Initially Submitted

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Tracts 1A-5, 1A-6, 1A-7, and 1A-8 Mariposa East as the same is shown and designated on the plat of Tracts 1A-1 thru 1A-10 & Tracts OS-1 thru OS-10 Mariposa East recorded July 1, 2004 in Book 407, page 20665 as document number 200420665, and Book 3, Folio 2433-B, in the records of Sandoval County, New Mexico



M A R I P O S A

EXHIBIT "B"

Land Subject to Annexation

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Any and all property lying and being in Sandoval County, New Mexico, that is within 3 miles of any boundary of the property comprising the Community.

Note to clerk and title examiners:

This Charter is not intended to create an encumbrance on title to the property described in this Exhibit "B." Such title may be encumbered only with the consent of the owner by filing a Supplement in accordance with Chapter 17.



M A R I P O S A

EXHIBIT "C"

Initial Rules

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The purpose of Rules is not to anticipate all acceptable or unacceptable behavior in advance and eliminate all improvements or activities that fall outside of "the norm." In fact, it is expressly intended that the Reviewer under Chapter 4, and the Board, as appropriate, have discretion to approve or disapprove items, or to enforce or not enforce technical violations of the Governing Documents, based upon aesthetic or other considerations consistent with the established guidelines. As such, while something may be approved or permitted for one Unit under one set of circumstances, the same thing may be disapproved for another Unit under a different set of circumstances. The exercise of discretion in approving or enforcement shall not be construed as a waiver of approval or enforcement rights, nor shall it preclude the Board from taking enforcement action in any appropriate circumstances.

The following shall apply to all of Mariposa until such time as they are modified pursuant to the Charter.

1. **General.** Mariposa Residential Property shall be used only for residential, recreational, and related purposes (which may include, without limitation, an information center and/or a sales office for any real estate broker retained by the Founder to assist in the sale of property described in Exhibit "A" or "B," offices for any property manager retained by the Association, or business offices for the Founder or the Association) consistent with this Charter and any Supplement.

2. **Restricted Activities.** Unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board, the following activities are prohibited within Mariposa:

(a) **M A R I P O S A** Parking any vehicles on thoroughfares or parking commercial vehicles or equipment, mobile homes, recreational vehicles, boats and other watercraft, trailers, stored vehicles, or inoperable vehicles in places other than enclosed garages and such vehicles and other equipment shall be subject to removal by the Association at the owner's expense; provided, construction, service and delivery vehicles shall be exempt from this provision during normal business hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Area. Periodic loading and unloading of recreational vehicles, watercraft, and trailers is permitted;

(b) Raising, breeding, or keeping animals except that a reasonable number of dogs, cats, or other usual and common household pets may be permitted in a Unit. However, those pets which are permitted to roam free, or, in the Board's sole discretion, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units shall be removed upon the Board's request. If the pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the dwelling. Pets shall be registered, licensed, and inoculated as required by law. All pet owners shall be responsible for ensuring that all waste deposited by their pets on any Units or Common Area is collected and properly disposed of;

(c) Any activity that emits foul or obnoxious odors outside the Unit or creates noise or other conditions that tend to disturb the peace or threaten the safety of the occupants of other Units;

(d) Any activity that violates local, state, or federal laws or regulations; however, the Board shall have no obligation to take enforcement action in the event of a violation;

(e) Pursuit of hobbies or other activities that tend to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures on the Unit;

(f) Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants of other Units;

(g) Outside burning of trash, leaves, debris, or other materials;

(h) Woodpiles, brush, or other materials, unless they are stored in a manner not to be attractive to rodents, snakes, or other animals and to minimize the potential danger from fires. No open fires shall be lighted or permitted in Mariposa, except in a contained outdoor fireplace or barbecue unit while attending and in use for cooking purposes or within a safe and well designed interior fireplace. All Owners and occupants of Mariposa must maintain their yards and underbrush in a manner that minimizes the risk of fire. Due to the fact that Mariposa is located in an area susceptible to wildfires, the Association and governmental entities may promulgate regulations concerning fire to minimize cataclysmic damage to dwellings and natural vegetation that can be caused by fire;

(i) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Units, except alarm devices used exclusively for security purposes;

(j) Use and discharge of firecrackers and other fireworks;

(k) Accumulation of rubbish, trash, or garbage except between regular garbage pick-ups, and then only in approved containers protected from disturbance by wild or domestic animals and concealed from the view of streets and adjacent Units. Throwing or dumping trash, ashes, or other refuse on any vacant lot, trail, parkland, public area, Common Area, or other vacant land within or adjacent to Mariposa is prohibited;

(l) Discharge of firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge;

(m) On-site storage of fuel, except that a reasonable amount of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment. This provision shall not apply to any underground fuel tank authorized pursuant to Chapter 5;

(n) Capturing, trapping, or killing wildlife within the Community, except in circumstances posing a threat to the safety of Persons within the Community and in other circumstances which the Board determines necessary (*i.e.*, poisoning pests such as rodents and prairie dogs);

(o) Any activities which materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within Mariposa or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution;



M A R I P O S A

(p) Conversion of any carport or garage to finished space for use as an apartment or other integral part of the living area on any Unit without prior approval pursuant to Chapter 5;

(q) Obstruction or rechanneling of drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that the Founder and the Association shall have such right; provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Unit without the Owner's consent;

(r) Use of any "arroyo" trails maintained by the Association for purposes other than walking and non-motorized bicycling.

(s) Placement, construction, installation, or any modification of any thing, permanently or temporarily, on the outside portions of the Unit, whether such portion is improved or unimproved, except in strict compliance with the provisions of Chapter 5 and the Guidelines for Sustainability. This shall include signs; and satellite dishes and antennas, except that:

(i) an antenna designed to receive direct broadcast satellite services, including direct-to-home satellite services, that is one meter or less in diameter

(ii) an antenna designed to receive video programming services via multipoint distribution services, including multi-channel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement

(iii) an antenna that is designed to receive television broadcast signals

shall be permitted on Units, subject to such reasonable requirements as to location and screening as may be set forth in the Guidelines for Sustainability, consistent with applicable law, in order to minimize obtrusiveness as viewed from streets and adjacent property. The Founder and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or a portion of the Community should any master system or systems be utilized by the Association and require such exterior apparatus.

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Upon recording, please return to:

Myers, Oliver & Price
1401 Central Ave NW
Albuquerque, NM 87110
Attn: Hope Wynn

Cross-Reference to Charter recorded at:

Document 200441052
Book 407
Page 41052

STATE OF NEW MEXICO

COUNTY OF SANDOVAL

SANDOVAL COUNTY
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FIRST SUPPLEMENT TO COMMUNITY CHARTER FOR MARIPOSA RESIDENTIAL PROPERTY

THIS SUPPLEMENT is made this 2 day of May, 2005, by High Desert Investment Corporation, a New Mexico corporation ("**Founder**").

BACKGROUND STATEMENT

WHEREAS, the Founder executed and filed that certain Community Charter for Mariposa Residential Property, which was recorded on December 23, 2004, as Document 200441052 in Book 407, Page 41052, *et seq.*, in the Office of the County Clerk of Sandoval County, New Mexico ("**Charter**"); and

WHEREAS, pursuant to the terms of Section 17.1 of the Charter, the Founder has the right unilaterally to submit all or any portion of the property described on Exhibit "B" of the Charter to the terms of the Charter by recording Supplements describing the property to be subjected to the Charter and to the jurisdiction of the Mariposa Community Association, Inc. (the "**Association**"), provided the Founder's right has not expired, and further provided that the Owner of the property to be subjected consents, if other than the Founder; and

WHEREAS, the property described on Exhibit "A" of this Supplement (the "Additional Property") is a portion of the property described on Exhibit "B" to the Charter; and

WHEREAS, the Founder's right has not expired; and

WHEREAS, the Founder is the owner of the Additional Property and desires to submit the Additional Property to the terms of the Charter and to the jurisdiction of the Association.

NOW, THEREFORE, pursuant to the powers retained by the Founder under the Charter, the Founder hereby subjects the Additional Property to the provisions of the Charter and this Supplement and to the jurisdiction of the Association. Such property shall be sold, transferred, used, conveyed, occupied, and mortgaged or otherwise encumbered pursuant to the provisions of this Supplement and the Charter, both of which shall run with the title to such property and shall be binding upon all persons having any right, title, or any interest in all or any other Additional Property, their respective heirs, legal representatives, successors, successors-in-title, and assigns. The provisions of this Supplement shall be binding upon the Association in accordance with the terms of the Charter.

ARTICLE I
Definitions

The definitions set forth in the Charter are incorporated herein by reference.

ARTICLE II

Neighborhood Designation

The Additional Property that is identified on Exhibit "A" of this Supplement as "Tract 1A-10 Mariposa East" is hereby established and designated as a Neighborhood to be known as "Vista Sandia" pursuant to Section 3.2 of the Charter. Additional Units may be added to the Neighborhood as provided for in the Charter. The Additional Property that is identified on Exhibit "A" of this Supplement as Tracts 1A-2, 1A-3, 1A-4, and 1A-9 Mariposa East shall be established and designated as a Neighborhood by separate supplement to be recorded at a later date.

ARTICLE III

RESERVED

ARTICLE IV
Amendment

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4.1. By the Founder.

Until conveyance of the first Unit to a Person other than a Builder, the Founder may unilaterally amend this Supplement for any purpose. Thereafter, the Founder may unilaterally amend this Supplement if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Units; (c) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on the Units; or (d) to satisfy the requirements of any local, state or federal governmental agency.

However, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent in writing.

In addition, during the Development and Sale Period, the Founder may unilaterally amend this Supplement for any other purpose, provided the amendment has no material adverse effect upon any right of more than 2% of the Owners.

4.2. By Owners.

Except as otherwise specifically provided above, this Supplement may be amended only by the affirmative vote or written consent, or any combination thereof, of 75% of the total votes allocated to the Units within the Additional Property, the approval of the Board, and, during the Development and Sale Period, any such amendment shall also require the Founder's written consent.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

4.3. Validity and Effective Date.

No amendment to this Supplement may remove, revoke, or modify any right or privilege of the Founder or the Founder Member without the written consent of the Founder or of the Founder Member, respectively (or the assignee of such right or privilege).

If an Owner consents to any amendment to this Supplement, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Supplement.

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EXHIBIT "D"

**BY-LAWS
OF**

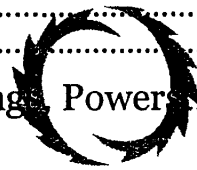


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COMMUNITY ASSOCIATION, INC.

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M A R I P O S A

BY-LAWS

OF

MARIPOSA COMMUNITY ASSOCIATION, INC.

Chapter 1

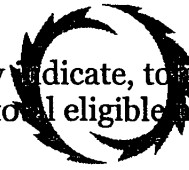
Name, Principal Office, and Definitions

Government is a trust, and the officers of the government are trustees; and both the trust and the trustees are created for the benefit of the people. Henry Clay

1.1. Name

The name of the corporation is Mariposa Community Association, Inc. (the "Association").

context may indicate, totaling more than 50% of the total eligible numbers



M A R I P O S A
1.2. Principal Office

The Association's principal office shall be located in Sandoval County, New Mexico. The Association may have such other offices as the Board may determine or as the Association's affairs require.

1.3. Definitions

The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that certain recorded Charter for Mariposa, as it may be amended (the "Charter"). The term "majority," as used in these By-Laws, means those votes, Owners, or other group, as the

Chapter 2

Membership: Meetings, Quorum, Voting, Proxies

We do not seek to have our way, but to find a common way. Lyndon B. Johnson

2.1. Membership

The Association shall have two classes of membership, Owner Membership, which is comprised of all Owners, and Founder Membership, which consists solely of the Founder.

(a) **Owner Membership.** Every Owner is automatically a member of the Association. However, there shall be only one membership per Unit. Thus, if a Unit has more than one Owner, all co-Owners of the Unit shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in the Charter and in these By-Laws. If an Owner is a corporation, a partnership, or other legal entity, its membership rights may be exercised by any officer, director, partner, or trustee, or by an individual the Owner designates from time to time in a writing to the Association's Secretary, except that only the individuals residing in the Unit shall be entitled to use any recreational facilities available for use by members.

(b) **Founder Membership.** The Founder holds the sole Founder membership. The Founder membership shall terminate two years after expiration of the Founder Control Period, or on such

earlier date as the Founder determines and declares in a recorded instrument.

2.2. Place of Meetings

The Association shall hold meetings at the Association's principal office or at such other suitable place the Board may designate.


2.3. Association Meetings

(a) **General.** Association meetings shall be of the Voting Delegates unless the Board otherwise specifies or New Mexico law otherwise requires; provided, until Voting Delegates are selected, meetings shall be of the Members and references in these By-Laws to Voting Delegates shall be deemed to be references to the Members. The first Association meeting, whether a regular or special meeting, shall be held within one year after the Association's incorporation.

(b) **Annual Meetings.** The Board shall schedule regular annual meetings to occur within 90 days before or after the close of the Association's fiscal year, on such date and at such time and place as the Board shall determine.

(c) **Special Meetings.** The President may call special meetings. In

addition, the President or the Secretary shall call a special meeting if so directed by Board resolution or upon a petition which Voting Delegates representing at least 10% of the total votes in the Association sign.

 Once Voting Delegates are elected to represent Neighborhoods, the Voting Delegates represent the Owners' interests at Association meetings. Due to the size of Mariposa, this will assist in making Association meetings efficient.

2.4. Notice of Meetings

The President, the Secretary, or the officers or other persons calling a meeting of the Voting Delegates shall deliver or cause to be delivered to each Voting Delegate entitled to vote at such meeting a written notice stating the place, day, and hour of the meeting. In the case of a special meeting or when otherwise required by statute, the Charter, or these By-Laws, the purpose or purposes for which the meeting is called shall also be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

Such notice shall be delivered by such means as permitted under Section 9.5, at least 14 but not more than 50 days before the date of such meeting.

2.5. Waiver of Notice

Waiver of notice of an Association meeting shall be deemed the equivalent of proper notice. Any Voting Delegate may waive, in writing, notice of any Association meeting, either before or after such meeting. A Voting Delegate's attendance at a meeting shall be deemed a waiver by such Voting Delegate of notice of the time, date, and place thereof,

unless the Voting Delegate specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed a waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.6. Adjournment of Meetings

If any Association meeting cannot be held because a quorum is not present, the Voting Delegates representing a majority of the votes present at such meeting may adjourn the meeting to a time at least five but not more than 30 days from the scheduled date of the original meeting. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If those in attendance at the original meeting do not fix a time and place for reconvening the meeting, or if for any reason a new date is fixed for reconvening the meeting after adjournment, the Board shall provide notice to the Voting Delegates of the time and place for reconvening the meeting in the manner prescribed for regular meetings.

Voting Delegates present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the departure of enough Voting Delegates to leave less than a quorum, provided at least a majority of the votes required to constitute a quorum must approve any action taken.

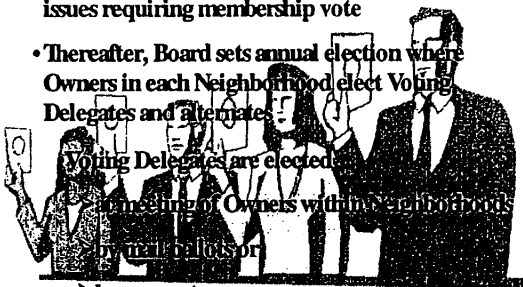
2.7. Voting

(a) **Voting Rights.** Members shall have such voting rights as are set

forth in the Charter, which provisions are specifically incorporated by this reference. Until such time as the Board first calls for election of a Voting Delegate for any Neighborhood, the Owners within such Neighborhood shall be entitled personally to cast the votes attributable to their respective Units on any issue requiring a membership vote under the Governing Documents.

VOTING DELEGATES

- Until Voting Delegates exist, Owners vote on issues requiring membership vote
- Thereafter, Board sets annual election where Owners in each Neighborhood elect Voting Delegates and alternates



Voting Delegates are elected at a meeting of Owners within a neighborhood by mail ballots or

> by computer

- Voting Delegates and alternates serve one-year terms

M A R I
(b) Election and Removal of Voting Delegates. The Owners owning Units within each Neighborhood shall elect a Voting Delegate to cast all votes attributable to their Units on all Association matters requiring a membership vote, except as otherwise specified in the Charter or these By-Laws. In addition, each Neighborhood shall elect an alternate Voting Delegate who shall be responsible for casting such votes in the absence of the Voting Delegate.

The first election of a Voting Delegate and alternate Voting Delegate from each Neighborhood shall occur no later than 90 days prior to any Association meeting at which the Voting Delegate from such Neighborhood will be entitled to vote. Thereafter, the Board shall call

for an election of Voting Delegates and alternates on a biennial basis.

Voting Delegate elections shall be by ballots cast by mail, computer, or at a meeting of the Owners within each Neighborhood, as the Board determines. Upon written petition signed by Owners holding at least 20% of the votes attributable to Units within any Neighborhood, the election for such Neighborhood shall be held at a meeting. Candidates for election as Voting Delegates may be nominated by the Board, a nominating committee the Board may appoint, or from the floor at any meeting at which such election is to be held. In addition or in the alternative, any Person may submit his or her name for consideration.

The presence, in person or by proxy, or the filing of ballots by Owners representing at least 25% of the total votes attributable to Units in the Neighborhood shall constitute a quorum for any Neighborhood meeting or election. In the event of a failure to obtain a quorum or vacancy in such positions for any Neighborhood, the Board may appoint a Voting Delegate or alternate Voting Delegate to represent such Neighborhood until a successor is elected.

Subject to the above quorum requirement, in any election of Voting Delegates the candidate who receives the greatest number of votes shall be elected as Voting Delegate and the candidate receiving the next greatest number of votes shall be elected as the alternate Voting Delegate. In the event of a tie vote among the leading candidates, the Voting Delegate shall be determined by drawing names from a hat, with the first person drawn being the Voting Delegate and the second being the alternate.

ing Delegate. The Voting Delegate and the alternate Voting Delegate shall serve a term of two years or until their successors are elected, whichever is longer. Elections for the Neighborhoods shall alternate to avoid all Neighborhoods holding elections at the same time.

In the event of the death, disability, or resignation of a Voting Delegate, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Owners entitled to elect such Voting Delegate may elect a successor for the remainder of the term.

Any Voting Delegate may be removed, with or without cause, upon the vote or written petition of Owners representing a majority of the total number of Units in the Neighborhood the Voting Delegate represents.

2.8. Proxies

Voting Delegates may not vote by proxy but only in person or through their designated alternates; provided, any Voting Delegate who is entitled to cast only the vote(s) for his own Unit(s) pursuant to the Charter may cast such vote(s) in person or by proxy until such time as the Board first calls for election of a Voting Delegate to represent the Neighborhood of which the Unit is a part. Likewise, if a Member is entitled personally to cast the vote for his Unit on any matter, he or she may vote in person or by proxy, subject to the limitations of New Mexico law and subject to any specific provision to the contrary in the Charter or these By-Laws.

Every proxy shall be in writing, shall identify the Unit for which it is given, signed by the Member or his duly au-

thorized attorney-in-fact, dated, and filed with the Association's Secretary prior to the meeting for which it is to be effective. Unless the proxy specifically provides otherwise, a proxy shall be presumed to cover the entire vote which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid.

Every proxy shall be revocable and shall automatically cease upon (a) conveyance of any Unit for which it was given, (b) the Secretary's receipt of written notice of revocation of the proxy or of the death or judicially declared incompetence of a Member who is a natural person, or (c) 11 months from the date of the proxy, unless a shorter period is specified in the proxy.

P A proxy is a legal term for the concept of one person giving a second person written authorization to act for them in an official capacity, such as voting.

2.9. Quorum

Except as these By-Laws or the Charter otherwise provides, the presence of Voting Delegates representing a majority of the total votes in the Association shall constitute a quorum at all Association meetings.

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A "quorum" is a legal term for the minimum number of persons necessary to accomplish a valid vote.

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2.10. Conduct of Meetings

The President or a Board-approved designee shall preside over all Association meetings. The Secretary shall ensure that minutes of the meetings are kept and that all resolutions adopted and all other transactions occurring at such meetings are kept with the Association's books.

