

**CORRECTED
 DECLARATION OF COVENANTS,
 CONDITIONS AND RESTRICIONS
 OF
 THE RABBITBRUSH RIDGE P.U.D.**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this 7 day of MAY, 2007 by the Weems Family, L.L.C., hereinafter referred to as the "Declarant," to restrict, govern, and define conditions of use of Lots 3 through 37 inclusive of the Rabbitbrush Ridge P.U.D. more particularly described on the Plat of said Planned Unit Development filed at Book 1444, Page 6110 in the records of San Juan County, New Mexico (the "Property") and to further restrict and govern the design, development, construction and location of residential units within the Property.

WHEREAS, Declarant is the owner of the Property in fee simple and desires to submit the Property to the provisions of Section 27-26-1 et. seq. of the Farmington City Code for a Planned Unit Development District in the City of Farmington, New Mexico for the purpose of establishing a first class residential development and provide for the preservation and enhancement of the values and amenities of the Property for the benefit of Declarant, Owners of Lots/Units in the Property, and their grantees, successors, heirs, personal representatives and assigns; and

WHEREAS, Declarant does hereby establish a plan for the separate fee simple ownership of real property estates consisting of residential Lots/Units, and the co-ownership by the individual and separate owners thereof, as tenants in common, of all of the remaining property, which is hereby defined and referred to as the Common Areas and Facilities.

NOW, THEREFORE, Declarant hereby declares that all of the real property described in the plat of the Rabbitbrush Ridge P.U.D. shall be held sold, and conveyed subject to the following easements, covenants, conditions and restrictions which shall constitute covenants running with the land and shall be binding on all parties having any right, title or interest in the above described property or any part thereof, their heirs, successors, and assigns and shall inure to the benefit of each owner of such real property.

ARTICLE I

NAME

This planned unit development shall be known as Rabbitbrush Ridge, a subdivision located in Farmington, New Mexico.




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ARTICLE II
DEFINITIONS

As used in this Declaration, unless the context otherwise requires, the terms hereinafter set forth shall have the following meanings:

- A. "Articles" means the Articles of Incorporation of Rabbitbrush Ridge Home Owners Association, Inc. a New Mexico not for profit corporation.
- B. "ACC" means the Architectural Control Committee of the Rabbitbrush Ridge Homeowner's Association, Inc.
- C. "Association" means the Rabbitbrush Ridge Homeowner Association, Inc., a New Mexico not for profit corporation; its successors and assigns; the By-Laws of which, along with this Declaration shall govern the administration of the Property.
- D. "Board of Directors" means the governing body of the Association.
- E. "Building" means any building or groups of buildings erected or to be erected within the Property.
- F. "Building Contractor" means any person or entity providing contracting services of any kind to a Lot/Unit.
- G. "Bylaws" means the bylaws of the Rabbitbrush Ridge Homeowner Association
- H. "Common Areas and Facilities" means all of the Property except the parts of which comprise the individual Units/Lots and the Lot/Units thereon. Common Areas and Facilities shall include, but not limited to:
 - 1. All of the land, improvements, and easements appurtenant to the Property except as are part of the individual Lots/Units.
 - 2. All streets and rights-of-way within the Property.
 - 3. All gates providing ingress and egress for the Property.
 - 4. All common parking spaces and driveways except as are part of any Lots/Units.
- I. "Common Expenses" means and includes all sums lawfully assessed against the Owners by the Association, expenses of administration, maintenance, repair, or replacement of the Common Areas and Facilities; expenses declared Common Expenses by the provisions of this Declaration and by the By-Laws; and expenses agreed upon as Common Expenses by a majority vote of the Board of Directors.
- J. "Common Wall" means the two hour fire wall between zero lot line units.
- K. "Declaration" means this instrument together with all amendments or supplements hereinafter recorded with the Clerk and Recorder of the San Juan County, New Mexico.


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- L. "Lot/Unit" means the fee simple interest and title in and to a numbered lot in the Rabbitbrush Ridge P.U.D. as the lot is defined on the plat of the planned unit development filed for record, the Lot/Unit and improvements thereon and the undivided interest in the Common Areas and Facilities appurtenant to such Unit and all other rights and burdens created by this Declaration.
- M. "Guest" means any agent, employee, tenant, guest, family member licensee or invitee of any Owner.
- N. "Managing Agent" means the Person employed by the Board to perform the management, operational and maintenance functions of the Property.
- O. "Mortgage" means any mortgage, deed of trust, real estate contract or other assignment or security instrument creating a lien on any Lot/Unit.
- P. "Owner" means a person, persons or entity owning a Lot/Unit in fee simple including an undivided interest in fee simple in the Common Areas and Facilities in the percentage specified and established in this Declaration, including the Declarant so long as any unit remains unsold.
- Q. "Person" means any person or entity having capacity to own property under New Mexico law.
- R. "Zero Lot Line" means a lot line with no side setback and to which a common wall divides the lots.

ARTICLE III

PLAT AND PLAN

There shall be filed for record in the office of the Clerk and Recorder of San Juan County, New Mexico, a plat and plan, hereinafter referred to as the "Plat" which Plat may be filed in whole or in part and if filed in part shall be supplemented as determinable depicting thereon:

- (a) The legal description of the surface of Real Property described on Exhibit A attached hereto;
- (b) The linear measurements and location, with reference to the exterior boundaries of said Real Property, of the Buildings and all improvements built on said land by Declarant;

The Plat, and any supplement(s) thereto, shall contain a statement of an engineer certifying that the Plat fully and accurately depicts the layout, measurements and location of all of the improvements, the Lot/Unit designations, and the dimensions of each Lot/Unit. Declarant reserves the right to amend the Plat and the supplements thereto, from time to time, to conform the Plat to the actual location of any of the constructed improvements and to establish, vacate and relocate outside the buildings, utility easements, access road easements, garages or parking spaces, and to establish certain Common Areas and Facilities.

