

DESERT VISTA SUBDIVISION
COMPREHENSIVE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS


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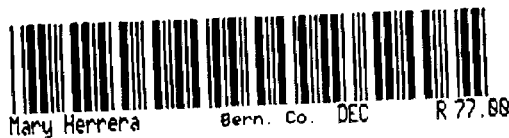
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DESERT VISTA SUBDIVISION

COMPREHENSIVE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION is made on the date and year below written by D. R. HORTON, INC., a Delaware corporation, hereinafter referred to as the "Declarant."

RECITALS

1. Declarant is the owner of that certain real property described in Section 1.17 hereof (the "Property").

2. The purpose of this Declaration is to create and carry out a uniform plan for the improvement, development, sale and use of the Property; to preserve so far as possible the natural beauty of the Property; to guard against the erection of poorly designed or proportioned Improvements, or the use of unsuitable materials; to encourage and secure the erection of well designed, attractive Improvements which are harmonious with their sites and consistent with existing Improvements; and in general, to enhance the environmental quality and economic value of the Property.

NOW, THEREFORE, Declarant hereby declares that the real property described in Exhibit A to this Declaration shall be held, sold, used, developed, occupied, leased and conveyed subject to the following reservations, easements, restrictions, covenants and conditions, as amended or as modified from time to time, which shall run with the Property and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1.1. "Architectural Control Committee" shall mean and refer to the committee created pursuant to Article VIII hereof. Such Architectural Control Committee shall hereinafter sometimes be referred to as "ACC" or "Committee."

Section 1.2. "Architectural Control Committee Rules" shall mean and refer to such rules as are adopted by the ACC pursuant to Article VIII hereof.

Section 1.3. "Assessments" shall mean and refer collectively to all regular operating expense charges or assessments, all regular reserve fund charges or assessments, any applicable special assessments or charges, and any fines or other fees provided for in Article X hereof.



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Section 1.4. "Association" or "Homeowners Association" shall mean and refer to Desert Vista Homeowners Association, Inc., a New Mexico non-profit corporation, which Declarant has or shall cause to be incorporated.

Section 1.5. "Common Facilities" shall mean and refer to all existing and subsequently provided Improvements upon or within the Common Properties, except those as may be expressly excluded herein. Also, in some instances, Common Facilities may consist of Improvements for the use and benefit of all Owners constructed on a portion of one or more Lots or on acreage owned by Declarant (or Declarant and others) which is not a part of the Common Properties. By way of illustration, Common Facilities may include, but are not necessarily limited to, the following: structures for storage or protection of equipment, fences, walls, perimeter walls, landscaping, drainage, and other similar and appurtenant Improvements. References herein to the "Common Facilities (any Common Facility) in the Subdivision" shall mean and refer to Common Facilities as defined respectively in this Declaration.

Section 1.6. "Common Properties" shall mean and refer to any tracts and lots deeded or to be deeded to the Association for the benefit of all Owners, together with such other property as the Association may, at any time or from time to time, acquire by deed from Declarant, purchase or otherwise, subject, however, to the easements, limitations, restrictions, dedications and reservations applicable thereto by virtue hereof and/or by virtue of the Subdivision Plats. References herein to "the Common Properties in the Subdivision" shall mean and refer to Common Properties as defined respectively in this Declaration.

Section 1.7. "Declarant" shall mean and refer to D. R. HORTON, INC. or its assignee of the rights and/or obligations under this Declaration.

Section 1.8. "Declaration" shall mean the covenants, conditions, and restrictions herein set forth in this entire document, as the same may be from time to time amended and supplemented.

Section 1.9. "Development Plan" shall mean the plan for development of a Lot which is required to be submitted to the ACC pursuant to Sections 6.1 and 8.12 hereof. The plan shall include a landscaping plan.

Section 1.10. "Drainage Easement" shall be any area designated on the Subdivision Plat as such.

Section 1.11. "Improvement(s)" shall mean the buildings, garages, antennas, driveways, parking areas, walls, fences, hedges, plantings, planting or removal of trees or shrubs or hedges or ground cover or any other landscaping, lighting and all other Structures or landscaping Improvements of every kind and type affecting the natural condition of the land or the drainage of surface waters on, across or from the land.