2.11. Action Without a Meeting

Any action required or permitted by law to be taken at a meeting of the Voting Delegates may be taken without a meeting, without prior notice, and without a vote if Voting Delegates entitled to vote on such matter sign a written consent specifically authorizing the proposed action. Such consents shall be signed within 60 days after receipt of the earliest dated consent, dated and delivered to the Association. Such consents shall be filed with the Association's minutes and shall have the same force and effect as a vote of the Voting Delegates at a meeting.



P O S A

Chapter 3

Board of Directors: Selection, Meetings, Powers

A. Composition and Selection.

3.1. Governing Body; Qualifications

The Board shall govern the Association's affairs. Each director shall have one vote. Except with respect to directors appointed by the Founder, directors shall be Owners or residents. However, no Owner and resident representing the same Unit may serve on the Board at the same time. A "**resident**" shall be any natural person 18 years of age or older whose principal residence is a Unit within Mariposa.

If an Owner is not an individual, any officer, director, partner, or any trust officer of such Owner shall be eligible to serve as a director unless a written notice to the Association signed by the Owner specifies otherwise. However, no Owner may have more than one such representative on the Board at a time except in the case of directors the Founder appoints.

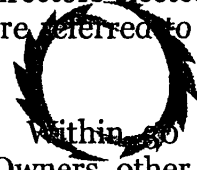
3.2. Number of Directors

The Board shall consist of three to seven directors, as provided in Section 3.3.

3.3. Selection of Directors; Term of Office

(a) **Initial Board.** The initial Board shall consist of the three directors identified in the Articles of Incorpora-

tion, who shall serve until their successors are appointed or elected as provided in this Section.

(b) **Directors During Founder Control Period.** Except as otherwise provided in this subsection, the Founder may appoint, remove, and replace Board members until termination of the Founder Control Period. During such period, the Voting Delegates shall be entitled to elect a minority of the total number of directors according to the following schedule (directors elected by the Voting Delegates are referred to as "Owner Directors."): 

(i) Within 30 days after the time that Owners other than Builders own 25% of the Units permitted by the Master Plan or whenever the Founder earlier determines, the President shall call for an election by which the Voting Delegates shall be entitled to elect one of the three directors, who shall be elected at large. The remaining directors shall be appointees of the Founder. The Owner Director shall be elected for a term of two years or until the happening of the event described in Section 3.3(b)(ii), whichever is shorter. If such director's term expires prior to the happening of the event described in Section 3.3(b)(ii), a successor shall be elected for a like term.

(ii) Within 30 days after the time that Owners other than Builders own 50% of the Units permitted by the Master Plan or whenever the Founder earlier determines, the Board shall be

increased to five directors and the President shall call for an election by which the Voting Delegates shall be entitled to elect two of the five directors, who shall be elected at large. The Founder shall appoint the remaining three directors. The Owner Directors shall be elected for a term of two years or until the happening of the event described in Section 3.3(c)(i), whichever is shorter. If such directors' terms expire prior to the happening of the event described in Section 3.3(c)(i) below, successors shall be elected for a like term.

(c) Directors After the Founder Control Period.

(i) Within 90 days after termination of the Founder Control Period, the President shall call for an election by which the Voting Delegates shall be entitled to elect three of the five directors, who shall be elected at large. The Founder shall appoint the remaining two directors. The Owner Directors shall serve until the first annual meeting following the termination of the Founder Control Period. If such annual meeting is scheduled to occur within 90 days after termination of the Founder Control Period, this subsection shall not apply and directors shall be elected in accordance

with Section 3.3(c)(ii) below.

(ii) Not later than the first annual meeting after the termination of the Founder Control Period, the Board shall be increased to seven directors. The President shall call for an election by which the Voting Delegates shall be entitled to elect six directors, with an equal number of Owner Directors elected by the Voting Delegates representing each Election District and any remaining Owner Director slots filled at large by the vote of all Voting Delegates. Three directors shall serve a term of two years and three directors shall serve a term of one year, as such directors determine among themselves.

(iii) So long as there is a Founder, the Founder shall be entitled to appoint, remove and replace the seventh director. Thereafter, the director elected by the Founder shall resign and the remaining directors shall be entitled to appoint a director to serve until the next annual meeting, at which time the Voting Delegates shall be entitled to elect a director to fill such position. Such director shall be elected for a term of two years.

(iv) Upon expiration of the term of office of each Owner Director,

TRANSITION OF CONTROL OF BOARD OF DIRECTORS					
Initial Board	25% of Permitted Units Conveyed	50% of Permitted Units Conveyed	90 days after Termination of Founder Control Period	1 st Annual Meeting after Termination of Founder Control Period	Termination of Founder Membership
Founder	Owner	Owner	Owner	Owner	Owner
Founder	Founder	Owner	Owner	Owner	Owner
Founder	Founder	Founder	Owner	Owner	Owner
		Founder	Founder	Owner	Owner
		Founder	Founder	Owner	Owner
				Owner	Owner
				Founder	Owner

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the Voting Delegates entitled to elect such director shall be entitled to elect a successor to serve a term of two years. Owner Directors shall hold office until their respective successors have been elected. Directors may serve any number of consecutive terms.

Diagram 3.1 illustrates the concept of transition of control of the Board during and after the Founder Control Period.

(d) Election Districts.

The Voting Delegates representing the Neighborhoods within each Election District shall vote on a separate slate of candidates for election to the Board. Each Election District is entitled to elect the number of directors specified in Chapter 3 of the By-Laws.

Acting alone, the Founder shall establish Election Districts, if at all, not later than the date the Founder Control Period expires by filing with the Association and recording a Supplemental Charter identifying each Election District by legal description or other means such that the Units within each Election District can be determined easily.

After the Founder's right to create Election Districts expires, the Board, with the approval of Voting Delegates representing a majority of the Neighborhoods and a majority of the total votes in the Association, may create one or more Election Districts, or change existing Election Districts, by recording a Supplemental Charter or amending a previous Supplemental Charter.

Recording or amending a Supplemental Charter to create or change Election Districts shall not be an amendment to the Charter or the By-Laws, and no

consent or approval of any person shall be required except as stated in this Section. Until Election Districts are established, the Community shall be a single Election District. After Election Districts are established, all portions of the Community not assigned to a specific Election District shall constitute a single Election District.

3.4. Nomination and Election Procedures

(a) Nomination of Candidates.

Sixty days prior to any election of directors by the Voting Delegates, the Board shall appoint a Nominating Committee consisting of a chairman and three or more Owners or representatives of Owners. Members of the Nominating Committee shall serve a term of one year or until their successors are appointed. The names of the Nominating Committee members shall be announced in the notice of each election.

In preparation for each election, the Nominating Committee shall meet and make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number of positions to be filled by the Voting Delegates at such election. The Nominating Committee shall nominate separate slates for the directors, if any, to be elected at large by all Voting Delegates, and for the director(s) to be elected by the Voting Delegates within each Election District. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity which exists within the pool of potential candidates. Nominations shall also be permitted from the floor at the meeting at which any election is held. In addition or in the alternative, any Per-

son may submit his or her name for consideration. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

(b) **Election Procedures.** At each election, voting shall be by written ballot. Each Voting Delegate may cast all votes assigned to the Units it represents for each position to be filled from any slate of candidates on which such Voting Delegate is entitled to vote. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected.


In the event of a tie vote on any slate, the Voting Delegates entitled to vote on such slate shall be informed of the tie vote and given the opportunity to discuss the candidates among themselves in an effort to resolve the tie before another vote is taken. If the second vote again results in a tie, the Board shall call for election of the Director(s) from such slate by the Owners represented by such Voting Delegates. Such election shall be held by mail, with ballots to be sent by first class mail to each Owners entitled to vote on such slate within 10 days after the meeting at which the original election was held.

3.5. Removal of Directors and Vacancies

Any Owner Director may be removed, with or without cause, by the vote of Voting Delegates holding a majority of the votes entitled to be cast for the election of such director. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a di-

rector by the Voting Delegates, the Voting Delegates entitled to elect the removed director shall elect a successor for the remainder of the term of such director.

At any meeting at which a quorum is present, a majority of the directors may remove any Owner Director who (a) has three consecutive unexcused absences from Board meetings; (b) is more than 30 days delinquent (or resides in a Unit owned by a Member who is so delinquent) in the payment of any assessment or other charge due the Association; or (c) fails to cure a violation of the Governing Documents pertaining to his or her Unit after being given notice from the Board or its designees and a reasonable opportunity to cure such violation. The Board may appoint a successor to fill the vacancy for the remainder of the term


Owner Directors who have three consecutive unexcused absences from Board meetings or owe money to the Association for more than 30 days can be removed from the Board. This provision helps to ensure that the Directors fulfill their duties to the Association.

In the event of the death, disability, or resignation of an Owner Director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Voting Delegates entitled to fill such directorship shall elect a successor for the remainder of the term.

Any director whom the Board appoints shall be selected from among eligible Owners or residents of Units within the Election District represented by the director who vacated the position.

This Section shall not apply to directors the Founder appoints. The Founder shall appoint a successor to fill any vacancy on the Board resulting from the death, disability, or resignation of a director appointed by the Founder.

B. Meetings

3.6. Organizational Meetings

The Board shall hold an organizational meeting within 10 days following each annual Association meeting at such time and place as the Board shall fix for the purpose of electing officers and providing such other organizational functions as deemed appropriate.

3.7. Regular Meetings

The Board shall hold regular meetings at such time and place as a majority of the directors shall determine, but the Board shall meet at least four times during each fiscal year with at least one meeting per quarter.

3.8. Special Meetings

The Board shall hold special meetings when called by written notice which the President, Vice President, or any two directors sign(s).

3.9. Notice; Waiver of Notice

Notices of Board meetings shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The Board shall notify each director of meetings by: (a) personal delivery; (b) first class mail, postage prepaid; (c) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate

such notice promptly to the director; or (d) facsimile, electronic mail, or other electronic communication device, with confirmation of transmission. All such notices shall be given at or sent to the director's telephone number, fax number, electronic mail address, or sent to the director's address as shown on the Association's records. The Board shall deposit notices sent by first class mail into a United States mailbox at least five business days before the day of the meeting. The Board shall give notices by personal delivery, telephone, or other device at least 72 hours before the time set for the meeting.

Transactions of any Board meeting, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each director not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.10. Telephonic Participation in Meetings

Members of the Board or any committee the Board designates may participate in a Board or committee meeting by conference telephone or similar communications equipment through which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this section shall constitute presence at such meeting.

3.11. Quorum of Board

At all Board meetings, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the Board's decision unless New Mexico law, these By-Laws, or the Charter specifically provides otherwise. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the departure of directors, if at least a majority of the required quorum for that meeting approves any action taken. If the Board cannot hold a meeting because a quorum is not present, a majority of the directors present may adjourn the meeting to a time not less than five nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present the Board may transact, without further notice, any business it might have transacted at the original meeting.

M A R I P O S A
3.12. Conduct of Meetings


The President or any designee the Board approves by resolution shall preside over all Board meetings. The Secretary shall ensure that minutes of the meetings are kept and that all resolutions and all transactions occurring at such meetings are included in the Association's records.

3.13. Open Meetings; Executive Session

(a) Subject to the provisions of Section 3.13(b) and Section 3.14, all Board meetings shall be open to all Voting Delegates, but only directors may participate in any discussion or deliberation unless a director requests that attendees

be granted permission to speak. In such case, the President may limit the time any such individual may speak.

(b) Notwithstanding the above, the President may adjourn any Board meeting and reconvene in executive session, and may exclude persons other than directors, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc.

 Board meetings must be open to all Association members except when sensitive topics that could affect the Association's rights are being discussed.

3.14. Action Without a Formal Meeting

Any action to be taken or which may be taken at a Board meeting may be taken without a meeting if the directors sign a written consent, setting forth the action so taken. Such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties

3.15. Powers

The Board shall have the power to administer the Association's affairs, perform the Association's responsibilities, and exercise the Association's rights as set forth in the Governing Documents and as provided by law. The Board may do or cause to be done on the Association's behalf all acts and things except those which the Governing Documents or New Mexico law require to be done and exercised exclusively by the Voting Delegates or the membership generally.

The Board's powers include such things as obtaining water usage informa-

tion from local and state authorities to the extent permitted by such authorities and providing or providing for information and training classes designed to educate Voting Delegates and Owners of the nomination, election, and voting process.

3.16. Duties

The Board's duties shall include, without limitation:

(a) preparing and adopting, in accordance with the Charter, an annual budget establishing each Owner's share of the Common Expenses and any Service Area Expenses;

(b) cooperating with the Assembly in levying and collecting assessments from the Owners;

(c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility consistent with the Community Wide Standard and in accordance with the Community Covenant;

(d) designating, hiring, and dismissing personnel necessary to carry out the Association's rights and responsibilities and where appropriate, providing for compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(e) depositing all funds received on the Association's behalf in a bank depository which it shall approve and using such funds to operate the Association; however, in the Board's business judgment any reserve funds may be deposited in depositories other than banks;

(f) making and amending Rules in accordance with the Charter;

(g) opening bank accounts on the Association's behalf and designating the signatories required;

(h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Governing Documents;

(i) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; however, the Association's obligation in this regard shall be conditioned in the manner provided in the Charter;

(j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Charter, paying the cost thereof, and filing and adjusting claims, as appropriate;

(k) paying the cost of all services rendered to the Association;

(l) keeping a detailed accounting of the Association's receipts and expenditures;

(m) making available to any prospective purchaser of a Unit, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Governing Documents and all other books, records, and financial statements of the Association as provided in Section 9.4;

(n) permitting Utility Suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Community;

(o) indemnifying a director, officer, or committee member or former director, officer, or committee member of the Association to the extent such indemnity is required by New Mexico law, the Articles, and these By-Laws.

(p) assisting in the resolution of disputes between owners and others in an attempt to discourage litigation, as set forth in the Charter;

(q) cooperating with the Assembly in carrying out its purposes and responsibilities under the Community Covenant and the Assembly's by-laws;

(r) cooperating with the Assembly in upholding the Community-Wide Standard;

(s) cooperating with the Foundation in carrying out its purposes and responsibilities, including any environmental and conservation activities;

(t) cooperating with non-residential owners and the commercial association, if any, in upholding the Community-Wide Standard;

(u) carrying out responsibilities pursuant to any covenants to share costs that the association enters into;

(v) filing required documents or reports with the New Mexico State Corporations Commission and other entities; and

(w) performing any other duties that are required under New Mexico law for nonprofit corporations.



P O S A

Chapter 4

Officers

You cannot be a leader, and ask other people to follow you, unless you know how to follow, too.
Sam Rayburn

4.1. Officers

The Association's Officers shall be a President, Vice President, Secretary, and Treasurer. The President and Secretary shall be elected from among the Board members; other officers may, but need not, be Board members. The Board may appoint such other officers, including one or more Assistant Secretaries and Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. One of the officers shall have the duty to record the proceedings of the meetings of the members and directors in a book kept for such purpose. Any two or more offices may be held by the same person, except the offices of President and Secretary. The Board shall also appoint one or more representatives to serve on the Assembly's Board of Directors as provided in the Assembly's By-Laws.

4.2. Election and Term of Office

The Board shall elect the Association's officers at the first Board meeting following each annual meeting of the Voting Delegates, to serve until their successors are elected.

4.3. Removal and Vacancies

The Board may remove any officer whenever in its judgment the Associa-

tion's best interests will be served and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

4.4. Powers and Duties

The Association's officers shall have such powers and duties as generally pertain to their respective offices as well as such powers and duties as the Board may specifically confer or impose. The President shall be the Association's chief executive officer. The Treasurer shall have primary responsibility for preparing the budget as provided for in the Charter and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

4.5. Resignation

Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at a later time specified therein. Unless the resignation specifies, acceptance of such resignation shall not be necessary to make it effective.

Chapter 5

Committees

5.1. General

The Board may appoint such committees, as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

5.2. Nominating Committee

The Board shall appoint a Nominating Committee prior to any election of directors further described in Section 3.4.

5.3. Service Area Committees

In addition to any other committees appointed as provided above, each Service Area which has no formal organizational structure may elect a Service Area Committee to determine the nature and extent of services, if any, to be provided to the Service Area by the Association in addition to those provided to all Members of the Association in accordance with the Charter. A Service Area Committee may advise the Board on any other issue but shall not have the authority to bind the Board. Such Service Area Committees, if elected, shall consist of three Members; provided, if approved by the vote of at least 51% of the Owners of Units within the Service Area, the number may be increased to five.

Service Area Committee members shall be elected for a term of one year or until their successors are elected. Any

director elected to the Board from a Service Area shall be an *ex officio* member of the Service Area Committee. The members of the committee shall elect a chairperson from among themselves, who shall preside at its meetings and shall be responsible for transmitting any and all communications to the Board.

In the conduct of its duties and responsibilities, each Service Area Committee shall abide by the notice and quorum requirements applicable to the Board under Sections 3.9 and 3.11. Meetings of a Service Area Committee shall be open to all Owners of Units in the Service Area and their representatives. Members of a Service Area Committee may act by unanimous written consent in lieu of a meeting.

5.4. Covenants Committee

In addition to any other committees which the Board may establish pursuant to Section 5.1, the Board may appoint a Covenants Committee consisting of at least three and no more than seven Members. Acting in accordance with the provisions of the Charter, these By-Laws, and resolutions the Board may adopt, the Covenants Committee shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Chapter 8 of these By-Laws.

Chapter 6

Standards of Conduct; Liability and Indemnification

Hold yourself responsible for a higher standard than anybody expects of you. Never excuse yourself. Henry Ward Beecher

6.1. Standards for Directors and Officers

The Board shall exercise its powers in a reasonable, fair, nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents.

In performing their duties, directors and officers shall act as fiduciaries and shall be insulated from liability as provided for directors of corporations under New Mexico law and as otherwise provided by the Governing Documents. Directors and officers shall discharge their duties as directors or officers, and as members of any committee to which they are appointed, in a manner that the director or officer believes in good faith to be in the best interest of the corporation and with the care that an ordinarily prudent person in a like position would exercise under similar circumstances. A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by others to the extent authorized under New Mexico law.

6.2. Liability

(a) A director shall not be personally liable to the Association, any Member, or any other Person for any action taken or not taken as a director if the director has acted in accordance with Sec-

tion 6.1 and has acted in compliance with Section 53-8-25.1 of the New Mexico Nonprofit Corporation Act as it may be amended.

(b) Pursuant to the business judgment rule, a director also shall not be personally liable for any action taken or not taken as a director if the director:

(i) acts within the expressed or implied scope of the Governing Documents and his or her actions are not *ultra vires*;

(ii) affirmatively undertakes to make decisions which are necessary for the Association's continued and successful operation and, when decisions are made, makes them on an informed basis;

(iii) acts on a disinterested basis, promptly disclosing any real or potential conflict of interests (pecuniary or other), and avoiding participation in decisions and actions on matters as to which he has a conflict of interest (beyond that which all directors have by virtue of their ownership or occupancy of a Unit); and

(iv) acts in a non-fraudulent manner and without reckless indifference to the Association's affairs.

(c) The Association's officers, directors, and committee members shall not

be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, misconduct, recklessness, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on the Association's behalf (except to the extent that such officers or directors may also be Members).

6.3. Indemnification

Subject to the limitations of New Mexico law, the Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees and expenses, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that the Association shall have no obligation to indemnify any individual against liability or expenses incurred in connection with a proceeding:

(a) brought by or in the right of the Association, although it may reimburse the individual for reasonable expenses incurred in connection with the proceeding if it is determined, by the court or in the manner provided above, that the individual met the relevant standard of conduct under New Mexico law; or

(b) to the extent that the individual is adjudged liable for conduct that constitutes:


(i) appropriation, in violation of his or her duties, of any business opportunity of the Association; or

(ii) intentional misconduct or knowing violation of the law;

(iii) an unlawful distribution to members, directors or officers; or

(iv) receipt of an improper personal benefit.

This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

 Indemnification is the practice in which corporations pay the expenses of officers or directors who are named as defendants in litigation where the litigation is related to the corporation's affairs.

6.4. Conflicts of Interest; Code of Ethics


We are what we repeatedly do. Excellence, therefore, is not an act but a habit. Aristotle

Unless otherwise approved by a majority of the other directors, no Owner Director may transact business with the Association or any Association contractor during his or her term as director or within two years after the term expires. A director shall promptly disclose in writing to the Board any actual or potential conflict of interest affecting the director relative to his or her performance as a director. A director's failure to make such disclosure shall be grounds

for removal by a majority vote of the other Board members.