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ARTICLE IV**DECLARATION OF RESIDENTIAL PURPOSE**

Declarant for itself, its successors and assigns, hereby declares that the Planned Unit Development shall at all times be owned and held as Lot/Units for residential purposes under the Planned Unit Development Ordinance of the City of Farmington and shall be owned, held, used, transferred and occupied subject to such law and the provisions of this Declaration.

ARTICLE V**DIVISION INTO LOT/UNITS**

1. Lot/Units. The Property is hereby divided into Lot/Units, each consisting of a separate fee simple estate in a particular lot and Lot/Unit site and an appurtenant undivided fee simple interest in the Common Areas and Facilities. The undivided interest in the Common Areas and Facilities appurtenant to a particular Lot/Unit is as set forth on the recorded plat as Greenbelt Lot A, B and C attached hereto and incorporated herein. Each owner shall own an undivided interest in the Common Areas and Facilities as a tenant-in-common with all other Owners. In proportion to the number of Lot/Units owned by the Owner divided by the number of Lot/Units in the property.

2. Description of a Lot/Unit. Every contract for a sale of a Lot/Unit written hereafter may legally describe a Unit by its identifying Lot/Unit number designation followed by the words "Rabbitbrush Ridge P.U.D." with further reference to the Plat thereof filed for record and this Declaration.

Every deed, lease, mortgage, will or other instrument shall legally describe a Lot/Unit by its identifying Lot/Unit number followed by the words "Rabbitbrush Ridge P.U.D." filed for record in Book ~~1044~~ Page ~~166~~ of the records of San Juan County, New Mexico and subject to the Declaration of Covenants Conditions, Restrictions, Easements and Lien of the Rabbitbrush Ridge P.U.D., filed for record in Book ~~1044~~ at Page ~~166~~ of the records of San Juan County, New Mexico." Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect not only the Lot/Unit, but also the Common Areas and Facilities appurtenant thereto. Each such description shall be construed to include: a non-exclusive easement for ingress and egress throughout and for use of the Common Areas and Facilities; and the other easements, obligations, limitations, rights, encumbrances, covenants, conditions and restrictions created in the Declaration. The Deed shall be in substantially the same form as Exhibit I attached hereto and made a part hereof.

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3. No Partition. The Common Areas and Facilities shall remain undivided, and no Owner or any other Person shall bring any action for partition or division of the Common Areas and Facilities. Similarly, no action shall be brought for partition of a lot/unit between or among the Owners thereof, except that Lot/Unit #23 may be divided into Lot/Units 23A and 23B on proper application approved by a majority of owners and the City of Farmington. Notwithstanding the foregoing, boundary line adjustments are allowed.

4. Separate Taxation. Each Lot/Unit shall be deemed to be a unique parcel and shall be subject to separate assessments and taxation by each assessing unit and special district for all types of taxes authorized by law, including ad valorem levies and special assessments. No Lot/Unit shall be combined with the Common Areas and Facilities for the purpose of taxation. A lien for taxes assessed to any Lot/Unit shall be confined to that Lot/Unit. No forfeiture of sale of any Lot/Unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other unit or the Common Area and Facilities.

ARTICLE VI

ARCHITECTURAL CONTROL

No residence building, fence, wall or other structure shall be commenced, erected or maintained upon the properties, nor shall any exterior addition to, or change, or alteration therein be made until the plans and specifications of such alteration showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Control Committee (ACC).

The ACC shall consist of Declarant or Declarant's representative until 90% of the Lot/Units are sold by Declarant. After sale of 90% of the lots in the Planned Unit Development the Architectural Control Committee shall be composed of three (3) or more representatives appointed by the Association.

ARTICLE VII

SPECIFIC BUILDING RESTRICTIONS

The intent and purpose of this Declaration is to ensure the development of Lot/Units of Rabbitbrush Ridge according to a common scheme.

1. Residential Use. The property subject to these covenants and restrictions may be used for single-family residential living units and for no other purpose. No business or commercial activity may be conducted on any lot/unit or common area, except that, so long as Declarant owns a lot in Rabbitbrush Ridge, it may authorize a sales and marketing office in a unit or on the Common Area.

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2. Architectural Style. All residences must be constructed in either Pueblo Revival or Spanish Territorial architectural style. All exterior construction shall be done in masonry stucco of an earth tone color complementary to the land and other residences. All roofs shall have a parapet wall which shall obscure the roof and roof mounted equipment and vents. Porch overhangs may be covered with red, or brown Spanish tile roofing.

3. Building Size Restriction. Single family residences shall have a ground floor finished and heated area, excluding garage, of no less than 1,800 square feet.

4. Restriction Concerning Bedrooms. Single family residences shall contain no less than two (2) bedrooms.

5. Building Height Restriction. The maximum height of any residence shall not exceed twenty-six (26) feet, except that the maximum height of any residence on Lot/Units 7, 8, 9, 24, 25, 26, 27, 28, 29, 29, 30, 31, 32, 33, shall not exceed eighteen (18) feet from the intersection of the sidewalk and the driveway of such lot/unit.

6. Building Setbacks. No building shall be located on any lot nearer than twenty (20) feet to any road right-of-way line that is indicated on the Plat for the garage portion and no nearer than fifteen (15) feet for the residence. No building shall be located nearer than fifteen (15) feet to the rear lot line. No building shall be located nearer than five (5) feet to the side lot line except those lots which share a common wall on one side as provided in the RIT zoning approved for the Property by the City of Farmington, New Mexico. No building shall be located on any platted and recorded easement. Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat of the Rabbitbrush Ridge. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may change the direction of flow of drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which the Homeowners Association or utility company is responsible.