Section 1.12. "Lot" shall mean each parcel of land shown or to be shown as a lot on the recorded Subdivision Plats for Desert Vista, and designated thereon by a separate Lot number, or shown or to be shown on any subsequent subdivision of a lot or tract within Desert Vista.



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Section 1.13. "Corner Lot" shall mean a lot which abuts more than one street, and in the absence of any other designation shall be deemed to front the street on which it has the smaller dimensions; although Declarant reserves the right to designate the street on which any Corner Lot shall be deemed to front.

Section 1.14. "Member(s)" shall mean and refer to all those Owners who are members of the Association as provided in this Declaration.

Section 1.15. "Modular Dwelling" shall mean a factory-fabricated transportable building designed to be used by itself or to be incorporated with similar units at a building site into a modular structure on a permanent foundation. The term applies to major assemblies designed to be permanently affixed to real property in conformance with the local building code, and does not include prefabricated sub-elements such as panels, trusses, or plumbing trees which are to be incorporated into a structure at a building site.

Section 1.16. "Owner(s)" shall mean and refer to the record Owner, whether one or more persons, associations or entities, of legal, equitable or beneficial title of or to any Lot, including Declarant. Owner shall include the purchaser of a Lot under a real estate contract for sale of real property. The foregoing does not include persons or entities who hold an interest in any Lot or in the Property merely as security for the performance of an obligation or who are the seller under a real estate contract. Any reference herein to Owners shall include Owners as defined herein.

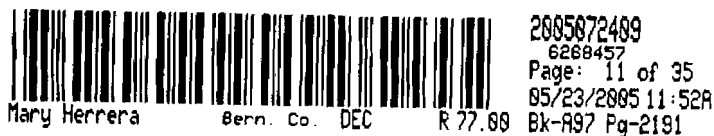
Section 1.17. "Property" shall mean and refer to the real property located in Bernalillo County, New Mexico, and more specifically described in **Exhibit A** to this Declaration including the aerial and subsurface rights appurtenant thereto, and such additional real property, if any, as may be annexed and added to the Subdivision, when any map or plat thereof is filed of record and a supplement to this Declaration is recorded which identifies the platted lots therein and the new or revised Common Properties.

Section 1.18. "Single-family Residential Use" shall mean the occupation or use of a Structure as a residence by a single person, a family or a family-sized unit in conformity with this Declaration and the requirements imposed by applicable zoning laws or any other state, county or municipal laws, rules, regulations, codes or ordinances. An Owner may rent or lease his residential Structure, but any such rental or lease must be by a written agreement which requires the tenant to observe the covenants, conditions and restrictions of this Declaration and no residential Structure may be rented or leased for a period of less than thirty (30) days.

Section 1.19. "Single-family Residential Unit" shall mean any building situated upon a Lot or Tract designed and intended for use and occupancy as a residence by a Single Family.

Section 1.20. "Structure(s)" shall mean anything erected, constructed, placed, laid or installed in, on, or over real property, the use of which requires a location on or in the ground but not including vegetation, trees, shrubs or plantings.

Section 1.21. The "Subdivision" or "Desert Vista" shall mean all of the Desert Vista Subdivision, as set forth on the Subdivision Plat filed in the real property records of the Bernalillo County Clerk on February 9, 2005 in Book 2005C, Page 58, Document # 2005019639,



and such additional real property, if any, as shall be annexed and added to the Subdivision, as when any maps or plats thereof are filed of record and a supplement to this Declaration is recorded which identifies the platted lots therein and the new or revised Common Properties.

Section 1.22. "Subdivision Map" or "Subdivision Plat" or "Plat Map" or "Plat" or "Final Plat" shall mean the recorded map or plats of the Desert Vista Subdivision, as amended or replatted from time to time, covering any or all of the Property referred to in this Declaration.

Section 1.23. "Visible From the Street" shall mean that with respect to any given object, that such object is or would be visible to a person six (6) feet tall, standing on any part of the street in front of the subject house.

ARTICLE II

PROPERTY SUBJECT TO RESTRICTION

Section 2.1. General Declaration. Declarant hereby declares that the Property within the Subdivision is and shall be held, conveyed, developed, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part, subject to this Declaration, as amended or modified from time to time. This Declaration is declared and agreed to be in furtherance of a general plan for the subdivision, improvement and sale of the Property, and is established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property and every part thereof. All of this Declaration shall run with all of the Property for all purposes and shall be binding upon and inure to the benefit of Declarant, all Owners and their successors in interest.