Notwithstanding the above, directors appointed by the Founder may be employed by or otherwise transact business with the Founder or its affiliate, and the Founder may transact business with the Association or its contractors.

The initial Board shall create and adopt a written "Code of Ethics" applicable to all directors and officers. The Code of Ethics shall incorporate the above standards and other conduct rules it deems appropriate. At a minimum, the Code of Ethics shall require each officer and director to conduct himself or herself in a manner consistent with the Board Standards described in Section 6.1. Each officer and director, as a precondition to service, shall acknowledge and agree, in writing, to abide by the Code of Ethics.

 Generally, a conflict of interest refers to a clash between the Association's interest and a director's or officer's personal interest which could cause the Association's interest to be disregarded in favor of a director's interest.

6.5. Advancement of Expenses

In accordance with the procedures and subject to the conditions and limitations set forth in New Mexico law, the Board may authorize the Association to advance funds to pay for or reimburse the reasonable expenses incurred by a present or former officer, director, or committee member in any proceeding to which he or she may be a party by reason of being or having been an officer, director, or committee member of the Association.

6.6. Board and Officer Training

The Board shall conduct or provide for seminars and continuing educational opportunities designed to educate and inform its officers and directors of their responsibilities as officers and directors. Such programs may include instruction on applicable New Mexico corporate and fiduciary law principles, other issues relating to administering community affairs, and upholding and enforcing the Governing Documents. The Board may retain industry professionals, which may include property managers, attorneys, and accountants, as appropriate or necessary for such purpose. Each newly elected officer and director shall complete a training seminar within the first six months of assuming such position. The seminar may be live, video or audio-tape, or in other format.

In a similar manner, the Board may provide or provide for Owner and resident education and training opportunities designed to foster awareness of Mariposa's governance, operations, and concerns. The Board shall conduct or provide for training and information classes designed to educate Voting Delegates and Owners of the nomination, election, and voting processes and the duties and responsibilities of directors and officers.

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Chapter 7

Management and Accounting

7.1. Compensation of Directors and Officers

The Association shall not compensate Directors and officers for acting as such unless Voting Delegates representing a majority of the total votes in the Association approve such compensation at an Association meeting. The Association may reimburse any director or officer for expenses he or she incurs on the Association's behalf upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director or officer, or any entity with which a director or officer is affiliated, for services or supplies he or she furnishes to the Association in a capacity other than as a director or officer pursuant to a contract or agreement with the Association. However, such director must make known his or her interest to the Board prior to entering into such contract, and a majority of the Board, excluding any interested director, must approve such contract.

7.2. Right of Founder to Disapprove Actions

So long as there is a Founder, the Founder shall have a right to disapprove any action, policy, or program of the Association, the Board, and any committee which, in the Founder's sole judgment, would tend to impair rights of the Founder or Builders under the Charter or these By-Laws, interfere with development or construction of any portion of

Mariposa, or diminish the level of services the Association provides.

(a) **Notice.** The Association shall give the Founder written notice of all meetings and proposed actions approved at Association, Board, or committee meetings (or by written consent in lieu of a meeting). The Association shall give such notice by certified mail, return receipt requested, or by personal delivery at the address the Founder has registered with the Association, which notice complies as to Board meetings with Section 3.9, and which notice shall, except in the case of regular Board meetings pursuant to these By-Laws, set forth with reasonable particularity the agenda to be followed at such meeting.

(b) **Opportunity to be Heard.** At any such meeting, the Association shall give the Founder the opportunity to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program that would be subject to the right of disapproval set forth herein.

The Board shall not implement any action, policy, or program subject to the right of disapproval set forth herein until and unless the requirements of this Section have been met.

The Founder, its representatives, or its agents shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. The Founder, acting through any officer or director, agent, or

authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action.

The Founder may use this right to disapprove to block proposed actions but shall not use it to require any action or counteraction of any committee, the Board, or the Association. The Founder shall not use its right to disapprove to reduce the level of services the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

7.3. Managing Agent

The Board may employ for the Association professional management agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties but shall not delegate policy-making authority or ultimate responsibility for those duties set forth in Section 3.16. The Board may employ the Founder or any Founder Affiliate as managing agent or manager.

The Board may delegate to one of its members the authority to act on its behalf on all matters relating to the duties of the managing agent or manager which might arise between Board meetings.

The Association shall not be bound, either directly or indirectly, by any management contract executed during the Founder Control Period unless such

contract contains a right of termination which may be exercised by the Association, with or without cause and without penalty, at any time after termination of the Founder Control Period upon not more than 90 days' written notice.

The managing agent shall not accept remuneration from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association. The managing agent shall promptly disclose to the Board any financial or other interest which it may have in any firm providing goods or services to the Association.

7.4. Accounts and Reports

(a) The Board shall follow the following accounting standards unless the Board by resolution specifically determines otherwise:

(i) Accounting and controls should conform to generally accepted accounting principles; and

(ii) the Association's cash accounts shall not be commingled with any other accounts.

(b) Commencing at the end of the quarter in which the first Unit is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:

(i) an income statement reflecting all income and expense activity for the preceding period;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

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(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(iv) a balance sheet as of the last day of the preceding period; and

(v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report (any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless the Board specifies otherwise by resolution).

(c) An annual report consisting of at least the following shall be made available for Members' review within 180 days after the close of the fiscal year: (i) a balance sheet; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines.

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In addition, the Association's annual report shall be delivered to the New Mexico State Corporation Commission in accordance with New Mexico law.

7.5. Borrowing

The Association shall have the power to borrow money for any legal purpose. However, the Board shall obtain Voting Delegate approval in the same manner provided in the Charter for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 20% of the Association's budgeted gross expenses for that fiscal year.

7.6. Right to Contract

The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or Neighborhood and other owners or residents associations, within and outside Mariposa. The Board shall consent to any common management agreement.

7.7. Agreements, Contracts, Deeds, Leases, Checks, Etc.

All Association agreements, contracts, deeds, leases, checks, and other instruments shall be executed by at least two officers or by such other person or persons as the Board may designate by resolution.

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Chapter 8

Enforcement Procedures

The Association shall have the power, as provided in the Charter, to impose sanctions for any violation of the Governing Documents. To the extent specifically required by the Charter, the Board shall comply with the following procedures prior to imposition of sanctions:

8.1. Notice and Response

The Board or its delegate shall serve the alleged violator with written notice describing (a) the nature of the alleged violation, (b) the proposed sanction to be imposed, and (c) that the alleged violator has 14 days from the date of such notice to respond to the notice of the alleged violation in writing or cure the alleged violation.

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The alleged violator shall respond to the notice of the alleged violation in writing within such 14-day period, regardless of whether the alleged violator is challenging the imposition of the proposed sanction. If the alleged violator cures the alleged violation and notifies the Board in writing within such 14-day period, the Board may, but shall not be obligated to, waive the sanction. Such waivers shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

If the alleged violator does not respond to the notice of the alleged violation in writing or cure the alleged violation within 14 days of the date of the written notification, the Board or its

delegate shall serve the alleged violator with a second written notice sent via certified mail describing (a) the nature and the date of the alleged violation, (b) the proposed sanction to be imposed, and (c) that the alleged violator shall have 14 days to present a written request for a hearing.

If the alleged violator (a) does not cure the violation, (b) present a written plan to correct the alleged violation, or (c) present a written request for a hearing within 14 days of the second notification, the Board or its delegate shall serve the alleged violator with a third written notice sent via certified mail describing (a) the nature and date of the violation, and (b) the commencement date of the sanction.

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Prior to the effectiveness of sanctions imposed pursuant to this Chapter, proof of proper notice shall be placed in the minutes of the Covenants Committee, as applicable. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative requests and appears at the hearing.

8.2. Hearing

If a hearing is requested within the allotted ten-day period, the hearing shall be held before the Covenants Committee, if appointed, or the Board, if a

Covenants Committee has not been appointed. The alleged violator shall be afforded a reasonable opportunity to be heard. The minutes of the meetings of the Covenants Committee shall contain a written statement of the results of the hearing (*i.e.*, the Committee's decision) and the sanction, if any, to be imposed.

If a timely request for a hearing is not made, the sanction stated in the notice shall be imposed; provided the Board or Covenants Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the ten-day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

8.3. Appeal

Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board. To exercise this right the violator must deliver a written notice of appeal to the Association's manager, President, or Secretary within 10 days after the hearing date. If a Covenants Committee has not been appointed and a hearing is held before the Board, the violator shall not have a right to appeal the decision to the Board.



P O S A

Chapter 9

Miscellaneous

9.1. Fiscal Year

The Association's fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution.

9.2. Parliamentary Rules

Except as may be modified by Board resolution, *Robert's Rules of Order* (current edition) shall govern the conduct of Association proceedings when not in conflict with New Mexico law or the Governing Documents.

9.3. Conflicts

If there are conflicts among the provisions of New Mexico law, the Articles of Incorporation, the Charter, and these By-Laws, the provisions of New Mexico law, the Charter, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

Diagrams, tables, and text set apart in boxes, some with "key" icons, are used in the Governing Documents to illustrate concepts and assist the reader. If there is a conflict between any of these and the text of the Governing Documents, the text shall control. In addition, the quotations set apart in boxes are for information only and have no legal effect.

9.4. Books and Records

(a) *Inspection by Members and Mortgagees.* The Board shall

make available for inspection and copying by any holder, insurer, or guarantor of a first Mortgage on a Unit, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Unit: the Governing Documents, the membership register, books of account, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the Association's office or at such other place within Mariposa as the Board shall designate.

(b) *Rules for Inspection.* The Board shall establish rules with respect to:

(i) Notice to be given to the custodian of the records;

(ii) hours and days of the week when such an inspection may be made; and

(iii) payment of the cost of reproducing documents requested.

(c) *Inspection by Directors.* Every director shall have the absolute right at any reasonable time to inspect all Association books, records, and documents and the physical properties owned or controlled by the Association. A director's right of inspection includes the right to make a copy of relevant documents at the Association's expense.

9.5. Notices

(a) **Form of Notice and Method of Delivery.** Except as otherwise provided in the Charter or these By-Laws or by law, all notices, demands, bills, statements, or other communications under the Charter or these By-Laws shall be in writing and may be delivered in person, by United States mail, by private carrier, or if the intended recipient has given its prior written authorization to use such method of delivery, by facsimile or electronic mail with written confirmation of transmission.

(b) **Delivery Address.** Notices shall be delivered or sent to the intended recipient as follows:

(i) if to a Member or Voting Delegate, at the address, telephone facsimile number, or e-mail address which the Member or Voting Delegate has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member or Voting Delegate;

(ii) if to the Association, the Board, or a committee of either, at the address, facsimile number, or e-mail address of the principal office of the Association or its managing agent, or at such other address as the Association shall designate by notice in writing to the Members pursuant to this Section; or

(iii) if to the Founder, at the Founder's principal address as it appears on the records of the New Mexico State Corporation Commission or at such other address as the Founder shall designate by notice in writing to the Association pursuant to this Section.

(c) **Effective Date.** Notice sent in accordance with Sections 9.5(a) and

9.5(b) shall be deemed to have been duly given and effective:

(i) if sent by United States mail, when deposited with the U.S. Postal Service, correctly addressed, with first class or higher priority postage pre-paid;

(ii) if delivered personally or by private carrier, when actually delivered to the address of the intended recipient, as evidenced by the signature of the person at such address who accepts such delivery; or

(iii) if sent by telephone facsimile or electronic mail, upon transmission, as evidenced by a printed confirmation of transmission.

9.6. Amendment

(a) **By Founder** Prior to termination of the Founder Control Period, the Founder may unilaterally amend these By-Laws. Thereafter, the Founder may unilaterally amend these By-Laws at any time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule or regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; or (iii) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Units. So long as there is a Founder, the Founder may unilaterally amend these By-Laws for any other purpose, provided the amendment has no

material adverse effect upon any Member's substantive right.

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(b) By Members Generally.

Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Delegates representing 67% of the total votes in the Association, and the consent of the Founder, if such exists. In addition, the approval requirements set forth in the Charter shall be met, if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) Validity and Effective Date of Amendments.

Amendments to these By-Laws shall become effective upon adoption and execution by two officers, and shall be recorded. Any procedural challenge to an amendment must be made within six months of its adoption, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

No amendment may remove, revoke, or modify any right or privilege of Founder or the Founder without the written consent of Founder or the assignee of such right or privilege.



P O S A

IN WITNESS WHEREOF, the undersigned, in their capacity as officers of the Association, on behalf of the Association, have executed these By-Laws, and as of the 27th day of August, 2004.

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[Signature]

By: **President**

Erid M. Chase

Attest:

Thomas K. Franchini

By: **Secretary**

Erid M. Chase

Attest:

State of New Mexico

County of BERNALILLO

This instrument was acknowledged before me on August 27, 2004 by Thomas Franchini, [Secretary] and Jack Eichorn [President] of Mariposa Community Association, Inc.



M [SEAL] A R I P Erid M. Chase S A
Notary Public

My Commission Expires:
May 13, 2007

GLOSSARY

The capitalized terms used in these By-Laws are defined in the Charter and incorporated herein by reference. All other terms used in these By-Laws have their natural, commonly accepted definitions.

Approval: permission or approval, which unless otherwise expressly qualified in the specific provision, may be granted or withheld in the discretion of the Person whose consent or approval is required

Area of Common Responsibility: all of the properties and facilities for which the Association has responsibility under the Governing Documents, or for which the Association otherwise agrees to assume responsibility

Assembly: the Mariposa Assembly, Inc., organized as a means of generating, enhancing, and pursuing a genuine sense of community within Mariposa

Association: the Mariposa Community Association, Inc.

Board: the Association's board of directors

Builders: those Persons who purchase one or more unimproved lots or parcels of land within Mariposa for further subdivision or development and resale in the ordinary course of their business

Charter: Community Charter for Mariposa Residential Property, recorded or to be recorded in the office of the Clerk of the County Court of Sandoval County, New Mexico

Common Area: any property and facilities that the Association owns or in which it otherwise holds possessory or use rights for the common use or benefit of more than one Unit

Common Expenses: except as the Governing Documents otherwise specifically provide, all of the expenses that the Association incurs, or expects to incur, in connection with the ownership, maintenance, and operation of the Area of Common Responsibility, and otherwise for the general benefit of the Owners

Community: consists of the property described in Exhibit "A" to the Charter and any additional property made subject to this Charter in the future by amendment or supplement

Community Covenant: the recorded Covenant for Community for Mariposa, which describes and governs the Assembly's rights and responsibilities

Community Foundation: the Mariposa Community Foundation, Inc. organized under the New Mexico Nonprofit Corporation Act and Section 501(C)(3) of the Internal Revenue Code exclusively for charitable, educational, environmental, and scientific purposes

Community-Wide Standard: (a) the standard of use, conduct, architecture, landscaping, or aesthetic matters generally prevailing in the Community, or (b) the minimum standards described in this Charter, the Community Covenant, the Guidelines for Sustainability, the Rules, and Board resolutions

Consent: permission or approval, which unless otherwise expressly qualified in the specific provision, may be granted or withheld in the discretion of the Person whose consent or approval is required

Discretion: the sole and absolute power or right to decide or act

Election Districts: the Units within one or more Neighborhoods, for the purpose of electing directors to the Board

Founder: High Desert Investment Corporation, its successors and assigns

Founder Affiliate: any Person that controls, is controlled by, or is under common control with the Founder, and any Person that is an owner, a member, a partner, or a shareholder of the Founder

Founder Control Period: the period of time that the Founder is entitled to appoint a majority of the members of the Association's board of directors

Founder Membership: the Founder holds the sole Founder membership

Governing Documents: various documents that have a legal and binding effect on all owners and occupants of property in the Community, as well as on anyone else that may now or in the future have an interest in any portion of the property comprising the Community, including the Charter, any Supplement, the Articles of Incorporation, these By-Laws, the Guidelines for Sustainability, the Rules, and Board resolutions.

Improvements: all site work, landscaping, structures, improvements, and other items placed on a Unit in a manner or location visible from outside of any existing structures on the Unit

Lease and Leasing: the regular, exclusive occupancy of a Unit by any Person other than the Owner, for which the Owner receives any consideration or benefit

Maintenance: maintenance, repair, rehabilitation, and renewal

Master Plan: the Founder's proposed plan for development of the Community, as it may be supplemented and amended, which encompasses all of the property described in Exhibit "A" to the Charter and all or a portion of the property described in Exhibit "B" to the Charter

Mortgage: a mortgage or other form of security instrument affecting title to a Unit

Mortgagee: the holder or beneficiary of that Mortgage

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Neighborhood Association: portions of the Community may be developed under a condominium form of ownership or may have special requirements that lead a Builder to establish a separate condominium or homeowners association to administer additional covenants applicable to that particular area

Neighborhoods: a Neighborhood may be comprised of any number of Units and may include Units of more than one housing type, as well as Units that are not contiguous to one another. Units are grouped into Neighborhoods to facilitate a system of representative voting on matters as to which the Governing Documents require approval of the Association's membership

Owner: each Person that holds record title to a Unit

Owner Membership: every Owner is automatically a member of the Association; however, there shall be only one membership per Unit

Person: an individual, a corporation, a partnership, a limited liability company, or any other legal entity

Recorded: an instrument filed or the filing of a legal instrument in the official records of Sandoval County, or such other place designated as the official location for filing documents affecting title to real estate in Sandoval County in order to make them a matter of public record

Rules: the rules of the Association which regulate use of property, activities, and conduct within Mariposa

Service Area Expenses: All expenses that the Association incurs or expects to incur in connection with the ownership, maintenance and operation of Limited Common Areas, or in providing other benefits and services to a Service Area, including any operating reserve or reserve for repair and replacement of capital items maintained for the benefit of the Service Area


Service Areas: Units may also be part of one or more Service Areas in which the Units share Limited Common Areas or receive special benefits or services from the Association that it does not provide to all Units within the Community

Units: a Unit is a portion of Mariposa, depicted in a recorded subdivision plat, survey, or condominium instrument, which may be independently owned and conveyed and is zoned or otherwise intended for development, use, and occupancy as a residence for a single family

Utility Suppliers: providers of utilities for Mariposa, including a private network

Voting Delegate: the Owners of Units in each Neighborhood elect a Voting Delegate and an alternative Voting Delegate, in the manner provided in these By-Laws, to cast the votes of all Units in the Neighborhood on matters requiring a vote of the membership, except where the governing documents specifically require a vote of the Owners

M A R I P O S A





OFFICE OF THE
PUBLIC REGULATION COMMISSION

CERTIFICATE OF INCORPORATION

OF

MARIPOSA COMMUNITY ASSOCIATION, INC.

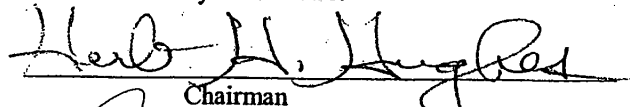
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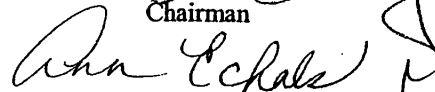
The Public Regulation Commission certifies that the Articles of Incorporation, duly signed and verified pursuant to the provisions of the
NONPROFIT CORPORATION ACT
(53-8-1 to 53-8-99 NMSA 1978)
have been received by it & are found to conform to law.

Accordingly, by virtue of the authority vested in it by law, the Public Regulation Commission issues this Certificate of Incorporation & attaches hereto, a duplicate of the Articles of Incorporation.

Dated: JUNE 22, 2004

In testimony whereof, the Public Regulation of the State of New Mexico has caused this certificate to be signed by its Chairman and the seal of said Commission to affixed at the City of Santa Fe.


Chairman

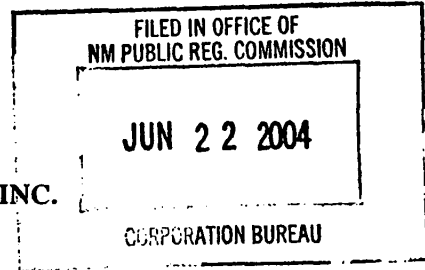

Bureau Chief

Bureau Chief

ARTICLES OF INCORPORATION

OF

MARIPOSA COMMUNITY ASSOCIATION, INC.
(a New Mexico nonprofit corporation)



The undersigned, acting as Incorporator of a corporation under the New Mexico Nonprofit Corporation Act, adopts the following Articles of Incorporation for the corporation:

Article 1. Name. The name of the corporation is Mariposa Community Association, Inc. ("Association").