7. Exterior Finish Restriction. All residences shall be designed to complement the overall architecture of Rabbitbrush Ridge. Exterior walls shall be stucco or stone with a uniform texture and earth tone color to match the residences in Rabbitbrush Ridge. Wood surfaces are not allowed except for doors, gates, posts, lintel and corbels.

8. Window Restrictions. Exterior frames of windows shall be designed to complement the overall architecture of Rabbitbrush Ridge and the home in which the windows are to be installed.

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9. Restriction on Roof Mounted Equipment. Roof mounted air conditioning units or evaporative coolers shall be screened so as to not be visible from adjoining units or any street. Antennas of any kind must be located or screened so as to not be visible from adjoining units or any street.

10. Restriction on Roofing Material. The roof over porches, portals, or any portion of a roof that is visible from adjoining units or any street shall be covered with Spanish style concrete roofing material of a complementary color to the residence and adjoining units.

11. Restriction for Garages and Driveways. All residences shall have attached two (2) car garages with garage doors of a complementary color to the residence and adjoining units. All residences shall have two (2) paved approaches for parking in front of the garage. Off street parking of two (2) spaces is required as on street parking is intended for guests only for temporary periods.

12. Restriction for Fences. All fences constructed within Rabbitbrush Ridge shall be eight inch (8") concrete masonry units not to exceed six (6") feet in height. Fences, if any, on the front of any Lot/Unit shall not exceed twenty four inches (24") in height. All fences shall be built on a reinforced concrete spread footing, reinforced with vertical reinforcement and grouted. Fences shall be finished with stucco to match the exterior color of the residence and shall be complementary to adjoining units. Though no wood fence is allowed, gates of wood are allowed if maintained in good condition. All fencing plans shall be submitted to the Architectural Control Committee for approval prior to construction.

13. Mandatory Soils Testing and Engineering. No construction shall commence on any residence until the Owner has obtained a soil test and engineering report advising the Owner and Owner's contractor of the soil conditions, the type of needed foundation, and necessary compaction or remediation prior to construction. Such soil tests and engineering report must be submitted to the ACC prior to foundation construction.

14. Mandatory Drainage and Retaining Walls. No building, grading, or other improvements will be constructed which will cause a drainage hazard to any other lot in the Planned Unit Development. Owners must continuously maintain all constructed drainage ways so as to avoid potential damage to neighboring properties.

15. Mandatory Retaining Walls for Specific Lots. Retaining walls are required for Lot/Units 9, 29, 30, 31, 32, and 33 as shown on the recorded Plat. Retaining walls for such lots will be comprised of engineered walls approved by the City of Farmington on public projects and shall be of a uniform color. No plan for construction will be approved by the ACC without provision for such retaining walls. The elevation of such retaining walls shall be determined by the grading plan submitted for each lot as part of the Building Permit.

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16. Landscaping. All home site plans submitted to the ACC for approval must include a complete landscaping plan including date of completion. Plans shall include such information as the species, size, mature height and other pertinent details for the proposed nursery stock. Approved landscaping must be completed on or before the approved completion deadline or the Lot/Unit.

Owner shall be subject to fines levied by the Board of Directors. In egregious circumstances, the Board of Directors may elect to complete landscaping in a manner decided by the Board of Directors at Lot/Unit Owner's expense. The ACC may give relief, in writing, from the date of completion of landscaping in its sole discretion. In no event shall landscaping be delayed past the next succeeding growing season following building/residence completion. Landscaping shall be maintained so as not to be a nuisance to adjoining property owners or to block the view of adjoining properties. Failure to maintain landscaping shall result in maintenance being performed by the Rabbitbrush Ridge HOA and the cost born by the property owner.

17. Owner/Contractor Responsibility. The owner and owner's contractor are specifically responsible, prior to construction, to submit all plans and obtain ACC approval in writing for all buildings and materials prior to first construction.

18. OWNER/CONTRACTOR COMPLIANCE. EACH OWNER AND EACH OWNER'S CONTRACTOR SHALL COMPLY STRICTLY WITH ALL THE PROVISIONS OF THE DECLARATION, THE ARTICLES AND THE BY-LAWS OF THE ASSOCIATION AND THE DECISIONS, RULES AND RESOLUTIONS OF THE ASSOCIATION ADOPTED PURSUANT THERETO AS THE SAME MAY BE LAWFULLY AMENDED FROM TIME TO TIME. FAILURE TO COMPLY WITH ANY OF THE SAME SHALL BE GROUNDS FOR AN ACTION TO RECOVERY SUMS DUE AND FOR DAMAGES OR INJUNCTIVE RELIEF, OR BOTH, ALONG WITH THE COSTS OF THE SUIT AND REASONABLE ATTORNEY'S FEES MAINTAINABLE BY THE MANAGING AGENT OR THE BOARD OF DIRECTORS IN THE NAME OF THE ASSOCIATION ON BEHALF OF THE OWNERS OR IN THE PROPER CASE, BY AN AGGRIEVED OWNER.

19. Rights of Declarant. Declarant shall act as the ACC with full rights and responsibilities of the ACC until such time as Declarant owns less than 10% of the Lot/Units of Rabbitbrush Ridge.

ARTICLE VIII

USE AND OCCUPANCY RESTRICTIONS

All use and occupancy of Rabbitbrush Ridge shall be governed by the rules and regulations of the Association.

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1. Common Areas. No Owner and no Owner's Guest shall obstruct damage or commit waste to any of the Common Areas and Facilities. No Owner and no Owner's Guest shall change, alter, repair or store anything in or on any of the Common Areas and Facilities without prior written consent of the Association. Each Owner may use the Common Areas and Facilities in accordance with the purpose for which they were intended without hindering or encroaching on the lawful rights of the other Owners.