Article 2. Principal Office. The address of the initial principal office of the Association is 3791 Southern Boulevard, Suite 202, Rio Rancho, New Mexico 87124.

Article 3. Duration. The Association shall have perpetual duration.

Article 4. Applicable Statute. The Association is organized pursuant to the provisions of the New Mexico Nonprofit Corporation Act.

Article 5. Definitions. All capitalized terms used herein that are not defined shall have the same meaning as set forth in the Community Charter for Mariposa Residential Property ("Charter"), recorded or to be recorded in the office of the Clerk of the County Court of Sandoval County, New Mexico.

Article 6. Purposes and Powers. The Association does not contemplate pecuniary gain or profit, direct or indirect, to its members.

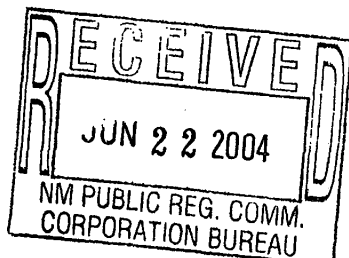
A. In way of explanation and not of limitation, the purposes for which it is formed are:

(i) to be and constitute the Association to which reference is made in the Charter, to perform all obligations and duties of the Association, and to exercise all rights and powers of the Association as specified therein, as specified in the By-laws of Mariposa Community Association, Inc. ("By-Laws"), and as provided by law; and

(ii) to provide an entity for the furtherance of the interests of the owners of real property subject to the Charter.

B. In furtherance of its purposes, the Association shall have the following powers, which, unless indicated otherwise by the Charter or By-Laws, may be exercised by its board of directors:

(i) all of the powers conferred upon nonprofit corporations by common law and New Mexico statutes in effect from time to time; and



(ii) all of the powers necessary or desirable to perform the obligations and duties and to exercise the rights and powers set out in these Articles, the By-Laws, or the Charter, including, without limitation, the following:

- (a) to fix and to collect assessments or other charges to be levied;
- (b) to manage, control, operate, maintain, repair, and improve the Common Area (as defined in the Charter) and any other property for which the Association has a right or duty to provide such services pursuant to the Charter, other applicable covenants, or any agreement or contract;
- (c) to promulgate and to enforce covenants, conditions, rules, regulations, or restrictions affecting Mariposa (as defined in the Charter) to the extent the Association may be authorized to do so under the Charter or By-Laws;
- (d) to engage in activities which will actively foster, promote, and advance the common interests of all owners of property subject to the Charter;
- (e) to buy or otherwise acquire, sell or otherwise dispose of, mortgage or otherwise encumber, exchange, lease, hold, use, operate, and otherwise deal in and with real, personal, and mixed property of all kinds and any right or interest therein for any purpose of the Association;
- (f) to borrow money for any purpose, subject to such limitations as may be set forth in the By-Laws;
- (g) to enter into, make, perform, or enforce contracts of every kind and description, and to do all other acts necessary, appropriate, or advisable in carrying out any purpose of the Association, with or in association with any other association, corporation, or other entity or agency, public or private;
- (h) to act as agent, trustee, or other representative of other corporations, firms, or individuals, and as such to advance the business or ownership interests in such corporations, firms, or individuals; and
- (i) to provide any and all supplemental municipal services to the property subject to the Charter as the Board may deem necessary or proper.

C. The foregoing enumeration of powers shall not limit or restrict in any manner the exercise of other and further rights and powers which may now or hereafter be allowed or permitted by law; and the powers specified in each of the paragraphs of this Article are independent powers, not to be restricted by reference to or inference from the terms of any other paragraph or provisions of this Article.

Article 7. Membership. The Association shall be a membership corporation without certificates or shares of stock. Each Person who is the record owner of a Unit (as such capitalized terms are defined in the Charter and the By-Laws) subject to the Charter is a member and shall be entitled to vote as set forth herein and in the Charter and the By-Laws.



Article 8. Board of Directors.

A. The Association's affairs shall be conducted, managed, and controlled by a Board of Directors. The initial Board of Directors shall consist of three directors.

B. The names and addresses of the members of the initial Board of Directors, who shall hold office until their successors are elected and have qualified, or until their resignation or removal, are as follows:

Jack Eichorn
3791 Southern Boulevard
Suite 202
Rio Rancho, New Mexico 87214

Tom Franchini
3791 Southern Boulevard
Suite 202
Rio Rancho, New Mexico 87214

Lauda Miles
3791 Southern Boulevard
Suite 202
Rio Rancho, New Mexico 87214

C. The method of election, removal, and filling of vacancies on the Board of Directors and the term of office of directors shall be as set forth in the By-Laws.

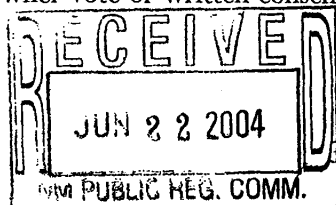
D. The Board may delegate its operating authority to such corporations, individuals, and committees as it, in its discretion, may determine.

Article 9. Indemnification of Directors. To the extent consistent with the New Mexico Nonprofit Corporation Act, as it exists on the date hereof or as it may hereafter be amended, the Association shall indemnify its officers and directors to the extent required by the Charter and By-Laws. No amendment to or repeal of this Article shall apply to or have any effect on the liability or alleged liability of any director of the Association for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

Article 10. Dissolution. Except as otherwise required under applicable New Mexico law, the Association may be dissolved only upon a resolution duly adopted by the board of directors and the affirmative vote of Members representing at least two-thirds (2/3) of the Owner votes in the Association and, so long as the Founder membership exists, the consent of the Founder Member.

Article 11. Merger and Consolidation. Except as otherwise required under applicable New Mexico law, the Association may merge or consolidate only upon a resolution duly adopted by its board of directors and the affirmative vote of Members representing at least two-thirds (2/3) of the Owner votes in the Association and the consent of the Founder membership so long as the Founder membership exists.

Article 12. Amendments. These Articles may be amended only upon a resolution duly adopted by the board of directors, the affirmative vote of Members representing at least two-thirds (2/3) of the Association's total Owner vote or written consent signed by all Members entitled to vote with respect

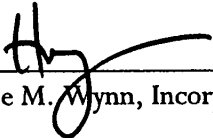


thereto, and Founder's consent so long as Founder owns any property subject to the Charter or has the unilateral right to subject additional property to the Charter.

Article 13. Incorporator. The name and address of the incorporator are as follows: Hope M. Wynn, Myers, Oliver & Price, P.C., 1401 Central, NW, Albuquerque, New Mexico 87104.

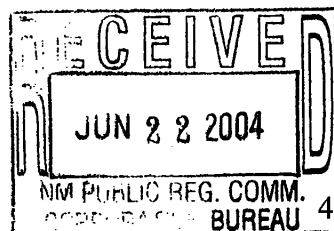
Article 14. Registered Agent and Office. The initial registered office of the Association is Hope M. Wynn, Myers, Oliver & Price, P.C., 1401 Central, NW, Albuquerque, New Mexico 87104.

IN WITNESS WHEREOF, the undersigned incorporator has executed these Articles of Incorporation.



Hope M. Wynn, Incorporator

526601/Mariposa/AOI/062204/kas



**STATEMENT OF ACCEPTANCE OF APPOINTMENT
BY DESIGNATED INITIAL REGISTERED AGENT**

FILED IN OFFICE OF
NM PUBLIC REG. COMMISSION

JUN 22 2004

CORPORATION BUREAU

I, Hope M. Wynn, hereby acknowledge that the undersigned individual or corporation accepts appointment as Initial Registered Agent of Mariposa Community Association, Inc., the corporation which is named in the annexed Articles of Incorporation.

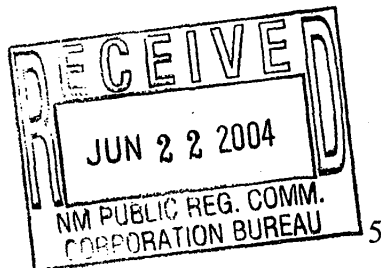
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(Sign on this line if the registered agent named in the Articles of Incorporation is an individual. If this line is signed, the two lines below do not apply and must be left blank.)

(If the following lines are used, the signature line above does not apply and must be left blank)

(If the registered agent named in the Articles of Incorporation is a corporation, type or print the name of the corporation here.)

By _____
(An authorized officer of the corporation being appointed as registered agent must sign here)



Upon recording, please return to:
President
High Desert Investment Corporation
3791 Southern Boulevard, Suite 202
Rio Rancho, New Mexico 87124

Reference: Document _____
Book _____, Page ____

**AMENDED AND RESTATED
COMMUNITY COVENANT**

SANDOVAL COUNTY
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FOR

MARIPOSA ASSEMBLY



M A R I P O S A

HYATT & STUBBLEFIELD, P.C.
Attorneys and Counselors
Peachtree Center South Tower
225 Peachtree Street, N.E., Suite 1200
Atlanta, Georgia 30303

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A R K I T O S A

**AMENDED AND RESTATED
COMMUNITY COVENANT
FOR
MARIPOSA ASSEMBLY**

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THIS AMENDED AND RESTATED COMMUNITY COVENANT is made as of the 7th day of July, 2005, by High Desert Investment Corporation, a New Mexico corporation ("Founder").

BACKGROUND STATEMENT

WHEREAS, the Founder executed and filed that certain Community Covenant for Mariposa Assembly ("Covenant") on May 3, 2005 as Document 200515690 in Book 408, Page 15690, et seq., in the Office of the County Clerk of Sandoval County, New Mexico; and

WHEREAS, pursuant to Section 5.10 of the Covenant, the Founder has the right unilaterally to amend the Covenant for any purpose provided Founder's right has not expired and provided the amendment has no material adverse effect upon any substantive right, privilege, or protection specifically granted to more than 2% of the Owners; and

WHEREAS, Founder's right to amend the Covenant has not expired; and

WHEREAS, this Amended and Restated Community Covenant has no material adverse effect upon any substantive right, privilege, or protection granted to more than 2% of the Owners;

NOW THEREFORE, the Covenant is hereby amended and restated as follows:

PREAMBLE

"Mariposa" is a master planned community in the City of Rio Rancho, Sandoval County, New Mexico. The Founder intends to create within Mariposa a sense of collective identity, belonging, solidarity, and pride that many master planned communities lack. In essence, the Founder desires to create and foster a true community, akin to that traditionally found in towns, that will grow and evolve over time.

In pursuit of that goal, this Covenant establishes a comprehensive plan that is designed to create unified, overall administration of Mariposa. Through this Covenant, the Founder intends to create and foster programs, activities, and services to facilitate interaction among owners, residents, and visitors; involvement in the surrounding community; community pride; and a sense of responsibility for the quality of life within Mariposa.

Chapter 1

Understanding the Community at Mariposa

Government is a trust, and the officers of the government are trustees; and both the trust and the trustees are created for the benefit of the people. Henry Clay

Truly great communities have a physical identity and a pride in that place; the community's stakeholders have a positive feeling of belonging and accomplishment in what goes on there. But words alone can never make community, and a community is only as good as the people who live and work there, the community's stakeholders, make it. Therefore, this Community Covenant creates a vehicle, a process, through which you and other stakeholders can build community at Mariposa.

Through the procedures the Founder established in this Covenant, there is an administrative structure with the power and responsibility to initiate programs, activities, and services and to respond to stakeholders' individual and collective creativity and interests.

This administrative structure is the Mariposa Assembly, Inc., a New Mexico nonprofit corporation. It has the necessary powers to administer this Covenant and to engage in a broad range of community activities. It has various funding mechanisms and all the other powers of a New Mexico nonprofit corporation.

The Assembly facilitates the building of community and administers this Covenant.

1.1. Mission Statement

The Assembly's mission is to generate, preserve, and enhance a true sense of "community" through the creation and sponsorship of programs, activities, and services to facilitate:

- interaction, inclusiveness, involvement, community pride, and responsibility, and
- the sharing of ideas, common interests, and resources

in order to enhance the lifestyle within and contribute to the betterment of Mariposa and surrounding communities.

1.2. Participation

An essential component of building a sense of community involves listening to the community. The Founder appreciates the need for input from all those interested in Mariposa, whether Own-

ers, residents, Builders, or Mortgagees. This Covenant creates opportunities for stakeholders to build and sustain a sense of community for years to come.

1.3. A Pledge

The Assembly and the Founder pledge to work to do the following:

- insure an inclusive environment
- provide an orderly, regular, and informative communication system within Mariposa
- provide all interested parties a voice in community matters and an opportunity to communicate with the Assembly
- respect the value of each individual as well as the value and the importance of the community
- appreciate diversity of thought and of people

- establish community traditions that will engender pride in Mariposa
- maintain an online network for communication within and about Mariposa
- foster a sense of belonging
- motivate Owners and residents to participate by offering a variety of life-enriching opportunities
- provide meaningful opportunities to connect with the Rio Rancho community
- make a significant contribution to the quality of life at Mariposa

1.4. Expectations of Stakeholders

There are only four expectations, but they are vital if there is to be community. It is expected that in all dealings among and between parties interested in Mariposa, everyone

- be informed

- act with civility
- communicate constructively
- strive to make a contribution to the community

Then there will be community.

1.5. Notes and Thoughts

Space has been set aside throughout this Covenant to allow the reader to make notes. Those spaces and any notes made are not part of this Covenant and have no legal or binding effect. Diagrams, tables, and text set apart in boxes, some with "key" icons, are used in this Covenant to illustrate concepts and assist the reader. If there is a conflict between any of these and the text of this Covenant, the text shall control. In addition, the quotations throughout this Covenant are for information only and have no legal effect.

You Are the Community

The Founder and the Assembly cannot create community at Mariposa; only you and your neighbors can do that. This document and the processes and powers it creates are intended to enhance your ability to fashion the community you desire and to do so with minimal interference from sources outside Mariposa. You can be as active or as inactive in that process as you desire, but ultimately you will have the community that you and your neighbors determine to be right for Mariposa. The Founder wants it to be a special place and hopes that you do so as well.

Throughout this document, you will find that there is a genuine effort to avoid two well-recognized impediments to community: individualism without regard for the group and formal authority without regard to flexibility. There must be a balance between an individual's desire for choice and the group's need for an appropriate degree of certainty. You are a most important part of creating this balance and in making it work at Mariposa.

There is an amazing strength in the expression of the will of a whole people.

Tocqueville

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Chapter 2

Governance Scaled for Mariposa

Planned communities traditionally have focused more on the "planned" and less on the "community." The emphasis, the true purpose of "governance," was on managing property—and quite often—on managing people, too. The results were lots of rules, excessive restrictiveness, and, in many cases, unhappiness and disputes. What was lost in that model was the quality of life that means community.

One needs all three - property, people, and community - in proportion and in a harmonious operational relationship. The property does need to be maintained and the Community Charter for Mariposa provides for such maintenance and other protections. The Mariposa Community Association, Inc. ("Association") will perform those responsibilities with respect to Mariposa's residential community. Other owners associations may have this responsibility for other portions of the community.

With this Covenant and the Assembly, governance is different. This Covenant is not concerned primarily with enforcement but with empowerment. Governance here has a different purpose, focus, and structure. It has one primary responsibility - to effectuate the vision for community at Mariposa.

Assembly governance is simplified. It is more ad hoc than formal. It responds to needs and desires, and it helps stakeholders accomplish things they select. It seeks to enable, not regulate, and ultimately, it seeks to add real value to owning property at Mariposa by making Mariposa a better place . . . a community.

To worship choice and community together is to misunderstand what community is all about.

Alan Ehrenhalt

2.1. Assembly Powers

The Assembly shall have such express or implied powers reasonably necessary to create and provide activities, services, and programs, and to maintain and manage property for the common good and general welfare of Mariposa and the surrounding Rio Rancho area. The Assembly may create and delegate authority to for-profit and nonprofit entities that may or may not be tax-exempt organizations and may employ any of the tools for community achievement discussed in Chapter 3.

The Assembly will act consistently with this Covenant, the Assembly's By-Laws, the Assembly's Articles, and New Mexico law to achieve the mission and goals of Chapter 1 and realize Mariposa's vision of community.

2.2. Assembly Activities

The Assembly may organize, fund, and administer such activities, services, and programs necessary, desirable, and appropriate to fulfill the Assembly's mission, including, but not limited to, the following:

- (a) continuing education and adult special interest programs;
- (b) services to benefit Mariposa's stakeholders and the surrounding area (e.g., caretaker services, childcare, personal shopping services, etc.);
- (c) charter clubs and other volunteer organizations and activities;
- (d) educational trust or endowment;

(e) a volunteer data bank to match those interested in volunteering with volunteer needs of local schools, libraries, and community organizations;

(f) social programs (e.g., parties, festivals, and similar events);

(g) environmental programs (e.g., community-wide recycling, tree planting, garden plots);

(h) activities designed to promote compliance with community standards through education, communication, and grass roots support;

(i) public relations activities to publicize the Assembly's programs and activities;

(j) cultural and artistic programs;

(k) health and wellness programs;

(l) operation and preservation of historical and archaeological sites;

(m) computer Internet or intranet sites;

(n) learning centers and computer centers;

(o) community-wide video and technology;

(p) strategic partnerships among local schools or public entities (e.g., library or local school system);

(q) programs to improve and maximize transportation and housing opportunities;

(r) other services, activities, and programs for the benefit of the residents of Mariposa and the surrounding community; and

(s) programs in cooperation with, and that work with, the neighboring Pueblos (e.g., providing services) and that educate Mariposa residents about Native American culture and history.

The Assembly may contract with other entities, including the Founder, to provide activities, services, programs, and the necessary facilities to accomplish the mission. The Assembly may also coordinate partnerships with local schools or corporate sponsors for the purpose of organizing or facilitating the above community building endeavors.

*Well done is better than well said.
Benjamin Franklin*

2.3. Assembly Funding

(a) *Budget.* At least 90 days before the beginning of each fiscal year, the Assembly shall prepare a budget of the estimated expenses necessary to facilitate or provide activities, services, and programs; to operate, maintain, and insure any Area of Assembly Responsibility (as defined in Section 5.4); and to perform other activities as authorized in this Covenant ("Assembly Expenses") for the coming year.

The budget shall reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, and any income anticipated to be generated through means authorized by this Covenant (e.g., assessments, "Mariposa Preservation Contribution," use and consumption fees, subsidies, etc.).

To fund the Assembly Expenses, the Assembly will levy an annual "Assembly Assessment," which will be allocated among the "Units" (a parcel of land depicted on a recorded subdivision plat, survey, or condominium instrument, which may be independently owned and conveyed and is zoned or otherwise intended for development, use, and occupancy). The Assembly Assessment shall be allocated equally among all Units subjected to the Community Charter for Mariposa ("Charter"). The Assembly Assessment shall be allocated among other Units made subject to this Covenant as determined by the Founder and as set forth in a separate recorded instrument

subjecting such Units to this Covenant. Assembly Assessments shall be in addition to any annual assessment that may be levied by the Association pursuant to the Charter ("**Association Assessments**").

The initial Assembly Assessment shall not exceed 22% of the Association Assessment for the same year. Further, any increase in the Assembly Assessment from the amount for the previous year shall not exceed the percentage increase of the Association Assessment from the previous year. The Founder may, but shall not be obligated to, pay a shortfall to assist in funding the Assembly's activities. Any shortfall shall be disclosed in the income portion of the budget. Payment of a shortfall in any year shall not obligate the Founder to continue payment of such shortfall in future years unless otherwise provided in a written agreement between the Assembly and the Founder.

(b) *Reserves.* The Assembly's budget may include contributions for capital and operating reserves. Such contributions shall take into account the number and nature of replaceable assets within the Area of Assembly Responsibility, the expected life of each asset, and the expected repair or replacement cost.

(c) *Use and Consumption Fees.* The Assembly may charge use and consumption fees to any person who uses its services or facilities. The Assembly shall have the sole discretion to establish the amount and method of determining use or consumption fees. The Assembly may charge lower use and consumption fees to Owners than to non-Owners. (Any Person holding record title to a Unit (excluding Persons holding title merely as security for the performance of an obligation) is an "Owner.")

(d) *Trust or Endowment.* The Assembly may establish or cooperate with an educational trust to assist local public schools or tribal educational programs. The Assembly may solicit and collect charitable donations from the public

stakeholders, or corporate sponsors to fund the trust and its mission of sustaining the highest quality of education for students who attend those schools.

(e) *Grants.* The Assembly may also seek to qualify for local, state, or federal grants.

(f) *Mariposa Preservation Contribution.*

(i) *Authority.* The Assembly has the authority to establish and collect a "**Mariposa Preservation Contribution**," from the transferring Owner upon each transfer of title to real property subject to this Covenant unless the transfer is exempt. The Contribution will be payable at the closing of the transfer and will constitute an assessment against the property being transferred, which is secured by the Assembly's lien.

(ii) *Amount of Contribution.* The Assembly has the sole discretion to determine the amount and method of calculating any Mariposa Preservation Contribution. The Contribution may be based upon a sliding scale, which varies according to the "Gross Selling Price" of the property or such other factors as the Assembly deems appropriate. Until July 1, 2010, the amount of any such Contribution shall not exceed 0.25% (one-quarter of one percent) of the Gross Sales Price of the real property transferred; thereafter, the amount of any such Contribution shall not exceed 0.5% (one-half of one percent) of the Gross Sales Price of the real property transferred. For purposes of this Section, the "**Gross Sales Price**") means the total amount paid by the purchaser for the real property, excluding transfer taxes and title fees imposed by the City of Rio Rancho, Sandoval County, and/or New Mexico, or in the case of a transfer other than a sale at fair market value, the appraised value of the real property being transferred, as determined by the local authority for real estate *ad valorem* tax purposes.

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(iii) *Purpose of Contribution.* All Mariposa Preservation Contributions shall be used exclusively for purposes consistent with the Assembly's mission and with the purposes for which the Assembly was created.

(iv) *Exempt Transfers.* No Mariposa Preservation Contribution shall be levied upon transfer of title to property:

(A) by a co-Owner to any person who was a co-Owner immediately prior to such transfer;

(B) to a family trust or a family limited partnership controlled by the grantor, or to the Owner's estate, surviving spouse, or child (or a trust for the benefit of the child) upon the death of the Owner; provided, upon any subsequent transfer of an ownership interest in such entity, the Mariposa Preservation Contribution shall become due;

(C) to an entity wholly owned by the grantor or, provided that upon any subsequent transfer of an ownership interest in such entity, the Mariposa Preservation Contribution shall become due;

(D) to an institutional lender pursuant to a mortgage or upon foreclosure of a mortgage;

(E) by an Owner who has held title to the property for less than 12 months;

(F) prior to July 1, 2010 by an Owner who purchased the property for occupancy or residential purposes and not solely for the purpose of development and resale;

(G) by a homebuilder or developer (other than Founder) who purchased property within Tracts 1A-2, 1A-4, 1A-9, 1A-10 or Desert View solely for the purpose of development and resale in the ordinary course of its business;

(H) under circumstances which the Assembly Board, in its discretion, deems to warrant classification as an exempt transfer (e.g., a transfer made solely for estate planning purposes may be, but is not required to be, deemed exempt from payment of the Mariposa Preservation Contribution); or

(I) to the Assembly.

(g) *Obligation for Assessments.* No person subject to assessment and/or contribution is exempt from liability for assessments and/or contributions because they do not use services, programs, property, facilities, or for any other reason. The obligation to pay assessments and/or contributions is a separate and independent covenant. Assessments and/or contributions may not be reduced or set-off due to an alleged failure of the Assembly to take some action or perform a certain function or from acting in a certain manner.

All charges and assessments are payable on such dates as the Assembly may establish.

The Assembly's failure to fix Assembly Assessment amounts or rates or to deliver or mail an Assembly Assessment notice is not a waiver, modification, or a release of any person from the obligation to pay assessments. In such event, the Association and each Owner shall continue to pay the Assembly Assessments on the same basis as during the last year for which an assessment was made until a new assessment is levied, at which time the Assembly may retroactively assess any shortfalls in collections.

If any person is delinquent in paying any assessment, fee, or other charge, the Assembly may require that the outstanding balance on all assessments against it be paid in full immediately.

All assessments, together with interest, late charges, costs, and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Unit until paid in full. Upon

a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments due the Assembly at the time of conveyance.

(h) Lien Rights. The Assembly has a lien against each Unit to secure payment of delinquent assessments, fees, and charges levied against that Unit as well as interest on the past due amount, late charges, and costs of collection (including attorneys' fees). The lien is superior to all other liens, except (i) the liens of all taxes, bonds, assessments, and other levies which by law would be superior; (ii) the lien or charge of any recorded first mortgage (meaning any recorded mortgage with first priority over other mortgages) made in good faith and for value; and (iii) the Association's lien for its "Common Expenses" (as defined in the Charter). The lien may be enforced by suit, judgment, and judicial or nonjudicial foreclosure, in the same manner as the Association's lien, in accordance with the Charter and New Mexico law. In addition, the Assembly may sue for unpaid assessments and other charges authorized in this Covenant without foreclosing or waiving the lien securing the amount due. The Assembly may record a notice of delinquency with respect to any Unit for which there is a delinquency.

The sale or transfer of property does not affect the lien or relieve such property from the lien for any subsequent assessments. However, sale or transfer pursuant to foreclosure of the first mortgage will extinguish the lien as to any installments of such assessments due prior to the mortgagee's foreclosure. An Owner acquiring property through foreclosure of a first mortgage will not be personally liable for assessments due prior to acquisition of title.

(i) Commencement of Assessments. Each Owner's obligation to pay Assembly Assessments begins on the last to occur of (A) the date the Owner becomes obligated to pay assessments to the Association under the Charter; (B) when the Assembly first determines a budget and levies assessments pursuant to this chapter; or (C) July

1, 2008. For each Owner who is not a member of the Association, the later of Section 2.3(i)(B) or (C) applies.

(j) Exempt Property. Any Area of Assembly Responsibility (as defined in Section 5.4), property that the Association or any other owners association within Mariposa owns (or which is owned by all of such association's members as tenants-in-common); and any property dedicated to and accepted by any governmental or quasi-governmental authority, including school districts or public utility for public purposes, is exempt from paying Assembly Assessments.

In addition, the Founder and/or the Assembly may grant exemptions to certain persons qualifying for tax-exempt status under Section 501(c) of the Internal Revenue Code so long as such persons own property subject to this Covenant for purposes listed in Section 501(c).

(k) Association's Obligation to Collect and Pay Assembly Assessments. The Association is responsible for collecting and paying to the Assembly all Assembly Assessments, fees, or other charges the Assembly levies against the Association's members. The Association shall provide for such collection and payment by including such amounts in its common expense budget to be assessed against all Owners subject to its jurisdiction. The Assembly may collect all amounts owed by Owners not subject to the Association's jurisdiction using any method available to it under this Covenant.

The Assembly may enforce the Association's obligation to collect Assembly Assessments and bring suit against the Association to collect delinquent assessments. In addition, the Assembly may enforce any other rights or remedies outlined in this Covenant at law or in equity. The Assembly's rights against the Association shall not prejudice its rights against individual Owners under this section, provided, each Unit Owner shall be liable only for (and the lien under Section 2.3(h) shall secure only) the payment of that Unit

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Owner's share of the Assembly Expenses together with costs incurred by the Assembly in collecting such amounts (including, but not limited to, attorneys' fees), and interest thereon.

2.4. Stakeholder Participation

(a) *Stakeholder Opinion.* At Mariposa, stakeholder opinion and input are essential to community success. The Assembly shall endeavor to stay apprised of resident interests, public opinions, and concerns. Stakeholders may participate in polls organized by the advisory panel at their discretion, and the Assembly may impose polling guidelines on the advisory panel to ensure polling fairness, accuracy, and resident privacy.

(b) *Advisory Panel and Measuring Device.* The Assembly's board of trustees ("Assembly Board") is charged with the responsibility of keeping apprised of community and resident related matters. (The members of the Assembly Board are referred to as "Trustees.") In order to facilitate an open exchange of ideas at Mariposa, the Assembly may organize a Mariposa advisory panel for the specific purpose of collecting resident and community-related information, such as resident opinions, interests, grievances, and attitudes and reporting the information to the Assembly ("Advisory Panel"). To the extent possible, the Assembly will take resident opinion and interest into consideration when performing its duties and responsibilities.

The Assembly will determine, in its discretion, how the Advisory Panel is selected and how the Advisory Panel will serve, *e.g.*, serve on an *ad hoc* basis, per assignment, or on an on-going basis. In order to reflect the diversity of people at Mariposa, the Advisory Panel shall be comprised of a cross section of people who live or work in Mariposa, such as Owners of various product types, Owners with varying interests, Owners of varying age groups, or employees of various community businesses. Costs associated with

opinion polling shall be itemized in the Assembly budget.

The overriding purpose of the Advisory Panel is to gather information from stakeholders by conducting interviews, disseminating questionnaires, mailings and emails, conducting phone interviews, or organizing any other form of polling effort. The Advisory Panel shall relay its findings to the Assembly. In turn, the Assembly shall report any Association-related information to the Association's board of directors for its consideration and use.

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Chapter 3 **Tools for Community Achievement**

Achieving the goal of making Mariposa a truly special place to live and work requires not only meaningful, productive opportunities for you and your neighbors to share your ideas, suggestions, and desires. It also requires a creative process, specialized staffing, and great communication. In this chapter, you find these essentials. However, you also will see that the Founder believes that the best community building ideas will come from the community itself. The community's and its stakeholders' ideas are what ultimately will define the way Mariposa will both look and live.

Luck is the residue of design.

Branch Rickey

3.1. Director of Community Enrichment

The Assembly may create and fund the position of "**Director of Community Enrichment**," or "DCE," whose role shall be to provide leadership for the overall planning, development, implementation, and continuing evaluation of programs, activities, and services to carry out the Assembly's mission. The DCE may be an employee or independent contractor and is responsible to the Board.

The DCE's specific responsibilities are outlined in this Covenant may include the following:

(a) creating accessible opportunities for stakeholders, and invitees to participate in and volunteer their time and skills for community events and activities;

(b) working with volunteers and staff members and cooperating with the Assembly Board and the Association's board of directors to implement the Assembly's objectives and administer its daily affairs;

(c) coordinating, promoting, and facilitating community-wide cultural, artistic, musical, athletic, and social events and activities, as well as educational and outreach programs, including Native American programs;

(d) conducting governance educational programs and contracting for and coordinating continuing education programs and opportunities;

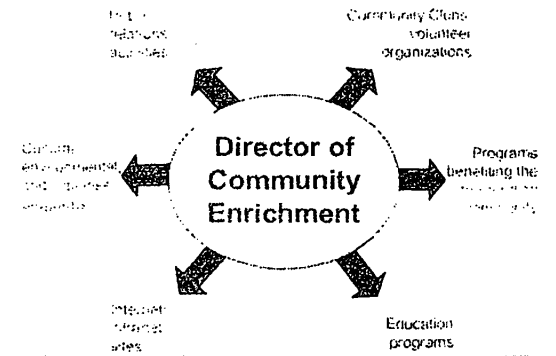
(e) serving as an ombudsman within Mariposa by teaching and practicing "non-adversarial communication" and, when the need arises, mediating, or otherwise intervening to solve disputes and conflicts at the request of the parties involved; and

(f) seeking out new opportunities for building community life and spirit while appreciating stakeholder diversity.

The DCE's responsibilities may also include those agreed upon by the DCE and the Assembly Board, so long as such responsibilities do not hinder, limit, or otherwise interfere with the fulfillment of DCE's responsibilities outlined above.

The DCE shall be employed or otherwise contracted for by the Assembly and shall be entitled to attend and participate in meetings of the Assembly Board; however, in the case of discussions regarding the DCE's employment the DCE may be excluded from meetings of the Assembly Board. The Assembly may enact rules to ensure the successful creation, staffing (including the Assembly's appointment rights), funding, opera-

tion, execution of duties, and continuity of the DCE position.



When you do the common things in life in an uncommon way, you will command the attention of the world.
George Washington Carver

3.2. Youth Board

The Assembly may create and fund a "Youth Board" composed of and selected by community residents between the ages of 13 and 19, to serve as a liaison between Mariposa's youth and the Assembly and to empower Mariposa's youth with a voice, a sense of "belonging," and a mechanism for positively influencing their peers and others in Mariposa.

An important aspect of the Youth Board's ability to be the voice of Mariposa's youth is its composition. The best Youth Board is one that is representative of those it seeks to serve. The members of the Youth Board shall be selected from candidates solicited through Mariposa-wide publications, emails, and any other methods of reaching large portions of the Community employed by the Assembly or the Association. The Director of Community Enrichment shall compile all applications for the Youth Board. The Assembly Board, with the assistance of the Director of Community Enrichment, will then select the Youth Board members from the applications. In the process of selecting members of the Youth

Board, the Assembly Board shall include representatives from a wide variety of backgrounds, ages, hobbies, charter clubs, sports teams, and residence locations within Mariposa.

The Youth Board shall hold meetings periodically. In addition, the Youth Board may hold discussion groups or sponsor other events to foster group discussion and collective decision-making. The Youth Board may request funding from the Assembly for additional services, facilities, or activities; organize and independently operate such services, facilities, or activities; communicate with the Assembly on issues of importance to the youth; or make suggestions or recommendations for community improvement to the Assembly. The Assembly shall fund the Youth Board based upon a budget created by the Youth Board. However, the Assembly may approve or reject any requested service, facility, or activity or any funding request (or may rescind any previously approved budget, service, or funding request) based upon reasonable, community-related considerations.

The Youth Board members shall select, from its own membership, an *ex officio* member of the Assembly Board and an alternate. The Youth Board member serving as *ex officio* member of the Assembly Board shall attend meetings of the Assembly Board, deliver the minutes of the most recent Youth Board meeting to the Assembly, deliver any proposed budgets or budget requests, and report on any Youth Board-related matters.

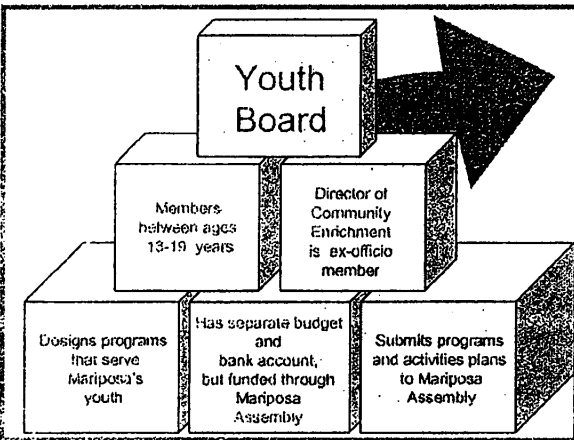
The Director of Community Enrichment shall serve as an *ex officio* member of the Youth Board, and the Youth Board shall cooperate with and assist the Director of Community Enrichment in the performance of its duties.

The Assembly Board may enact additional rules to ensure the successful formation, selection, operation, and continuity of the Youth Board, including terms of service of the Youth Board.

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3.3. Community Education and Training

In recognition of the fact that Owners, tenants, and other stakeholders who are well informed regarding their community's structure and governance and their rights and responsibilities in the community, have greater capacity to participate in civic life and in the affairs of the community, the Assembly may establish education, training, and orientation programs, including "continuing" education programs, for everyone in Mariposa. The Assembly may utilize any appropriate method to achieve these education goals, including a community intranet; learning centers, computer centers, and business centers; and coordinated activities with the DCE, one or more Assembly committees, the Assembly Board or Trustees, or the Association.

Community education may begin as early as the marketing stage or the point of sale of property within Mariposa and may include orientation classes regarding community structure and governance; the nature, extent, and purpose of the covenants, rules, and regulations; and community-building issues such as the mission for Mariposa, opportunities to participate in and affect the community's evolution and growth, and general community orientation. In addition, the Assembly may cover such topics as board election procedures, director responsibilities and duties, offi-

cers' duties and responsibilities, and committee service guidelines and training. The Assembly may also provide programming explaining the Youth Board's purpose, goals, and selection to those interested in being participants and their parents. The Assembly also may teach non-adversarial dispute or conflict resolution, negotiation, listening, team building, and other community skills designed to serve individuals in many different contexts.

Community governance education is an essential component of living in Mariposa. The Assembly should coordinate with the Association to achieve the goal of educating stakeholders as to how their community operates. Educating Owners regarding ownership rights, voting privileges, property use restrictions, assessment responsibility, community development, developer turnover or transition period, community activities, etc., should be an ongoing innovative process geared toward including residents of all ages. Governance education may be offered in the form of seminars, simple question and answer pamphlets, audio/video recordings, through the community cable channel, or through Mariposa's interactive website. The Assembly may also coordinate with nationally recognized organizations such as the Urban Land Institute or the Community Associations Institute to offer programs regarding community governance or coordinate with nationally or locally recognized speakers to provide community governance instruction and workshops.

Training for Trustees is required and shall be conducted as specified in the Assembly By-Laws. The Assembly may delegate all or any of its training, education, and orientation duties to the Association. The Assembly's expenses of training, education, or orientation, or contracts for such services from third parties, shall be Assembly Expenses.

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3.4. Volunteerism and Community Clubs

In recognition of the fact that volunteerism benefits both Mariposa and Rio Rancho, the Assembly desires to promote a strong volunteer ethic among stakeholders and encourage and facilitate the organization of volunteer organizations within Mariposa. To accomplish this end, the Assembly may grant incentives for volunteering, such as exemptions from specific program fees and public recognition of distinguished volunteers and their achievements. The Assembly also may cooperate with and support outside organizations, such as recreational leagues or cultural organizations, by making facilities available for the organization's use or sponsoring the organization's activities. Additionally, the Assembly may compile and maintain a data bank of Owners, tenants, residents, or invitees interested in volunteering and make such data available to other volunteer organizations.

In its discretion, the Assembly may establish or support the establishment of "Community Clubs" to encourage or facilitate the gathering of people to pursue common interests or hobbies. The sanctioning of a club as a "Community Club" shall confer privileges and impose responsibilities on the club and its members. For example, the Assembly may grant privileges including financial support; material support; facility use privileges, either with or without charge; priority for facility use; administrative and technical support; and liability insurance coverage.

The Assembly may grant Community Club status to any group of individuals who share a particular field of interest. Any Owner, tenant, or resident may submit a written request to the DCE to be sanctioned as a Community Club. In its discretion, the Assembly may grant or deny such request. The Assembly may fund the Community Club as an Assembly Expense and/or require that club members pay use or consumption fees for materials, facilities use, or other club expenses. The Assembly shall not, directly or

indirectly, engage in or fund others' engaging in partisan political activity.

The CEA may use computer bulletin boards, web sites, and publications to assist charter clubs and other community groups, religious groups, civic groups, youth organizations, and support groups in publicizing meetings, events, and the need for volunteer assistance. However, the Assembly may not fund the specific advertising or promotion of a charter club's events or another volunteer group's events, unless the Assembly, in its discretion, determines that such events or organizations benefit the entire community.

Volunteerism

Assembly:

- Facilitates volunteer organizations
- Supports recreational leagues and cultural organizations
- May maintain volunteer data bank
- May grant charters to Community Clubs
- Publicizes meetings, events, etc.
- Provides recognition to volunteers

3.5. Education as an Amenity

Continuing education and learning opportunities are community amenities to be enjoyed by all stakeholders, particularly adults and retirees. The range of continuing education opportunities being offered at Mariposa should be determined by resident interest, participation, satisfaction, and budget. The Assembly should make every effort to provide or provide for a variety of continuing education opportunities that reflect the diverse interests of the community and its residents, *i.e.*, finance, art, music, exercise, community wellness, environmental preservation, sports, and recreation. The Advisory Panel may provide assistance to the Assembly in determining opportunities that are desired and appropriate. The Assembly may coordinate or contract with

local schools, civic leagues, or professional speakers or instructors to offer these continuing education opportunities. The Assembly may charge a user fee to all participants and open programs to the community at large.

The Assembly will work in cooperation with community schools to achieve educational success. The advisory panel will seek the opinions of parents, teachers, administrators, and students to make education a high priority at Mariposa. The Assembly will strive to meet the needs of parent/student stakeholders by offering a variety of services and programs, *e.g.*, before and after school programs, tutorial programs, and holiday events. The Assembly may draw from Mariposa's databank of stakeholder volunteers to support these programs.