2. Recreational Vehicles and Equipment. No motor homes, travel trailers or boats may be parked or stored on any lot within Rabbitbrush Ridge or its streets for more than four (4) hours. This restriction also applies to buses, dune buggies, dirt bikes and commercial vehicles. No basketball goals shall be erected on any residence. No temporary basketball goals shall stand in a driveway for a period exceeding 8 hours.

3. No Renting. No Owner shall lease a Lot/Unit for a period less than one hundred eighty (180) days. Prior approval by the Board of Directors of the lease, its terms, and tenant is required.

4. Violations of Law. No Owner and no Owner's Guest shall do anything or keep anything in or on the Property which would be in violation of any statute, rule, ordinance, regulation, permit or any other validly imposed requirement of any governmental body.

5. No Noxious, Offensive, Hazardous or Annoying Activities. Noxious or offensive activities shall not be carried on upon any part of the Property, nor shall anything be done or placed on or in any part of the Property which is or may become a nuisance or cause embarrassment, disturbance, or annoyance to others. No activity shall be conducted on any part of the Property and no improvements shall be made or conducted on any part of the Property which are or might be unsafe or hazardous to any person or property. No sound shall be emitted in any part of the Property which is unreasonably loud or annoying. No odor shall be emitted on any part of the Property which is noxious or offensive to others. No light shall be emitted from any part of the Property which is unreasonably bright or causes unreasonable glare.

6. No Unsightliness. No unsightliness shall be permitted on or in any part of the Property. Without limiting the generality of the foregoing, nothing shall be kept or stored on or in the Common Areas and Facilities; nothing shall be hung or placed upon any of the Common Areas and Facilities; and nothing shall be placed on or in windows or doors or on porches or patios of Lot/Units which would or might create an unsightly appearance.

7. Restrictions on Animals. No animals, livestock, reptiles or birds shall be kept on any part of the Property except that domesticated dogs, cats and birds may be kept on the Property subject to all animal ordinances of the City of Farmington and the County of San Juan, New Mexico, and subject to the rules and regulations promulgated by the Association in regard thereto, provided that they are not kept for commercial purposes. An Owner is responsible for any damages caused by his animal(s). No animal

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shall be allowed to remain tied or chained to any balconies, patios, or other parts of the Lot/Unit, and any such animal(s) may be removed by the Association or its agent.

All household pets allowed by this section shall be kept in control at all times, either by fencing, tethering or kept within the home. No pet shall cause any disturbance such as barking or engage in destructive activities that would create undue annoyance to adjoining property owners.

8. Restrictions on Signs. No signs or advertising devices of any nature shall be erected or maintained on any part of the Property without the written consent of the Association. The association shall permit the placing of a least one sign of reasonable size and dignified form to identify the Property and Units therein. During the period of construction and sales of the Units, Declarant shall be permitted such signs as to facilitate sales as are permitted by the sign ordinance(s) of the City of Farmington, New Mexico.

9. Maintenance of the Lot/Unit. Each Lot/Unit and all improvements, fixture, furniture and equipment therein, both interior and exterior, shall be kept and maintained by the Owner thereof in a clean, safe, attractive, pleasing condition and in good repair.

10. No Violation of the Rules. No Owner and no Owner's Guests shall violate the rules and regulations adopted by the Association, whether relating to the use of the Lot/Unit, the use of the Common Areas and Facilities, or otherwise.

11. Owner-Caused Damage. If, due to the act or neglect of an Owner or such Owner's Guest or children, loss or damage shall be caused to any person or property, including the Property of any Lot/Unit therein, such Owner shall be liable and responsible for the same, except to the extent such damage or loss is covered by insurance obtained by the Association and the carrier of the insurance has waived its rights of subrogation against such Owner. The amount of such loss or damage may be collected by the Association from such Owner as a special assessment against such Owner by legal proceedings or otherwise and such amounts shall be secured by a lien on the Lot/Unit of such Owner as provided hereinabove for assessments and other charges.

12. Garbage and Refuse. Trash and garbage shall be kept in containers provided by the City of Farmington and screened from view of adjoining Lot/Units at all times except for twelve (12) hours before and eight (8) hours after scheduled garbage pickup. No lot shall be used or maintained as a dumping ground for rubbish.

13. Mechanical Operations. No mechanical work on automobiles or other vehicles shall be allowed in any yard, street or driveway area. No automobiles or other vehicles shall be allowed to remain in any yard, street, or driveway in an unserviceable condition. Mechanical work on automobiles or other vehicles is only allowed within a garage out of site of neighboring lots.

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14. Temporary Structures. No structure of a temporary nature, utility trailer, boat trailer, general use trailer, tent, shack, garage, barn or other outbuildings shall be permitted on any lot except that the Building Contractor may use one (1) semi-trailer or mobile office trailer for offices and storage during construction periods.

A temporary chain link fence enclosure may be erected by the Building Contractor during construction periods to secure building materials. Upon completion of construction, the temporary fence shall be removed and the site restored to its original condition with all trash and rubbish properly disposed of.

15. Speed Limit. The Maximum speed allowed on Rabbitbrush Dr. shall be 20 mph. The maximum speed on Saltbush Dr and Brittlebush Dr. shall be 15 mph.

16. Conversions. No garage conversions to living areas will be permitted.

17. Antenna/Dishes. One roof mounted antenna or dish for over the air reception is allowed so long as it is screened from the view of adjoining units.

18. Clotheslines. No clotheslines or outdoor drying of clothes shall be permitted.

19. Flags. Only the Flag of the United States of America and the Flag of the State of New Mexico shall be flown on the Property or any Lot/unit.

20. Construction and Delivery Vehicles. Construction and delivery vehicles shall enter and exit the property using the Cherry Hills gate.

DETERMINATION WITH RESPECT TO WHETHER OR NOT A PARTICULAR ACTIVITY OR OCCURRENCE SHALL CONSTITUTE A VIOLATION OF THE USE AND OCCUPANCY RESTRICTIONS SHALL BE MADE BY THE BOARD OF DIRECTORS OF THE ASSOCIATION AND SHALL BE FINAL.