Learning is what most adults will do for a living in the 21st century. Perelman

3.6. Dispute Resolution

The Founder, the Association, and each Owner agree that it is in the best interest of all concerned to resolve disputes among and between the Association or any Owner and the Assembly without the emotional and financial costs of litigation. Accordingly, each of the foregoing agree that Sections 19.1 and 19.2 of the Charter relating to resolution of disputes shall also apply to resolution of any dispute arising out of the Covenant or the Assembly's By-Laws or Articles of Incorporation, subject to the same exceptions as are set forth in Section 19.1(c) of the Charter, as applicable to the Assembly and this Covenant (and substituting the Assembly for the Association in such section).

Prior to the initiation of any administrative or judicial proceeding by the Association or any Owner against the Assembly, the party initiating such action shall comply with all procedures for notice, negotiation, mediation, and settlement set forth in Section 19.2 of the Charter. This

section shall serve as an agreement by the Association and the Owners to submit their claims to such procedures, and the failure to abide by such requirements shall serve as a defense to any such administrative or procedural proceeding.

The requirements of this section shall not apply to any action by the Assembly to collect assessments or other fees or charges authorized by this Covenant, which actions may proceed in the Assembly's discretion directly without any prior procedure for claims resolution.

In our own case we accept excuses too easily, in other people's lives we do not accept them easily enough. C.S. Lewis

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Chapter 4

Connections and Community

No one can build community in isolation; community life requires private time as well as interdependence with others. Some connections are planned; others, often the best, just grow from the seeds of shared interest.

Connections within Mariposa are vital to creating community, and connections outside Mariposa are essential to building a community that is not an island unto itself. Promoting community spirit throughout Mariposa builds understanding and caring. That makes Mariposa an even better place to live and work.

4.1. Stakeholder Participation

Owners and residents at Mariposa are essential to community life and community success. As such, the Founder views each resident as an integral part of Mariposa and a stakeholder in Mariposa's community successes. Stakeholders are encouraged to participate, at their discretion and level of interest, in community life, events, governance, continuing education, and volunteer opportunities, and the Assembly is encouraged to provide or provide for opportunities for Owners and occupants to participate.

Hard work spotlights the character of people: some turn up their sleeves, some turn up their noses, and some don't turn up at all.
Sam Ewig

functions, such as educational, environmental, conservation, health, wellness, and cultural programs, benefiting Mariposa and the greater Rio Rancho area.

If the Founder or the Assembly establishes a tax-exempt entity for activities within Mariposa, the Assembly shall fund the minimum annual organizational expenses of maintaining such entity and may contribute additional money, real or personal property, or services to such entity. Such expenses and any such contributions shall be an Assembly Expense. For the purposes of this section, a "tax-exempt organization" shall mean an entity exempt from federal income taxes under the Internal Revenue Code ("Code"), for example, entities exempt under Section 501(c)(3) or 501(c)(4), as the Code may be amended from time to time.

4.2. Relationship With Other Entities

(a) *General.* The Assembly may enter into cooperative agreements and expend funds for facilities use, shared services, and development of projects and activities that benefit Mariposa and communities outside of Mariposa.

(b) *Relationships With Other Nonprofit Organizations.* The Founder or the Assembly may create, and/or enter into agreements or contracts with nonprofit organizations to gain some direct or indirect benefit upon Mariposa and the surrounding community. Such organization(s) may perform a variety of services and

The Assembly may maintain multiple use facilities within Mariposa for temporary use by tax-exempt organizations. Such use may be on a scheduled or "first-come, first-served" basis. A reasonable maintenance and use fee may be charged for such use.

(c) *Other Third Parties.* In the Assembly Board's sole discretion, the Assembly may provide services or facilities to the general public or other people or groups who do not reside within Mariposa and charge and collect use and consumption fees for such use. The Assembly also may enter into agreements with third parties to

provide such services or facilities in exchange for financial or other consideration.

NOTES AND THOUGHTS

4.3. The Community Beyond Mariposa

As "no man is an island alone unto himself," neither is a successful community. Mariposa is an integral part of the greater Rio Rancho and Sandoval County area and shall not be closed off to neighboring residents.

Interacting with the greater Rio Rancho and Sandoval County community is an important part of the Assembly's purpose, as the Assembly is uniquely able to connect stakeholders with the City of Rio Rancho. To achieve this goal, the Assembly shall work with local governments and civic groups to promote or address local concerns and issues and create opportunities for stakeholders to become involved. This interaction will foster contributions of time and energy that will benefit both Mariposa and the larger Rio Rancho community and enrich the lives of everyone who lives, works, or plays in Mariposa.

The Assembly, at its discretion, may invite local civic and professional groups to engage in activities at Mariposa (i.e., Girl/Boy Scouts of America, 4-H, recreational youth sports leagues, Boys/Girls Clubs, Big Brothers and Big Sisters, Rotary Club, AARP, Garden Club, Junior Women's League, NAACP, Veterans Club, and school community service groups).

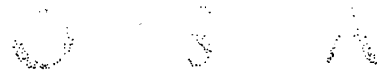
Opportunities multiply as they are seized.
Sun Tzu

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Chapter 5

Mariposa as a Special Place

The Founder and its design team have endeavored to create a physical presence that respects and compliments the beauty, unique attributes, and endearing qualities of the natural environment and the cultural and historical resources of the surrounding area. This respect is embodied in each stakeholder's property. The Charter and other documents address how that property is used and maintained. The Assembly does not enforce these documents, but all stakeholders benefit from them as everyone uses and enjoys Mariposa's physical features.

The Assembly owns or has use rights in property for its specialized purposes. Whether these purposes are artistic or cultural, civic or recreational, or a myriad of other activities, the property is to be used and maintained as in any quality community: with respect.

5.1. Mariposa

"Mariposa," as used throughout this Covenant, consists of the property described in Exhibit "A" and any additional property made subject to this Covenant in the future by amendment or supplement, as provided in Section 5.2. This Covenant shall run with the title to such property, binding the Founder, its successors and assigns, and all future owners of any portion of the property, their respective heirs, successors, successors-in-title, and assigns, and any other person or entity that now or hereafter has any legal, equitable, or beneficial interest in any portion of such property. This Covenant shall also be binding upon the Assembly.

5.2. Expansion of Mariposa

From time to time, the Founder may submit to the terms of this Covenant all or any portion of the property described in Exhibit "B" by recording a "Supplement" describing the additional property to be submitted. The Founder may record such a Supplement without the consent of any person except the owner of such property, if not the Founder.

The Founder's right to expand Mariposa under this section expires when all property described in Exhibit "B" has been submitted to this Covenant or 40 years after this Covenant is re-

corded, whichever is earlier. Until then, the Founder may transfer or assign this right to any person who is the developer of at least a portion of the real property described in Exhibit "A" or "B." Any such transfer shall be described in a recorded instrument executed by the Founder.

Nothing in this Covenant shall require the Founder or any successor to submit additional property to this Covenant or to develop any of the property described in Exhibit "B" in any manner whatsoever.

The Assembly may also submit additional property to this Covenant by recording a Supplement executed by or on behalf of the Assembly and the owner(s) of the property being submitted and by the Founder, so long as the Founder owns property described in Exhibit "A" or "B."

5.3. Additional Covenants and Easements

The Founder may impose upon portions of Mariposa covenants and easements in addition to those set forth in this Covenant, such as the Charter or other covenants creating property restrictions and assessments in favor of a property owners association. If someone other than the Founder owns the property, then the instrument imposing such covenants and easements must be

signed by such owner evidencing such owner's consent.

5.4. Ownership and Maintenance of Property

The Assembly may own and maintain real property ("Area of Assembly Responsibility") subject to the rights and powers of the Assembly as set forth in the Assembly's By-Laws and Articles of Incorporation, and any terms, conditions, covenants, or restrictions set forth in the instrument conveying such property to the Assembly.

The Assembly may enact reasonable rules and regulations governing access, use, and enjoyment of the Area of Assembly Responsibility. Every owner and the Association shall comply with such rules and regulations. In addition, the Founder or the Assembly may grant exclusive and/or non-exclusive easements over that portion of the Area of Assembly Responsibility that it owns to non-profit organizations, the operation of which confers some benefit on Mariposa and the surrounding community.

5.5. Conveyance of Property by the Founder

At any time the Founder owns any property described in Exhibit "A" or "B," the Founder may convey to the Assembly, or assign the Assembly maintenance responsibility for, improved or unimproved real estate located within Mariposa, personal property, and leasehold or other property interests. The Assembly shall accept and maintain, operate, and manage such property as part of the Area of Assembly Responsibility. The Assembly also shall perform, as an Assembly Expense, such obligations and responsibilities with respect to such property as the Founder may assign in writing.

In recognition of the fact that the Founder conveys real property to the Assembly at no cost to the Assembly, if conveyed in error or needed

to make minor adjustments in property lines, the Founder, for so long as it owns property described in Exhibit "A" or "B," may unilaterally amend this Covenant to withdraw property from its coverage and may require the Assembly to reconvey real property to the Founder or to other persons.

5.6. Conveyance of Property from Other Persons

Under negotiated terms, the Assembly may acquire and maintain improved or unimproved real estate, personal property, easements, and leasehold or other property interests from other persons.

5.7. Dedication of Area of Assembly Responsibility

Subject to the approval of and acceptance by such entity, the Assembly may dedicate, lease, grant easements in, or convey portions of any real property it owns to any local, state, or federal governmental or quasi-governmental entity, provided the Assembly Board have determined, in their reasonable discretion, that such entity has the funding source and commitment properly to maintain the dedicated property.

5.8. Easements Reserved to the Founder

There is hereby reserved to the Founder and granted to its duly authorized agents, representatives, successors, assigns, licensees, and mortgagees, a perpetual, non-exclusive easement over property the Assembly owns and over the Area of Assembly Responsibility for the use, access, and development of property depicted on the master land plan for Mariposa. This easement includes, but is not limited to, a right of ingress and egress over such property for construction of roads and for tying in and installation of utilities on such property. The Founder also reserves for itself the non-exclusive right and power to grant and record specific easements as may be necessary, in

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the Founder's sole discretion, in connection with the orderly development of the property.

5.9. Facilities and Services Open to the Public

Certain facilities and areas within Mariposa which the Assembly owns or for which it has responsibility may be made available for use and enjoyment of the public. Such facilities and areas may include, by way of example: trails and paths; greenbelts; parks and other spots conducive to gathering and interaction; roads; sidewalks; and medians. The Founder may designate such facilities and areas as open to the public at the time the Founder makes such facilities and areas a part of the Area of Assembly Responsibility or the Assembly Board may do so thereafter.

5.10 Amendments to this Covenant

This Covenant may be amended unilaterally at any time by the Founder, its successors or assigns, if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on any portion of the property subject to this Covenant; (c) to permit any institutional or governmental lender, purchaser, guarantor, or insurer of mortgage loans to make, purchase, guarantee, or insure mortgage loans; or (d) to satisfy the requirements of any local, state, or federal governmental agency.

Further, for so long as the Founder owns any property described in Exhibit "A" or "B," the Founder may unilaterally amend this Covenant for any other purpose, provided such amendment has no materially adverse effect upon any substantive right, privilege, or protection specifically granted to more than 2% of the Owners.

This Covenant may be amended at any time by a recorded instrument approved by the Assembly Board and the Association's board of di-

rectors. The Founder's consent shall be required to amend this Covenant for so long as the Founder owns property described in Exhibit "A" or "B." Any such instrument shall set forth the intent to amend this Covenant.

No amendment may remove, revoke, or modify any right or privilege of the Founder without the written consent of the Founder (or the assignee of such right or privilege).

Amendments to this Covenant are effective upon recordation unless a later effective date is specified. Any procedural challenge to an amendment must be made within six months of its recordation. In no event shall a change of conditions or circumstances operate to amend any provision of this Covenant.

5.11. The Covenant's Duration

(a) Unless terminated by the Founder or by the Assembly Board and the Association's board of directors in the manner as provided in this section, this Covenant shall have perpetual duration. If New Mexico law limits the period during which covenants may run with the land, then to the extent consistent with such law, this Covenant shall automatically be extended at the expiration of such period for successive 10-year periods, unless terminated as provided below. Notwithstanding the above, if any provision of this Covenant would be unlawful, void, or voidable by reason of any New Mexico law restricting the period of time that covenants on the land may be enforced, such provision shall expire 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

(b) This Covenant may be terminated at any time by a recorded instrument approved by the Assembly Board and the Association's board of directors. The Founder's consent also is required to terminate this Covenant for so long as the Founder owns property described in Exhibit "A"

or "B." Any such instrument shall set forth the intent to terminate this Covenant.

[SIGNATURES ON NEXT PAGE]

W A K I P O S A



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IN WITNESS WHEREOF, the undersigned Founder has executed this Amended and Restated Covenant this 7th day of July, 2005.

FOUNDER: HIGH DESERT INVESTMENT CORPORATION, a New Mexico corporation

By: Douglas H. Collister
Name: Douglas H. Collister
Title: President

By: Richard G. Elkins
Name: RICHARD G. ELKINS
Title: Asst. Secretary

STATE OF NEW MEXICO)
)
COUNTY OF SANDOVAL) ss

This instrument was acknowledged before me on July 7, 2005 by RICHARD G. ELKINS [Secretary] and DOUGLAS H. COLLISTER [President] of High Desert Investment Corporation

{SEAL}

Laura J. Medana
Notary Public
My Commission Expires: 11/18/06

526601/CADocs\Amend & Restated Covenant-Assembly-070105

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EXHIBIT "A"

Land Initially Submitted

Tracts 1A-2, 1A-3, 1A-4, 1A-9 and 1A-10 Mariposa East as the same is shown and designated on the plat of Tracts 1A-1 thru 1A-10 & Tracts OS-1 thru OS-10 Mariposa East recorded July 1, 2004 in Book 407, page 20665 as document number 200420665, and Book 3, Folio 2433-B, in the records of Sandoval County, New Mexico

Desert Highlands - Mariposa, New Mexico as the same is shown and designated on the plat of Desert Highlands - Mariposa, New Mexico (a Replat of Tracts 1A-6 Mariposa East and 1A-7A Desert View - Mariposa, New Mexico) recorded February 11, 2005 in Book 408 page 5003, as document number 200505003, and Volume 3, Folio 2504B in the records of Sandoval County, New Mexico

Desert View - Mariposa, New Mexico as the same is shown and designated on the plat of Desert View - Mariposa, New Mexico (a Replat of Tracts 1A-5, 1A-7, 1A8 & OS-8 Mariposa East) recorded February 11, 2005 in Book 408 page 5002, as document number 200505002, and Volume 3, Folio 2504A in the records of Sandoval County, New Mexico

Venada Estates - Mariposa, New Mexico as the same is shown and designated on the plat of Venada Estates - Mariposa, New Mexico (a Replat of Tracts 1A-6A, 1A-7A-1, Desert Highlands - Mariposa East) recorded February 11, 2005 in Book 408 page 5001, as document number 200505001, and Volume 3, Folio 2503BA in the records of Sandoval County, New Mexico

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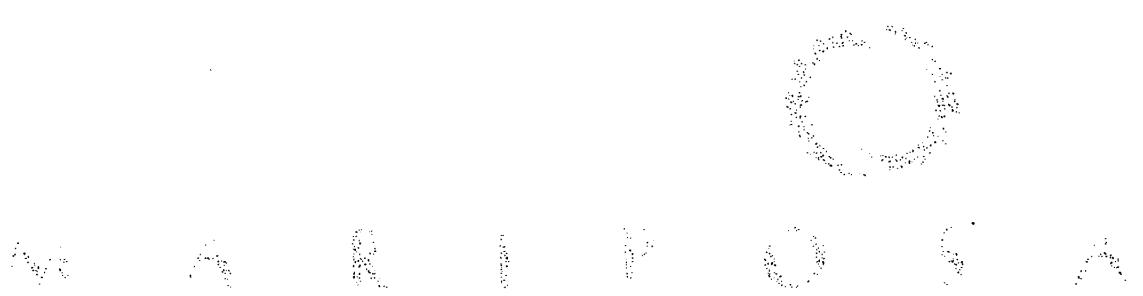
EXHIBIT "B"

Additional Property

Any and all property lying and being in Sandoval County, New Mexico, that is within three miles of any boundary of the property comprising the Community.

Note to clerk and title examiners:

This Covenant is not intended to create an encumbrance on title to the property described in this Exhibit "B." Such title may be encumbered only with the consent of the owner by filing a Supplement in accordance with Chapter 5.



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Upon recording, please return to:
Myers, Oliver & Price
1401 Central Ave NW
Albuquerque, NM 87110
Attn: Hope Wynn

Cross-Reference to Charter recorded at:
Document 200525022
Book 408
Page 25022

STATE OF NEW MEXICO

COUNTY OF SANDOVAL

**FIRST AMENDMENT TO AMENDED AND RESTATED COMMUNITY
COVENANT FOR MARIPOSA ASSEMBLY**

THIS AMENDMENT (the "Amendment") is made this 10th day of March, 2009,
by High Desert Investment Corporation, a New Mexico corporation ("Founder").

BACKGROUND STATEMENT

WHEREAS, the Founder executed and filed that certain Amended and Restated Community Covenant for Mariposa Assembly, which was recorded on July 8, 2005, as Document 200525022 in Book 408, Page 25022, *et seq.*, in the Office of the County Clerk of Sandoval County, New Mexico ("**Covenant**"); and

WHEREAS, pursuant to the terms of Section 5.10 of the Covenant, the Founder has the right unilaterally to amend the Covenant for any purpose provided the Founder's right has not expired, and further provided that the amendment has no material adverse effect upon any substantive right, privilege, or protection specifically granted to more than 2% of the Owners; and

WHEREAS, the Founder's right to amend the Covenant has not expired; and

WHEREAS, this Amendment has no material adverse effect upon any substantive right, privilege, or protection granted to more than 2% of the Owners.

NOW, THEREFORE, the Covenant is hereby amended and restated as follows:

ARTICLE I
Definitions

The definitions set forth in the Covenant are incorporated herein by reference.

ARTICLE II
Amendment to Mariposa Preservation Contribution

2.1. Section 2.3(f)(ii) Amount of Contribution. The second sentence of Section 2.3(f)(ii) of the Covenant is amended to read as follows:

After July 1, 2015, and until such time that the Assembly decides otherwise, the amount of any such Contribution shall not exceed 0.25% (one-quarter of one percent) of the Gross Sales Price of the real property transferred.

2.2. Section 2.3(f)(iv)(F) Exempt Transfers. Section 2.3(f)(iv)(F) of the Covenant is amended to read as follows:

(F) Prior to July 1, 2015, by an Owner who purchased the property for occupancy or residential purposes and not solely for the purpose of development and trade.

2.3. Section 2.3(f)(iv) Exempt Transfers. Section 2.3(f)(iv) is amended to add a new subsection 2.3(f)(iv)(J) which reads as follows:

(F) that occurs prior to July 1, 2015.

ARTICLE III
Amendment

3.1. By the Founder. Until conveyance of the first Unit to a Person other than a Builder, the Founder may unilaterally amend this Amendment for any purpose. Thereafter, the Founder may unilaterally amend this Amendment if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Units; (c) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on the Units; or (d) to satisfy the requirements of any local, state or federal governmental agency. In addition, during the Development and Sale Period, the Founder may unilaterally amend this Amendment for any other purpose, provided the amendment has no material adverse effect upon any right of more than 2% of the Owners.

3.2. By Assembly and Association. This Amendment may be amended at any time by a recorded instrument approved by the Assembly Board and the Association's board of directors. The Founder's consent shall be required to amend this Amendment for so long as the Founder owns property described in Exhibit "A" or "B" to the Covenant. Any such instrument shall set forth the intent to amend this Amendment.



Upon recording, please return to:
Myers, Oliver & Price
1401 Central Ave NW
Albuquerque, NM 87110
Attn: Hope Wynn

Cross-Reference to Covenant recorded at:
Document 200525022
Book 408
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STATE OF NEW MEXICO

COUNTY OF SANDOVAL

**SECOND AMENDMENT TO AMENDED AND RESTATED COMMUNITY
COVENANT FOR MARIPOSA ASSEMBLY**

THIS AMENDMENT (the "Amendment") is made this 23 day of September, 2010, by High Desert Investment Corporation, a New Mexico corporation ("Founder").