ARTICLE IX

RIGHTS AND EASEMENTS

1. Association Rights. The Association shall have the non-exclusive right of easement to make such use of and to enter upon the Common Areas and Facilities, every Lot/Unit as may be necessary and appropriate for the performance of the duties and functions which the Association is obligated and permitted to perform under this Declaration.

2. Owner's Easement for Access, Support and Utility. Each Owner shall have a non-exclusive easement for access between his Lot/Unit and roads and streets adjacent to the Property and the common driveways and parking spaces, over the halls, corridors, stairs, elevators, walks, bridges, and exterior access and other easements, if



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any, which are a part of the Common Areas and Facilities. Each owner shall have a non-exclusive easement in and over the Common Areas and Facilities within the Lot/Unit if any, of another Owner for horizontal and lateral support of its Lot/Unit, and for utility service to the Lot/Unit, including water, sewer, gas, electricity, telephone and television service.

3. Easements for Encroachments. If any part of the Common Areas and Facilities encroach or shall encroach upon the Lot/Unit, an easement for such an encroachment and for the maintenance of the same shall and does exist. If any part of the Lot/Unit encroaches or shall hereinafter encroach upon the Common Areas and Facilities or upon another Lot/Unit the Owner of the encroaching Lot/Unit shall and does have an easement for such encroachment and for the maintenance of the same. Such encroachments shall not be considered encumbrances, either on the Common Areas and Facilities or on the Lot/Unit. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the construction of the Building by error in the Plat, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Property or any part thereof.

4. Easement in Lot/Units for Repairs, Maintenance, and Emergencies. Some of the Common Areas and Facilities are or may be located within a Lot/Unit. The Association, Managing Agent, and each Owner by the Association or the Managing Agent as his agent for access through each Lot/Unit and to all Common Areas and Facilities from time to time during such reasonable hours as may be necessary for the maintenance, repair, or replacement of any of the common Areas and Facilities, located therein, necessary to prevent damage to the common Areas and Facilities or to another Lot/Unit. Damage to the interior or any part of the Lot/Unit resulting from the maintenance, repair, emergency repair or replacement of any of the Common Areas and Facilities or as a result of emergency repairs on another Lot/Unit at the insistence of the Association shall be a Common Expense assessment of all the Owners. No diminution or abatement of Common Expense assessment shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements or from action taken to comply with any law, ordinance or order of any governmental authority. Restoration of the damaged improvements shall be substantially the same as the condition in which they existed prior to the damage. Notwithstanding the foregoing, if any such damage is the result of the carelessness of any Owner, then such Owner shall be solely responsible for the cost and expenses of repairing such damage.

5. Easements Deemed Appurtenant. The easements and rights created for an Owner shall be appurtenant to the Lot/Unit of that Owner and all conveyances and all other instruments affecting title to a Lot/Unit shall be deemed to grant and reserve the easements and rights as are provided for herein even though no specific reference to such easements appears in any such conveyance.

ARTICLE X

OWNER'S MAINTENANCE RESPONSIBILITY

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1. With regard to the maintenance, repair, alteration, and remodeling of the property, the following provisions shall apply:

- a. Except as provided in (b) and (c) below, the Owner of a Lot/Unit shall be responsible for the maintenance, repair, alteration and remodeling of his Unit and landscaping. Such responsibility for the maintenance, repair, alteration, and remodeling shall carry with it the obligation to replace any finishing or other materials removed with similar materials. An Owner shall maintain, clean, and keep and repair the interior and exterior of his own Lot/Unit, including fixtures, doors, and windows thereof, paint and trim, roofing materials, landscaping, and the improvements affixed thereto and such other items as may be required by the By-Laws or the Board of Directors. The Owner shall maintain, in a neat and clean condition, all decks and patios appurtenant to this Lot/Unit which are not Common Areas and Facilities. All facilities and equipment installed within the Lot/Unit commencing at a point where the utilities enter the Lot/Unit shall be maintained by the Owner thereof. Any expenses incurred by an Owner under this paragraph shall be the sole expense of said Owner.
- b. All Owners of Lot/Units to which any Common Area and Facility is appurtenant shall have the joint and several responsibility to maintain, repair, alter, or remodel said Common Area and Facility in the same manner in which an Owner shall maintain, repair, alter and remodel his Lot/Unit as provided above. The Owners shall apportion the expense of such repair, maintenance, alteration, or remodeling with each Owner paying a fraction of the total cost equal to a fraction wherein said Owner's interest in the property as set forth in this Declaration is the numerator and the interest in the property as set forth in this Declaration of all Owners of Lot/Units to which said Limited Common Area and Facility is appurtenant is the denominator. Notwithstanding the foregoing, any obligation sought to be enforced by the Association as set forth in (d) hereof shall be a joint and several obligation of all Owners of Lot/Units to which said Limited Common Area and Facility is appurtenant.
- c. The Association shall be responsible to maintain the Common Areas and Facilities and the utilities for operation of the Common Areas and Facilities together with improvements thereon. The Association is further responsible to maintain the storm sewer drainage improvements including the storm sewer piping, drop inlets, and retention pond.

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- d. In the event the Owner under paragraph (a) hereof or Owners under paragraph (b) hereof should fail to carry out or neglect the responsibilities set forth in paragraphs (a) and (b) respectively, then the Association may carry out or fulfill the same and charge the Owner all costs thereof in which case the charge may, at the option of the Association, be treated as an assessment and enforced as provided for enforcement of assessments in this Declaration, or, in the alternative, the Association may bring an action for specific performance or damages or both against the Owner or Owners.

2. Rules and Regulations. The Association may make and enforce reasonable and uniformly applied rules and regulations governing the use and occupancy Lot/Units and the Common Areas and Facilities. Such rules and regulations may, without limitation:

- a. Regulate the use of the Common Areas and Facilities to assure equitable use and enjoyment by all persons entitled thereto;
- b. Require that draperies, shades and other window coverings shall present a uniform and attractive appearance for the exterior of the building;
- c. Restrict or limit the Owner's right to use portions of the Common Areas and Facilities for particular use, purpose or event.

3. Enforcement of Rules. The Association may suspend any Owner's voting rights in the Association during a period or periods during which such Owner fails to comply with such rules and regulations or with any other obligation of such Owner under this Declaration. The Association may also take judicial action against any Owner to enforce compliance with such rules, regulations and other obligations or to obtain damages for non-compliance including reasonable attorney's fees, all to the extent as permitted by law.

4. Certificate. The Board of Directors shall from time to time record a certificate of identity and the mailing addresses of the Persons then comprising the Board of Directors, together with the identity and address of the Managing Agent, if any thereby. Such certificate shall be conclusive evidence thereof in favor of any person relying thereon in good faith regardless of the time elapsed since the date thereof.

5. Implied Rights. The Association shall have and may exercise any right or privilege given expressly by this Declaration or to be reasonably implied from the provisions of this Declaration or given or implied by law, or which may be necessary or desirable to fulfill its duties, obligations, rights and privileges.

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ARTICLE XI**ASSESSMENTS**

1. Assessment for Common Expenses. All Owners shall be obligated to pay the estimated assessments imposed by the Board of Directors of the Association to meet the Common Expenses. The assessment shall be made pro rata, according to each Owner's percentage of interest in or to the common Areas and Facilities. Except as hereinbefore provided, the Limited Common Areas and Facilities shall be maintained as Common Areas and Facilities and Owners having exclusive use thereof shall not be subject to any special charges or assessments. Assessments for estimated Common Expenses, including insurance, shall be due monthly in advance on the first day of each month. The managing Agent or Board of Directors shall prepare and deliver or mail to each Owner an itemized monthly statement showing the various estimated or actual expenses for which the assessments were made. Contributions for monthly assessments shall be pro-rated if the ownership of a Lot/Unit commences on a day other than the first day of the month. The assessments made for Common Expenses shall be based on the cash requirements deemed to be such aggregate sums as the managing agent or Board of Directors of the Association shall from time to time determine is to be paid by all of the Owners, including Declarant, to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas and Facilities, which sum may include among other things: expenses of management; taxes and special assessments until separately assessed; premiums for insurance of the types and kinds provided hereinafter; landscaping and care of grounds; common lighting and heating; repairs and renovations; trash collection; wages, water charges; legal and accounting fees; management fees; capital expenditures made by the Board; expenses and liabilities incurred by the Managing Agent or Board of Directors under or by reason of this Declaration; deficits remaining from previous periods; and other costs and expenses relating to the Common Areas and Facilities. Further, it shall be mandatory for the Managing Agent or Board to establish out of such monthly assessments, a contingency or reserve fund for the repair, replacement, and the maintenance of those Common Areas and Facilities that must be replaced periodically. The omission or failure of the Managing Agent or Board of Directors to fix this assessment for any month shall not be deemed a waiver, modification or release of the Owners from their obligation to pay. Any Owner may inspect the Association's records or receipts and expenditures at convenient weekday business hours, and upon ten days notice to the Board of Directors or Managing Agent, if any, and upon the payment of a reasonable fee not to exceed \$100.00, any Owner shall be a furnished a statement of his account setting further the amount of any unpaid assessments or other charges due and owing from such Owner.

2. Assessment Reserves. The Association may require an Owner another than the Declarant to deposit with the Association up to an amount equal to three (3) times the amount of the estimated monthly Common assessment which sum shall be held without interest by the Association or Managing Agent as a reserve to be used for paying such Owner's monthly assessment and for working capital. Such advance payments shall not relieve the Owner from making the regular payment of monthly common assessments as

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the same come due. Upon the transfer of his Lot/Unit, the Owner shall be entitled to a credit from his assignee or sublessee for any unused portion thereof.

3. Special Assessments for Capital Improvements. In addition to the monthly assessments authorized above, the Association may levy at any time a special assessment payable over such a period as the Association may determine for the purpose of deferring in whole or in part the cost of any construction or reconstruction, unexpected repair or replacement of the Property or any part thereof or for any other expense or purchase incurred or to be incurred as provided in this Declaration. This paragraph shall not be construed as an independent source of authority for the Association to incur expense, but shall be construed to prescribe the manner of assessing for expenses authorized by other sections hereof. Any amounts assessed pursuant hereto shall be assessed to Owners in proportion to their respective undivided interest in the Common Areas and Facilities. Notice in writing of the amount of such special assessment and the time for the payment thereof shall be given promptly to the Owners, and no payment shall be due less than thirty days after such notice shall have been given.

4. Lien for Non-Payment of Expenses. All sums assessed by the Association but unpaid for the share of Common Expenses chargeable to any Lot/Unit shall constitute a lien on such Lot/Unit superior to all other liens and encumbrances excepting only:

- a. Tax and special assessment liens on the Unit in favor of any assessing unit; and
- b. All sums unpaid to a First Mortgage of record including all unpaid obligatory sums as may be provided by such encumbrance.

If an assessment shall remain unpaid after ten (10) days after the due date thereof, the Board of Directors or Managing Agent may impose a penalty on such defaulting Owner in an amount equal to 1.5% of such assessment. Likewise, a penalty equal to 1.5% of the unpaid assessment may be imposed on the first day of each calendar month thereafter so long as such assessment shall be unpaid.

To evidence such lien, the Board of Directors or Managing Agent shall prepare a written notice setting forth:

- a. The amount of such unpaid indebtedness;
- b. The name of the Owner of the Lot/Unit of record;
- c. The description of the Lot/Unit.