BACKGROUND STATEMENT

WHEREAS, the Founder executed and filed that certain Amended and Restated Community Covenant for Mariposa Assembly, which was recorded on July 8, 2005, as Document 200525022 in Book 408, Page 25022, *et seq.*, in the Office of the County Clerk of Sandoval County, New Mexico and which was amended by the First Amendment to Amended and Restated Community Covenant for Mariposa Assembly which was recorded on July 8, 2005, as Document 2009006514 in Book 412, Page 6514, *et seq.*, in the Office of the County Clerk of Sandoval County, New Mexico (together "Covenant"); and

WHEREAS, pursuant to the terms of Section 5.10 of the Covenant, the Founder has the right unilaterally to amend the Covenant for any purpose provided the Founder's right has not expired, and further provided that the amendment has no material adverse effect upon any substantive right, privilege, or protection specifically granted to more than 2% of the Owners; and

WHEREAS, the Founder's right to amend the Covenant has not expired; and

WHEREAS, this Amendment has no material adverse effect upon any substantive right, privilege, or protection granted to more than 2% of the Owners.

NOW, THEREFORE, the Covenant is hereby amended and restated as follows:

ARTICLE I
Definitions

The definitions set forth in the Covenant are incorporated herein by reference.

ARTICLE II
Deletion of Mariposa Preservation Contribution

2.1. Mariposa Preservation Contribution. The Mariposa Preservation Contribution as set forth in the Covenant is hereby terminated and deleted and the Covenant is amended accordingly. All references to the "Mariposa Preservation Contribution" or "contribution" (when such references relate to the Mariposa Preservation Contribution but only to the extent they relate to the Mariposa Preservation Contribution) are deleted. Without limiting the generality of the foregoing, the following specific deletions and amendments are made to the Covenant:

Section 2.3(a) Budget. The words "Mariposa Preservation Contribution" are deleted from the second paragraph of this section.

Section 2.3(f) Mariposa Preservation Contribution. This section is deleted in its entirety.

ARTICLE III
Amendment

3.1. By the Founder. Until conveyance of the first Unit to a Person other than a Builder, the Founder may unilaterally amend this Amendment for any purpose. Thereafter, the Founder may unilaterally amend this Amendment if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Units; (c) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on the Units; or (d) to satisfy the requirements of any local, state or federal governmental agency. In addition, during the Development and Sale Period, the Founder may unilaterally amend this Amendment for any other purpose, provided the amendment has no material adverse effect upon any right of more than 2% of the Owners.

3.2. By Assembly and Association. This Amendment may be amended at any time by a recorded instrument approved by the Assembly Board and the Association's board of directors. The Founder's consent shall be required to amend this Amendment for so long as the Founder owns property described in Exhibit "A" or "B" to the Covenant. Any such instrument shall set forth the intent to amend this Amendment.

3.3. Validity and Effective Date. No amendment to this Amendment may remove, revoke, or modify any right or privilege of the Founder or the Founder Member without the written consent of the Founder or of the Founder Member, respectively (or the assignee of such right or privilege). If an Owner consents to any amendment to this Amendment, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment. Any amendment shall become effective upon recording unless a later effective date

is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Amendment.

IN WITNESS WHEREOF, the undersigned, on behalf of the Founder, have executed this Amendment and affixed the corporate seal as of the day and year first written above.

FOUNDER: HIGH DESERT INVESTMENT CORPORATION, a New Mexico corporation

ADDRESS: 2500 Parkway Avenue NE, Suite 200 Rio Rancho, New Mexico 87144

By: [Signature]
Name: Douglas H. Collister
Title: President

By: [Signature]
Name: Jack Eichorn
Title: Senior Vice President

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

This instrument was acknowledged before me on Sept 23, 2010, by Douglas H. Collister and Jack Eichorn, President and Senior Vice President, respectively of High Desert Investment Corporation on behalf of the corporation.

[Signature]
Notary Public

My commission expires: 5-08-2011

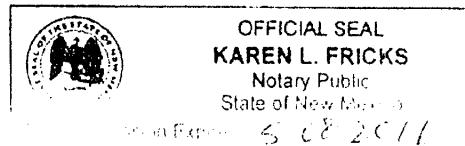


EXHIBIT "C"

BY-LAWS

OF

MARIPOSA ASSEMBLY, INC.



M A R I P O S A

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BY-LAWS

OF

MARIPOSA ASSEMBLY, INC.

Chapter 1

Name, Principal Office, and Definitions

*Any powerful idea is absolutely fascinating-and absolutely useless unless we choose to use it.
Richard Bach*

1.1. Name

The name of the corporation shall be Mariposa Assembly, Inc. ("Assembly").

1.2. Principal Office

The Assembly's principal office shall be located in Sandoval County, New Mexico. It may have such other offices, either within or outside Sandoval County, as the Assembly's board of trustees may determine or as the Assembly's affairs may require.

1.3. Definitions

The words used in these Assembly By-Laws shall have their normal, commonly understood definitions unless otherwise specified. Unless the context indicates otherwise, capitalized terms shall have the same meaning as set forth in the Community Covenant for Mariposa (as may be amended from time to time, the "Covenant") recorded or to be recorded in the public records of Sandoval County, New Mexico, by High Desert Investment Corporation, a New Mexico corporation ("**Founder**").

Each Person that holds record title to a Unit, as defined in the Covenant, is referred to in these Assembly By-Laws as an "**Owner**." However, a Person who holds title merely as security for the

performance of an obligation (such as a lender holding a mortgage or similar security instrument) is not considered an "Owner." If a Unit is sold under a recorded contract of sale, and the contract specifically so states, the purchaser (rather than the holder of fee simple title) will be considered the Owner. If a Unit has more than one Owner, all co-Owners are jointly and severally obligated to perform the responsibilities of the Owner.

Space has been set aside throughout these Assembly By-Laws to allow the reader to make notes. Any notes made in such spaces are not part of these Assembly By-Laws.

NOTES AND THOUGHTS

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Chapter 2

Administration of the Assembly

It is not only what we do, but also what we do not do, for which we are accountable.
Moliere

2.1. Management

The Assembly shall have no members. The Assembly's board of trustees (the "Assembly Board") shall manage the Assembly's affairs in accordance with these Assembly By-Laws and the Covenant (The members of the Assembly Board are referred to as "Trustees." The term Trustee shall mean "director" as defined in the New Mexico Nonprofit Corporation Act, Chapter 53, Article 8, New Mexico Statutes). The Assembly Board shall be selected as provided in Section 3.3.

2.2. Community-Wide Meetings

From time to time, the Assembly Board may call meetings of the Mariposa owners, occupants, and other interested parties. The Assembly Board shall set the time, place, and agenda for such meetings. They also shall communicate notice of the meetings by (a) posting in a conspicuous location or locations within Mariposa, (b) publishing in a newspaper or community newsletter, (c) posting on a community cable channel or intranet or Internet website generally known to the Mariposa owners and occupants, or (d) similar means to which the Mariposa owners and occupants could reasonably be expected to have access.

Such notice shall be given, published, or posted not less than 10 nor more than 50 days prior to the meeting date. Participation in discussions during community-wide meetings shall be subject to reasonable regulation by the Assembly Board.

2.3. Special Meetings

The Assembly Board shall call a special community-wide meeting:

- (a) if a majority of a quorum of the Trustees so directs by resolution;
- (b) if the Association's board of directors requests such a meeting; or
- (c) upon petition of the Owners of at least 10% of the Units.

The notice of any special meeting shall be given as provided in Section 2.2. No business shall be transacted at a special meeting except as stated in the notice.

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Chapter 3

Board of Trustees: Number, Meetings, Powers

Democracy's the worst form of government except for all the others.
Sir Winston Churchill

A. Composition and Selection

3.1. Governing Body

The Assembly's affairs shall be governed by the Assembly Board. Each Trustee shall have one equal vote.

3.2. Number and Qualification of Trustees

The initial Assembly Board shall consist of the three Trustees identified in the Articles of Incorporation. During the time that the Founder is authorized to appoint Trustees as provided in Section 3.3, there shall be at least three and no more than nine Trustees, as the Founder may determine. After termination of the Founder's right to appoint Trustees, the Trustees shall be appointed as described in Section 3.3. Each Trustee shall be a natural person of at least 18 years of age.

3.3. Selection of Trustees; Term of Office

For a period of five years from the date the Covenant originally is recorded, the Founder, in its discretion, may appoint, remove, and replace all of the Trustees on the Assembly Board. Thereafter, the Assembly Board shall be comprised of:

(a) five Trustees selected by the Association's board of directors in accordance with such election or appointment procedures as the Association's board may establish;

(b) one Trustee elected by the Owners of Units which are not subject to the Charter (each such Owner having one equal vote for each Unit it owns to be cast by mail or such other means as the Assembly Board may establish); and

(c) one Trustee appointed by the Founder until such time as the Founder no longer owns any property subject to the Covenant or which it may unilaterally submit to the terms of the Covenant. Thereafter, the Assembly Board, by majority vote of the Trustees, shall elect one Trustee.

The terms of the initial Trustees elected upon termination of the Founder's right to appoint the Trustees shall be staggered, with four of the initially elected Trustees serving three-year terms and three of the initially elected Trustees serving a two-year term, as they among themselves determine. Upon the subsequent expiration of the term of office of any Trustee, successor Trustees shall be elected to serve two-year terms. A Trustee may serve any number of consecutive terms.

In addition to the above, the Youth Board may appoint a representative to serve as a Trustee in an *ex officio* capacity, as provided in the Covenant. The Director of Community Enrichment also shall serve as a Trustee in an *ex officio* capacity.

3.4. Resignation and Removal of Trustees; Vacancies

Any Trustee may resign at any time by giving written notice to the Trustees, the President, or the Secretary. Such resignation shall take effect on the date such notice is received or at a later time specified in the notice. Acceptance of such

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resignation shall not be necessary to make it effective.

Any Trustee may be removed, with or without cause, upon a majority vote of the other Trustees or by the Founder, so long as the Founder continues to own any property within Mariposa. Any vacancy created by such removal shall be filled for the unexpired portion of the term in the same manner as the removed Trustee was selected (as provided in Section 3.3).

B. Meetings

3.5. Organizational Meetings

The first meeting of the Trustees shall be held within 90 days following the date of issuance of a certificate of incorporation at such time and place as the Trustees shall fix.

3.6. Regular Meetings

Regular Trustee meetings may be held at such time and place as a majority of the Trustees determine from time to time; however, at least four meetings shall be held during each fiscal year with at least one meeting each fiscal quarter.

3.7. Special Meetings

When called by written notice signed by the President, Vice President, or any two Trustees the Trustees shall hold a special meeting. The Secretary shall prepare and distribute written notice of any special meetings specifying the time and place of the meeting and the nature of any special business to be considered.

3.8. Quorum of Assembly Board

At all Assembly Board meetings, a majority of the Trustees shall constitute a quorum for transacting business, and votes of a majority of the Trustees present shall constitute the Trustees' decision, unless New Mexico law provides otherwise. If a quorum is present, the Trustees may continue to transact business, notwithstanding

the withdrawal of Trustees, if any action taken is approved by at least a majority of the required quorum for that meeting.

If any Assembly Board meeting cannot be held because a quorum is not present, a majority of the Trustees who are present at such meeting may adjourn the meeting to a time not less than five nor more than 30 days from the scheduled date of the original meeting. At the reconvened meeting, if a quorum is present, any business that could have been transacted at the originally called meeting may be transacted without further notice.

3.9. Compensation

Trustees shall not receive any compensation for acting as such unless a majority of the Trustees consents in writing, excluding the Trustee whose compensation is in question. A Trustee may receive reimbursement for expenses incurred on the Assembly's behalf upon approval of a majority of the other Trustees.

Nothing herein shall prohibit the Assembly from compensating a Trustee, or any entity with which a Trustee is affiliated, for services or supplies furnished to the Assembly in a capacity other than as a Trustee pursuant to a contract or agreement with the Assembly. However, such Trustee must make his or her interest known to the Trustees prior to entering into such contract, and a majority of Trustees other than the interested Trustee must approve such contract.

3.10. Conduct of Meetings

The President or an Assembly Board-approved designee shall preside over all Assembly Board meetings. The Secretary shall ensure that minutes of the meetings are kept and that all resolutions adopted and all other transactions occurring at such meetings are kept with the Assembly's books.

Subject to Section 3.11, and the Assembly Board's right to deliberate in executive session,

all Assembly Board meetings shall be open to the Founder, all Mariposa Owners and occupants, and all directors, officers, and authorized representatives of the Association. Non-Trustees may not participate in any discussion or deliberation unless a Trustee requests permission for the attendee to speak. In such case, the President may limit the time any individual may speak.

Notwithstanding the above, the President may adjourn any Assembly Board meeting and reconvene in executive session, and may exclude persons other than Trustees, for consideration of one or more of the following topics, without limitation:

- (a) employment or personnel matters for Assembly employees;
- (b) legal advice from an attorney for the Trustees or the Assembly;
- (c) pending or contemplated litigation; and/or
- (d) pending or contemplated matters relating to enforcement of the Assembly's documents or rules.

3.11. Action Without a Formal Meeting

Any action taken or which may be taken at an Assembly Board meeting may be taken without a meeting if all Trustees sign a consent setting forth the action so taken. Such consent shall have the same force and effect as a unanimous vote. All consents shall be filed with the minutes of the proceedings of the Assembly Board.

3.12. Electronic Participation

One or more Trustees may participate in and vote during any regular or special Assembly Board meeting by telephone conference call, fiber optics, or similar audio or video communication equipment by means of which all persons participating in the meeting can hear each other

at the same time. Those Trustees so participating shall be deemed present at such meeting for all purposes including determining a quorum.

C. Powers and Duties

3.13. Powers

The Assembly Board shall have all the powers which New Mexico law provides for nonprofit corporations and those necessary and desirable to administer the Assembly's affairs and to perform the Assembly's responsibilities and to exercise its rights as set forth in these Assembly By-Laws, the Covenant, and the Assembly's Articles of Incorporation.

For purposes of illustration but not limitation, the Trustees shall have the power to:

- (a) provide for activities, services, and programs designed to further the Assembly's mission as set forth in these Assembly By-Laws;
- (b) impose reasonable membership requirements and/or charge reasonable admission, use, or consumption fees for the use and enjoyment of the various services and programs provided by or through the Assembly and for the use and enjoyment of any of the Areas of Assembly Responsibility; and
- (c) enforce the provisions of these Assembly By-Laws, the Covenant, and the Assembly's Articles of Incorporation and the rules and regulations of the Assembly, and bring any proceedings concerning the Assembly.

3.14. Duties

The Assembly Board's duties shall include those imposed by law, and, without limitation:

- (a) overseeing the preparation of and adopting annual budgets for Assembly Expenses;

(b) levying assessments, fees, and other charges to pay for Assembly Expenses, and establishing the means and method of collecting such payments as set forth in these Assembly By-Laws, the Covenant, and the Assembly's Articles of Incorporation;

(c) collecting the Mariposa Preservation Contribution, and establishing the means and method of collecting such funds;

(d) making available to any Owner, mortgagee, or prospective purchaser of a Unit, copies of these Assembly By-Laws, the Covenant, and the Assembly's Articles of Incorporation, and rules promulgated by the Assembly Board. The Assembly Board may establish and charge fees to cover its printing and mailing costs; and

(e) cooperating with the Association and fulfilling its responsibilities under the Covenant.

NOTES AND THOUGHTS

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CHAPTER 4

Officers

Only those who dare to fail greatly will achieve greatly.

Robert F. Kennedy

4.1. Officers

The Assembly officers shall be a President, Secretary, and Treasurer. The President and Secretary shall be elected from among the Trustees; other officers may, but need not, be Trustees. The Assembly Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties the Assembly Board prescribes. The same person may hold any two or more offices except the offices of President and Secretary.

4.2. Election and Term of Office

The Assembly Board shall elect the Assembly officers at such times as it deems appropriate or when a position becomes vacant. Officers may serve terms of such length as the Assembly Board may designate, but not to exceed two years.

4.3. Removal and Vacancies

The Assembly Board may remove any officer whenever in its judgment the Assembly's best interests will be served and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise for the unexpired portion of the term.

4.4. Powers and Duties

The Assembly's officers shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and du-

ties as the Assembly Board may from time to time specifically confer or impose. The President shall be the Assembly's chief executive officer. The Secretary shall be responsible for ensuring that the minutes of all Assembly Board and committee meetings are kept and shall have charge of such books and papers as the Assembly Board may direct. The Treasurer shall be primarily responsible for preparing the budget of Assembly Expenses but may rely upon accounting or other professionals in the process of doing so.

4.5. Resignation

Any officer may resign at any time by giving written notice to the Assembly Board, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein. Acceptance of such resignation shall not be necessary to make it effective.

4.6. Agreements, Contracts, Deeds, Leases, Checks, Etc.

All agreements, contracts, deeds, leases, checks, and other instruments of the Assembly shall be executed by at least two officers, or by such other person or persons as may be designated by Assembly Board resolution.

4.7. Compensation

Compensation of officers shall be subject to the same limitations as compensation of Trustees under Section 3.9.

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CHAPTER 5

Management and Administration

Good thoughts are no better than good dreams if you don't follow through.

Ralph Waldo Emerson

5.1. Standards for Trustees and Officers

The Assembly Board shall exercise its powers in a reasonable, fair, nondiscriminatory manner and shall adhere to the procedures established in these Assembly By-Laws, the Covenant, and the Assembly's Articles of Incorporation.

In performing their duties, Trustees and officers shall act as fiduciaries and shall be insulated from liability as provided for directors of corporations under New Mexico law and as otherwise provided by these Assembly By-Laws, the Covenant, and the Assembly's Articles of Incorporation. Trustees and officers shall discharge their duties as Trustees or officers, and as members of any committee to which they are appointed, in a manner that the Trustee or officer believes in good faith to be in the best interest of the corporation and with the care that an ordinarily prudent person in a like position would exercise under similar circumstances. A Trustee is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by others to the extent authorized under New Mexico law.

5.2. Liability

(a) A Trustee shall not be personally liable to the Assembly or any other Person for any action taken or not taken as a Trustee if the Trustee has acted in accordance with Section 5.1 and has acted in compliance with Section 53-8-25.1 of the New Mexico Nonprofit Corporation Act as it may be amended.

(b) Pursuant to the business judgment rule, a Trustee also shall not be personally liable for any action taken or not taken as a Trustee if the Trustee:

(i) acts within the expressed or implied scope of these Assembly By-Laws, the Covenant, and the Assembly's Articles of Incorporation and his or her actions are not *ultra vires*;

(ii) affirmatively undertakes to make decisions which are necessary for the continued and successful operation of the Assembly and, when decisions are made, they are made on an informed basis;

(iii) acts on a disinterested basis, promptly discloses any real or potential conflict of interests (pecuniary or other), and avoids participation in such decisions and actions on matters as to which he has a conflict of interest; and

(iv) acts in a non-fraudulent manner and without reckless indifference to the Assembly's affairs.

(c) The Assembly's officers, Trustees, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, misconduct, recklessness, or bad faith. The officers and Trustees shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on the Assembly's behalf.

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5.3. Indemnification

Subject to the limitations of New Mexico law, the Assembly shall indemnify every officer, Trustee, and committee member against all damages and expenses, including counsel fees and expenses, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Assembly Board) to which he or she may be a party by reason of being or having been an officer, Trustee, or committee member, except that the Assembly shall have no obligation to indemnify any individual against liability or expenses incurred in connection with a proceeding:

(a) brought by or in the right of the Assembly, although it may reimburse the individual for reasonable expenses incurred in connection with the proceeding if it is determined, by the court or in the manner provided above, that the individual met the relevant standard of conduct under New Mexico law; or

(b) to the extent that the individual is adjudged liable for conduct that constitutes:

(i) appropriation, in violation of his or her duties, of any business opportunity of the Assembly; or

(ii) intentional misconduct or knowing violation of the law;

(iii) an unlawful distribution to Trustees or officers; or

(iv) receipt of an improper personal benefit.

This right to indemnification shall not be exclusive of any other rights to which any present or former officer, Trustee, or committee member may be entitled. The Assembly shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

5.4. Training Seminar

In cooperation with or independent of the Association's board, the Assembly Board may provide or provide for seminars and continuing educational opportunities designed to educate and inform Trustees and officers of their responsibilities as such. Such programs may include instruction on applicable New Mexico corporate and fiduciary law principles, other issues relating to administering community affairs, and upholding and enforcing these Assembly By-Laws, the Covenant, and Assembly's Articles of Incorporation. The Trustees may retain industry professionals, which may include attorneys and accountants, as appropriate or necessary for such purpose. The Assembly Board may require that each newly elected Trustee and officer complete a training seminar within the first six months of assuming such position.