Such notice shall be signed by one of the Board of Directors or by the Managing Agent and may be recorded in the office of the County Clerk of San Juan County, New Mexico. Such a lien for the common Expenses shall attach from the date of the failure of payment of the assessment. Such lien may be enforced by foreclosure of the defaulting



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Owner's Unit by the Association in like manner as a mortgage or real property upon the recording of notice of claim thereof. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, the costs and expense for filing the notice or claim of lien and all reasonable attorney's fees. In addition, an Owner shall pay to the Association the sum of \$100.00 if it is necessary for the Association to record a notice of lien for Common Expenses. The Owner shall also be required to pay to the Association the monthly assessment for the Unit during the period of foreclosure and the Association shall be entitled to the appointment of a receiver to collect the same. The Managing Agent or Board of Directors shall have the power to bid on the Lot/Unit at foreclosure sale and to acquire and hold and lease and mortgage and convey the same.

An encumbrancer holding a lien on a Lot/Unit may pay, but shall not be required to pay, any unpaid Common Expenses payable with respect to such Lot/Unit, and upon such payment such encumbrances shall have a lien on such Lot/Unit for the amount paid on the same rank as the lien of his encumbrance.

The Association shall report to the Mortgagee of a Lot/Unit any unpaid assessments remaining unpaid for longer than thirty (30) days after the same are due, as well as any other default of the Owner which is not cured within thirty (30) days.

Notwithstanding any provision to the contrary, any first Mortgagee who obtains title to a Lot/Unit pursuant to the remedies provided in the mortgage or foreclosure of the mortgage will not be liable for such Lot/Unit's unpaid dues or charges which accrue prior to the acquisition of the title to such Lot/Unit by the first Mortgagee.

5. Owner's Obligation for Payment of Assessments. The amount of Common Expenses assessed against each Lot/Unit shall be the personal and individual debt of the Owner thereof at the time the assessment is made. Suit to recover a money judgment for unpaid Common Expenses and costs of suit and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same. No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Areas and Facilities or by abandonment of his Lot/Unit.

6. Liability for Common Expenses Upon Transfer of Lot/Unit is Joint. Upon the payment of a reasonable fee not to exceed \$100.00 and upon ten (10) days notice from any Owner or Mortgagee or prospective Mortgagee of a Lot/Unit, the Association its Managing Agent or Board of Directors shall issue a written statement setting forth the amount of the unpaid Common Expenses, if any, with respect to the subject Unity, the amount of the current monthly assessment and the date that such assessment becomes due and the credit for any advance payments or pre-paid items, including but not limited to insurance premiums which statements shall be conclusive upon the Association in favor of all persons who rely thereon in good faith.

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Unless such request for a statement of indebtedness shall be complied with within ten (10) days, all unpaid Common Expenses which become due prior to the date of making such a request shall be subordinate to the lien of the person requesting the statement.

7. Association as Attorney-in-Fact. This Declaration does hereby make an appointment of an attorney-in-fact to deal with the Property upon its destruction, repair, or obsolescence, said power of attorney not to be affected by the incapacity of any principal. Title to any Lot/Unit is declared and expressly made subject of the terms and conditions hereof and acceptance by any grantee of a deed from any Owner shall constitute appointment of the attorney-in-fact herein provided. All of the Owners constitute and appoint the Association in their names, place and stead for the purpose of dealing with the Property upon its destruction or obsolescence as hereinafter provided. As attorney-in-fact, the Association, by its President and Secretary shall have full and complete power to make execute, deliver any contract, deed or other instrument with respect to the interest of an Owner which is necessary and appropriate to exercise the powers herein granted. Repair and reconstruction of the improvements as used in the succeeding subparagraphs means the restoration of the improvement(s) to substantially the same condition in which it existed prior to the damage with each Lot/Unit and Common Areas and Facilities and Limited Common Areas and Facilities having substantially the same vertical and horizontal boundaries as before, the proceeds of any insurance collected shall be available to the Association for purpose of repair, restoration or replacement unless the Owner and all First Mortgagees agree not to rebuild in accordance with the provisions set forth hereinafter.

ARTICLE XII

GENERAL PROVISIONS

1. Duration of Declaration. The covenants and restrictions of this Declaration shall run with and be binding on the Property, and shall inure to the benefit of and be enforceable by the Declarant, the Association, the Owner of any property subject to the Declaration, their respective legal representatives, heirs, successors, and assigns for a term of ten (20) years from the date this Declaration is recorded, after which time said covenants and restrictions shall automatically be extended for successive periods of ten (10) years unless an instrument signed by the then Owners of two-thirds (2/3) of the lot/units has been recorded, agreeing to change or to terminate said covenants and restrictions in whole or in part.

2. Duration of Remedies for Violation. Violation or breach of any condition, covenant, or restriction herein contained shall give the Declarant, Association and/or Owner(s), in addition to all other remedies, the right to proceed at law or in equity to compel compliance with the terms of said conditions, covenants and restrictions and to prevent the future violation or breach of any of them with the expense of litigation awarded to the prevailing party including all costs and reasonable attorneys fees.

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3. Severability. Invalidation of one or any of the provisions herein by a Court of competent jurisdiction does not invalidate the remaining provisions which shall be construed as a whole to give effect to the intent of Declarant expressed herein.

4. Supplement to Law. The provisions of this Declaration shall be in addition to and supplemental to the Planned Unit Development Ordinance of the City of Farmington and all other provisions of the law.

5. Numbers and Genders. Whenever herein used unless the context shall otherwise provide, the singular number shall include the plural, the singular, and the use of any gender shall include all genders.

6. Registration by Owner of Mailing Address. Each Owner shall register his mailing address with the Association and except for monthly statements and other routine notices, all other notices and demands intended to be served upon an Owner shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices, demands or other notices intended to be served upon the Board of Directors of the Association or the Association shall be sent by Certified Mail, postage prepaid, to Damon L. Weems, 8101 Foothills Dr., Farmington, NM 87402, agent for service, until such address is changed by a notice of address change duly recorded with the office of the Secretary of State of New Mexico.

7. Successors and Assigns. This Declaration shall be binding upon and inure to the benefit of the Association, each Owner and the heir's personal representatives, successors and assigns of each of them.

8. Captions. The captions and headings in this Declaration are for convenience only and shall not be considered as construing or limiting any provision of this Declaration.

9. No Waiver. Failure to enforce any provision of this Declaration shall not operate as a waiver of any such provision or any other provision of this Declaration.

10. Sales and Construction Facilities and Activities of Declarant. Notwithstanding any provision to the contrary contained herein, Declarant, its agents, employees and contractors shall be permitted to maintain during a period of construction and sale of the Units in the Property upon such portion of the Property as Declarant may choose, such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the construction, sale or rental of the Lot/Units, including, but not limited to a business office, storage area, contraction yard, signs, model Lot/Unit, sales office, construction office, parking areas, lighting and temporary parking facilities for all prospective tenants or purchasers of the Lot/Units. In addition, Declarant shall have the right to ingress and egress over the Common Areas and Facilities and Limited Common Areas and Facilities as in its discretion may be necessary to complete the Property.

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11. Amendment. This Declaration may be amended by the affirmative vote of Owners representing seventy-five percent (75%) of the votes cast with respect to the amendment at an annual or special meeting of the Owners. The Board may amend this Declaration or Plat without obtaining approval of the Owners to conform this Declaration or Plat to requirements or guidelines of any federal, state, or local authority whose approval is required by law or requested by the Board or Declarant. Any such amendment requires approval in writing by Declarant as a condition of its effectiveness and implementation.

12. Rules and Regulations. In addition to the right to adopt rules and regulations on matters expressly mentioned elsewhere in this Declaration, the Association shall have the right to adopt rules and regulations with respect to all other aspects of the Association's rights activities and duties, provided said rules and regulations are not inconsistent with the provisions of this Declaration.

13. Laws, Ordinances and Regulations. The covenants, conditions and restrictions set forth in this Declaration and the provisions requiring Owners and other persons to obtain approval of the ACC or the Board with respect to certain actions are independent of the obligation of the Owners and other persons to comply with all applicable laws, ordinances and regulations, and compliance with this Declaration shall not relieve an owner or any other person from the obligation to also comply with all applicable laws, ordinance and regulations.

IN WITNESS WHEREOF Declarant has executed this Declaration this 7 day of MAY, 2007.


 Weems Family L.L.C.
 Damon L. Weems, Manager

STATE OF NEW MEXICO)
)ss
 COUNTY OF SAN JUAN)

The foregoing instrument was acknowledged before me this 7 day of May, 2007.


 Rachael James
 Notary Public

My Commission Expires:



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EXHIBIT "A"


**LEGAL DESCRIPTION OF THE RABBITBRUSH RIDGE SUBDIVISION
PLANNED UNIT DEVELOPMENT**

A parcel of land located in the East Half (E1/2) of Section 2, T29N, R13W, N.M.P.M., Farmington, San Juan County, New Mexico, being more particularly described as follows:

BEGINNING at the East Quarter Corner of said Section 2 and S89°37'15"W for a distance of 375.22 feet to the True Point of Beginning, lying on the westerly right-of-way of Cherry Hills Drive;

THENCE: ALONG said right-of-way line of Cherry Hills Drive the following courses and distances and S89°37'15"W for a distance of 10.65 feet;
 THENCE: S20°01'25"E for a distance of 34.56 feet;
 THENCE: ALONG the arc of a curve to the right for a distance of 195.40 feet whose radius is 260.00 feet with a chord of S01°30'23"W for a distance of 190.33 feet;
 THENCE: S23°02'12"W for a distance of 251.79 feet;
 THENCE: ALONG the arc of a curve to the right for a distance of 19.64 feet whose radius is 20.00 feet with a chord of S51°10'04"W for a distance of 18.86 feet to a point on the northerly right-of-way line of Cliffside Drive;
 THENCE: ALONG said northerly right-of-way line of Cliffside Drive and S79°17'56"W for a distance of 836.61 feet;
 THENCE: LEAVING said Cliffside Drive right-of-way line and N00°22'38"W for a distance of 615.97 feet to the Southwest Corner of Lot 6 of the Cherry Hills Subdivision as recorded in Map File C-27A;
 THENCE: ALONG the south boundary line of said Cherry Hills Subdivision the following courses and distances and N89°37'15"E for a distance of 375.00 feet;
 THENCE: S00°22'44"E for a distance of 22.93 feet;
 THENCE: N79°36'07"E for a distance of 60.93 feet;
 THENCE: N00°22'48"W for a distance of 12.33 feet;
 THENCE: N89°37'15"E for a distance of 112.00 feet;
 THENCE: N52°17'07"E for a distance of 73.94 feet;
 THENCE: N37°23'44"E for a distance of 108.48 feet;
 THENCE: N20°43'15"E for a distance of 51.31 feet;
 THENCE: N62°09'59"E for a distance of 209.19 feet to a point on the westerly right-of-way line of Cherry Hills Drive;
 THENCE: ALONG said Cherry Hills Drive right-of-way line the following courses and distances and S02°47'55"E for a distance of 49.62 feet;
 THENCE: ALONG the arc of a curve to the left for a distance of 99.39 feet whose radius is 330.00 feet with a chord of S11°26'46"E for a distance of 99.01 feet;
 THENCE: S20°01'25"E for a distance of 136.08 feet and back to the point of beginning.

Said tract of land contains 12.54 acres, more or less.


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