5.5. Conflicts of Interest

Unless otherwise approved by a majority of the other Trustees, no Trustee or officer may transact business with the Assembly or the Association, or any Assembly or Association contractor, during his or her term as Trustee or officer or within two years after the term expires. A Trustee or officer shall promptly disclose in writing to the Assembly Board any actual or potential conflict of interest relative to his or her performance as a Trustee or officer. A Trustee's or officer's failure to make such disclosure shall be grounds for removal by a majority vote of the other Trustees members. The Trustees may void any contract that creates a prohibited conflict of interest.

Notwithstanding the above, Trustees appointed by the Founder may be employed by or otherwise transact business with the Founder or its affiliate, and the Founder may transact business with the Assembly.

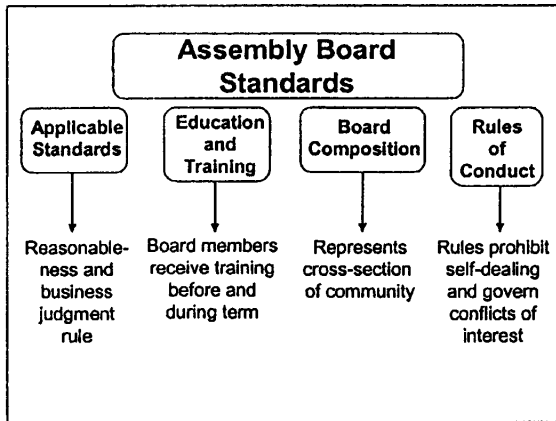
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Notwithstanding the above, any Trustee the Founder appoints may be employed by or otherwise transact business with the Founder or any affiliate of the Founder, and the Founder may transact business with the Assembly, the Association, or their contractors.

5.6. Management

The Assembly may employ an agent or agents, at such compensation as the Assembly Board may establish, to perform such duties and services as the Assembly Board shall authorize. Subject to the Assembly Board's supervision, the Assembly Board may delegate to the agent or agents such powers as are necessary to perform its assigned duties but shall not delegate policy-making authority. The Founder may be the agent.

The Trustees may delegate to any single Trustee the authority to act on their behalf on all matters relating to any agent's duties that arise between Assembly Board meetings.

The Trustees may not terminate any agency contract, or retain a new agent, without the Founder's approval for so long as the Founder owns property within Mariposa. Any such contract may, among other things, authorize action as the Assembly's agent with respect to the expenditure of Assembly funds within the scope of the approved Assembly budget.

5.7. Right to Contract

The Assembly shall have the right to contract with any person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements, or covenants to share costs with a property owners association or any other entity within or outside Mariposa.

5.8. Right to Appoint Committees

The Trustees may appoint such committees as they deem appropriate to perform such tasks as the Assembly Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution. Unless otherwise specified in the resolution creating the committee, service on a committee shall be for a term of two years. The Trustees shall have the right to disapprove or veto any committee decision or action. Committees shall not have the authority contractually to bind the Assembly or to commit the Assembly financially or otherwise.

5.9. Limitation on Assembly Authority

The Association exists independently from the Assembly and is managed and administered in accordance with the Charter and the Association's other governing documents. Unless the Association otherwise specifically consents in writing, or unless specifically provided in the Charter, the Assembly has no authority to, and shall not (a) enforce the Charter or any Association rights; (b) maintain, improve, operate, or encumber Association-owned or administered property; (c) act as the Association's agent or representative; (d) commit the Association to any contracts, obligations, or costs; (e) hire, terminate, direct, manage, or supervise any of the Association's employees or its managing agent; (f) solicit the Association's employees or agents to become the Assembly's employee or exclusive agent (provided, this shall not prevent the Assembly and the Association from being jointly managed); or (g) assess

the Owners, except as otherwise specifically permitted under the Covenant or the Charter.

This Section is for the benefit of and shall be enforceable by the Association.

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CHAPTER 6

Accounting and Insurance

*Not everything that can be counted counts, and not everything that counts can be counted.
Albert Einstein*

6.1. Accounts and Reports

The following management standards of performance shall be followed unless the Assembly Board, by resolution, specifically determine otherwise:

(a) generally accepted accounting principles shall be employed;

(b) the Assembly's cash accounts shall not be commingled with any other accounts;

(c) no persons, on behalf of the Assembly, shall accept remuneration from vendors, independent contractors, or others providing goods or services to the Assembly, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Assembly;

(d) the Director of Community Enrichment or any other agent of the Assembly shall disclose promptly to the Assembly Board any financial or other interest which he or she may have in any firm providing goods or services to the Assembly; and

(e) an annual report consisting of at least the following shall be made available for inspection by any interested party within 120 days after the close of the fiscal year: (i) a balance sheet showing actual receipts and expenditures; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Assembly Board determines, by an independent public accountant. The Assembly's annual report

shall be delivered to the New Mexico Public Regulation Commission in accordance with New Mexico law.

The Assembly's Annual Report

Contains the following:

- a balance sheet showing actual receipts and expenditures
- an income statement
- a statement of changes in financial position for the fiscal year

The Assembly shall provide any interested party a copy of the annual financial report within 10 business days following receipt of a written request for access.

6.2. Borrowing

The Assembly shall have the power to borrow money for any legal purpose.

6.3. Insurance

Acting through the Assembly Board or its duly authorized agent, the Assembly shall obtain and maintain in effect the following types of insurance, if reasonably available and affordable and to the extent the Assembly Board deems reasonably necessary:

- (a) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name

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denominated) for such improvements as customarily are insured on property which the Assembly owns, if any. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. All property insurance policies which the Assembly obtains shall have policy limits sufficient to cover the full replacement cost of the insured improvements;

(b) Commercial general liability insurance on any property which the Assembly owns or maintains, insuring the Assembly for damage or injury which the Assembly or any of its employees, agents, or contractors negligently causes while acting on its behalf. The commercial general liability coverage (including primary and any umbrella coverage) shall have a limit of at least \$3,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage; however, should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Assembly shall obtain such additional coverage or limits;

(c) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(d) Directors and officers liability coverage;

(e) Fidelity insurance covering all persons responsible for handling Assembly funds in an amount determine in the Assembly Board' business judgment but not less than an amount equal to one-quarter of the Annual Assessments on all individually owned property plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation; and

(f) Such additional insurance as the Assembly Board, in the exercise of their business judgment, determines advisable, which may include, without limitation, flood insurance, boiler and machinery insurance, and building ordinance coverage.

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CHAPTER 7
Miscellaneous

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We find no real satisfaction or happiness in life without obstacles to conquer and goals to achieve.
Dr. Maxwell Maltz

7.1. Fiscal Year

The Assembly's fiscal year shall be the calendar year unless the Assembly Board establishes a different fiscal year by resolution.

7.2. Parliamentary Rules

Except as may be modified by the Assembly Board, *Robert's Rules of Order* (current edition) shall govern the conduct of Assembly proceedings when not in conflict with New Mexico law, the Assembly's Articles of Incorporation, or these Assembly By-Laws.

7.3. Conflicts

If there are conflicts among the provisions of New Mexico law, the Covenant, the Assembly's Articles of Incorporation, and these Assembly By-Laws, the provisions of New Mexico law, the Covenant, the Assembly's Articles of Incorporation, and these Assembly By-Laws (in that order) shall prevail.

Diagrams, tables, and text set apart in boxes, some with "key" icons, are used in the Covenant and in these By-Laws to illustrate concepts and assist the reader. If there is a conflict between any of these and the text of the documents, the text shall control. In addition, the quotations set apart in boxes are for information only and have no legal effect.

7.4. Books and Records

(a) *Inspection by Owners and Mortgagees.* The Assembly Board shall make the following available for inspection and copying by the

Founder, any Owner, mortgagee of a Unit, or the duly authorized representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in his or her property: the Assembly's Articles of Incorporation, the Covenant, and these Assembly By-Laws, including any amendments, Assembly rules, books of account, and the minutes of Assembly Board meetings. The Assembly shall provide for such inspection to take place at the Assembly's office or at such other place as the Assembly Board designates.

(b) *Rules for Inspection.* The Assembly Board shall establish reasonable rules with respect to (i) notice to be given to the custodian of the records; (ii) hours and days of the week when such an inspection may be made; and (iii) payment of the cost of reproducing copies of documents requested.

(c) *Inspection by Trustees.* Every Trustee and the Founder shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Assembly and the physical properties the Assembly owns or controls. The right of inspection by a Trustee or the Founder includes the right to make a copy of relevant documents at the Assembly's expense.

7.5. Notices

Unless otherwise provided in these Assembly By-Laws, all notices, demands, bills, statements, or other communications under the Covenant or these Assembly By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States Mail, first class postage prepaid:

(a) if to an Owner, at his or her address as designated in writing and filed with the Assembly's Secretary or, if no such address has been designated, at the address of the owner's property within Mariposa;

(b) if to the Association, to the address designated by the Association in writing to its Secretary, or if no such address has been designated, at the Association's principal office; and

(c) if to the Assembly, the Founder, Trustees, or managing agent, at the Assembly's, the Founder's, Trustees', or managing agent's principal office, or at such other address as shall be designated by notice in writing.

All such notices shall be deemed delivered (a) upon personal delivery to the party or address specified above; or (b) on the third day after mailing when mailed by first class mail, postage prepaid, and properly addressed. Notices given by personal delivery, telephone, or other device shall be delivered or transmitted at least 72 hours before the time set for the meeting.

Alternatively, all such notices may be sent by means of facsimile or other electronic communication with confirmation of receipt. Such notice shall be deemed delivered upon transmission and confirmation of receipt.

Except for emergency meetings, notice of each Assembly Board meeting shall be communicated to Owners and occupants of the Mariposa community by posting in a conspicuous location or locations within Mariposa, publishing in a newspaper or community newsletter, or posting on a community cable channel or intranet or internet website generally known to Mariposa Owners and occupants, or by similar means to which the owners and occupants could reasonably be expected to have access. As an alternative to providing separate notice for each meeting, the Assembly Board may post or publish a schedule of upcoming, regular Assembly Board meetings.

Transactions of any Assembly Board meeting, however called and noticed or wherever held, shall be as valid as if taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each absent Trustee signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the meeting's purpose. Notice of a meeting also shall be deemed given to any Trustee who attends the meeting without protesting before or at its commencement about lack of adequate notice.

7.6. Amendment

The Founder may unilaterally amend these Assembly By-Laws at any time if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule or regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage; (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans; (d) to enable any governmental agency or reputable private insurance company to insure mortgage loans; or (e) to satisfy the requirements of any governmental agency.

In addition, these Assembly By-Laws may be amended from time to time by the Assembly Board upon approval of a majority of the Trustees; provided, any amendment shall require the Founder's written consent for so long as the Founder owns any property described in Exhibit "A" or "B" to the Covenant. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment by the Assembly Board shall be

prepared and signed by the President or Vice President and by the Secretary or Treasurer of the Assembly certifying that the requisite approval was obtained.

Amendments are effective upon adoption and execution by two officers and shall be recorded. No amendment may remove, revoke, or modify any right or privilege of the Founder without the Founder's written consent or the assignee of such right or privilege. No amendment may remove, revoke, increase, or modify any Association right, privilege, or obligation without the Association's written consent.

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OFFICE OF THE
PUBLIC REGULATION COMMISSION

CERTIFICATE OF INCORPORATION

OF

MARIPOSA ASSEMBLY, INC.

2557254

The Public Regulation Commission certifies that the Articles of Incorporation, duly signed and verified pursuant to the provisions of the

NONPROFIT CORPORATION ACT

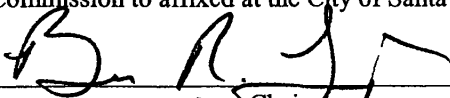
(53-8-1 to 53-8-99 NMSA 1978)

have been received by it & are found to conform to law.

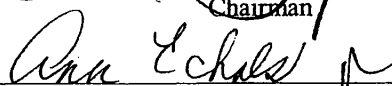
Accordingly, by virtue of the authority vested in it by law, the Public Regulation Commission issues this Certificate of Incorporation & attaches hereto, a duplicate of the Articles of Incorporation.

Dated: MARCH 7, 2005

In testimony whereof, the Public Regulation of the State of New Mexico has caused this certificate to be signed by its Chairman and the seal of said Commission to be affixed at the City of Santa Fe.

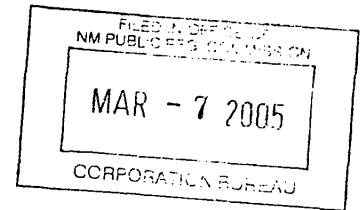


Chairman



Bureau Chief

**ARTICLES OF INCORPORATION
OF
MARIPOSA ASSEMBLY, INC.
(A New Mexico Nonprofit Corporation)**



The undersigned, acting as Incorporator to form a corporation under the New Mexico Nonprofit Corporation Act, *N.M. Stat. Ann. § 53-8-1, et seq.*, ("Act") adopts the following Articles of Incorporation:

Article 1. Name. The name of the corporation is Mariposa Assembly, Inc. (the "Assembly").

Article 2. Principal Office. The address of the initial principal office of the Assembly, and the initial mailing address of the Assembly, is 3791 Southern Boulevard, Suite 202, Rio Rancho, New Mexico 87124.

Article 3. Duration. The Assembly shall exist in perpetuity unless otherwise terminated or dissolved by law or in accordance with Article 13.

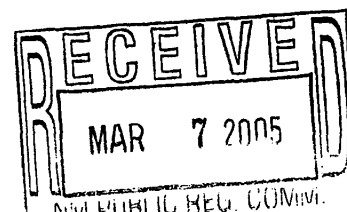
Article 4. Definitions. All capitalized terms used herein which are not defined shall have the meaning set forth in the Community Covenant for Mariposa, recorded or to be recorded by High Desert Investment Corporation, a New Mexico corporation, in the office of the Clerk of the County Court of Sandoval County, New Mexico, as amended from time to time (the "Covenant").

Article 5. Membership. The Assembly shall have no members.

Article 6. Purposes. Subject to any limitations imposed by the Act, the Assembly shall exist for the purpose of providing an entity for the furtherance and promotion of i) building a sense of community throughout Mariposa as described in the Covenant; and ii) the common good and general welfare of the people of Mariposa and the greater Rio Rancho area and such other activities as are permitted to be carried on by a corporation exempt from federal income tax under Section 501(c) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

The Assembly is not organized, and shall not be operated, for pecuniary gain or profit. It does not contemplate the distribution of gains, profits, or dividends to its members or to any private shareholder or individual. The property, assets, profits, and net income of this corporation are irrevocably dedicated to purposes consistent with 501(c)(4) of the IRC. No part of the earnings of this corporation shall ever inure to the benefit of any director, trustee, officer, shareholder, or member of the corporation, or to the benefit of any private individual.

The corporation shall exist to provide or provide for programs, services, and activities permitted to be carried on by a corporation exempt from federal income tax under Section 501(c)(4) of the Internal Revenue Code of 1986, as amended, or the corresponding provision of any future United States internal revenue law ("IRC"); however, if the corporation at any time



determines that is not feasible for, or in the best interest of, the corporation to be organized as a 501(c)(4) corporation, or if tax-exempt status is not granted or is revoked, the corporation may be organized or reorganized, as applicable, as another type of corporation, which may or may not have tax-exempt status. This corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the purposes of this corporation.

Article 7. Powers. Subject to the following limitations, the Assembly shall have all of the common law and statutory powers conferred upon nonprofit corporations under New Mexico law and all of the powers necessary or desirable to perform the obligations and duties and to exercise the rights and powers set out in these Articles, the Assembly's By-Laws, and the Covenant.

No substantial part of the Assembly's activities shall be the carrying on of propaganda, or otherwise attempting to influence legislation. The Assembly shall not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of or in opposition to any candidate for public office.

The Assembly shall make no distributions of income to its trustees or officers.

Article 8. Board of Trustees. The Assembly's business and affairs shall be conducted, managed, and controlled by a Board of Trustees performing the same role as a board of directors under the Act. The Board may delegate its operating authority to such companies, individuals, or committees as it, in its discretion, may determine.

The initial Board shall consist of three trustees, as provided in the By-Laws. The names and addresses of the initial trustees, who shall hold office until their successors are elected and have qualified, or until removed, are as follows:

Richard G. Elkins
3791 Southern Boulevard
Suite 202
Rio Rancho, New Mexico 87214

Cynthia Steiner
3791 Southern Boulevard
Suite 202
Rio Rancho, New Mexico 87214

Charles Price
c/o Myers, Oliver & Price P.C.
1401 Central Avenue NW
Albuquerque, New Mexico 87104

The method of selection and removal of trustees and filling of vacancies on the Board, and the term of office of trustees, shall be as set forth in the By-Laws.

Article 9. By-Laws. The By-Laws shall be adopted by the Board of Trustees and may be altered, amended, or rescinded in the manner provided in the By-Laws.

Article 10. Liability of Trustees. To the fullest extent that the Act, as it exists on the date hereof or as it may hereafter be amended, permits the limitation or elimination of the liability of directors, no trustee of the Assembly shall be personally liable to the Assembly for monetary damages for breach of duty of care or other duty as a trustee. No amendment to or repeal of this Article shall apply to or have any effect on the liability or alleged liability of any trustee of the Assembly for or with respect to any acts or omissions of such trustee occurring prior to such amendment or repeal.

Article 11. Indemnification of Trustees and Officers.

To the extent consistent with the New Mexico Nonprofit Corporation Act, as it exists on the date hereof or as it may hereafter be amended, the Assembly shall indemnify its officers and trustees to the extent required by the Covenant and By-Laws.

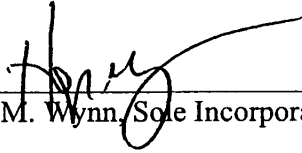
Article 12. Amendments. These Articles may be amended only upon a resolution duly adopted by a majority of the trustees, and the consent of Founder so long as the Founder owns any property subject to the Covenant or which it may unilaterally subject to the Covenant; however, no amendment may be in conflict with the Covenant and no amendment shall be effective to impair or dilute any rights of any particular class of Persons that are subject to the Covenant without the approval of a majority of the Persons whose rights are so impaired or diluted.

Article 13. Dissolution. Except as otherwise required under applicable New Mexico law, dissolution of the Assembly shall be authorized only upon a resolution duly adopted by a majority of the trustees. In the event of dissolution, a plan of distribution, in a resolution duly adopted by a majority of the trustees of the Assembly, and subject to applicable provisions of New Mexico law, shall provide that all assets of the Assembly be distributed to, or its assets be sold, and the proceeds distributed to, one or more organizations organized and operating for one or more exempt purposes within the meaning of Section 501(c) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or to the federal government, or a state or local government, for a public purpose.

Article 14. Incorporator. The name of the sole incorporator of the Assembly is Hope M. Wynn, whose address is Myers, Oliver & Price, P.C., 1401 Central, NW, Albuquerque, New Mexico 87104.

Article 15. Registered Agent and Office. The street address of the initial registered office of the Assembly is Myers, Oliver & Price, P.C., 1401 Central, NW, Albuquerque, New Mexico 87104, and the name of the initial registered agent at such address is Hope M. Wynn.

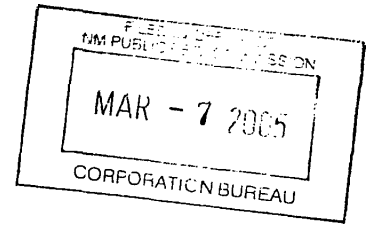
IN WITNESS WHEREOF, the undersigned Incorporator has executed these Articles of Incorporation on 7th day of March, 2005.



Hope M. Wynn, Sole Incorporator

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3/7/2005

**STATEMENT OF ACCEPTANCE OF APPOINTMENT
BY DESIGNATED INITIAL REGISTERED AGENT**



I, Hope M. Wynn, hereby acknowledge that the undersigned individual or corporation accepts appointment as Initial Registered Agent of Mariposa Assembly, Inc., the corporation which is named in the annexed Articles of Incorporation.

(Sign on this line if the registered agent named in the Articles of Incorporation is an individual. If this line is signed, the two lines below do not apply and must be left blank.)

(If the following lines are used, the signature line above does not apply and must be left blank)

(If the registered agent named in the Articles of Incorporation is a corporation, type or print the name of the corporation here.)

By _____
(An authorized officer of the corporation being appointed as registered agent must sign here)