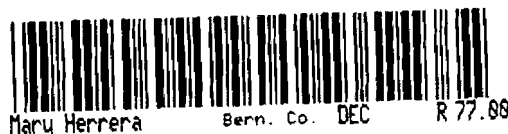
Section 2.2. Description of Property. The property subject to this Declaration is all Property described in Section 1.17 hereof.

ARTICLE III

LAND USE

Section 3.1. Single-family Residential Use. The Lot Owner shall not use any of the Property for other than Single-family Residential Use and is restricted to one Single-family Residential Unit per Lot.

Section 3.2. Limitations on Renting. No Lot Owner shall rent his house for less than a thirty (30) day term. No house within the Subdivision shall be rented other than on a written form of lease requiring the lessee to comply with this Declaration, as amended from time to time, the By-Laws and any rules and regulations promulgated by the Association's Board of Directors and/or the ACC, and providing that failure to comply constitutes a default under the lease. Each Owner shall promptly, following the execution of any such lease, forward a conformed copy to the Association's Board of Directors. The foregoing provisions of this subparagraph shall not apply to the Declarant, or to a Mortgagee in possession of a Lot as a result of a foreclosure or other judicial sale or as a result of any proceeding in lieu of foreclosure, during the period of such Mortgagee's possession.



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Section 3.3. Replating. Declarant has the right in its sole discretion to replat the Subdivision into a greater number of lots than 67 or to revise the lot lines, subject to Section 3.3 herein, and to file maps or plats of additional real property annexing and adding to the Subdivision. Each Owner hereby makes, constitutes and appoints Declarant, with full power of substitution, as the Owner's lawful attorney-in-fact, with power to execute, acknowledge, file and record with any governmental authority any appropriate documents for the purpose of effecting the resubdivision of any Lot or portion thereof (including replatting the Subdivision into a greater number of Lots or revising Lot lines), in accordance with the terms of this Declaration. The foregoing power (i) is coupled with an interest, (ii) is irrevocable, (iii) shall survive the dissolution of or resignation of Declarant, (iv) may be exercised for each Owner individually or by listing all of the Owners and executing any instrument with a single signature as attorney-in-fact for all of them, and (v) shall be binding upon all assignees and successors of each Owner. Tracts A through P in Desert Vista are identified on the Plat as common areas and pedestrian access and drainage easements which have been, or shall be, deeded to and maintained by, the Association.

Section 3.4. Limitations on Replating. No Owner (other than Declarant) shall subdivide or separate into smaller Lots or parcels any Lot, or tract. No Owner (other than Declarant) shall convey or transfer any portion of any Lot, or tract, or any easement or any other interest (other than a security interest or a rental or lease), without the written consent of Declarant.

Section 3.5. Combining of Lots. An Owner of two (2) or more contiguous Lots may, with prior written approval of the ACC, combine said Lots into one Lot. Such combination shall be at the sole expense of said Owner. After combination, the resulting Lot shall be treated as one (1) Lot for all purposes of this Declaration, including voting rights within the Association and resubdivision.

Section 3.6. Restrictions On Business and Commercial Activity and Rental or Leasing of Property. No business or commercial activity frequented by and open to the general public (and in any event no business or commercial activity which takes place outdoors or which creates noise audible from neighboring property) shall be conducted within the Subdivision. Home occupations of the Owner are permissible if conducted in the home and in compliance with city ordinances and regulations and any rules and regulations governing home occupations hereafter adopted by the ACC. Nothing contained herein shall be deemed to prevent the rental or leasing of a Single-family Residential Unit by the Owner thereof, subject to all the provisions of this Declaration.

Section 3.7. Conveyance of Common Properties. Notwithstanding the foregoing limitations on land use, Declarant has the right in its sole discretion to convey lots and tracts of the Subdivision to the Association for use as landscape and access easements and other common purposes, after final plats are recorded. Tracts A-P, in Desert Vista shall be landscaped by Declarant and conveyed to the Association. Such conveyances shall be free and clear of all encumbrances which would at any time or from time to time, secure an obligation to pay money and, with regard to any Common Properties used for ingress or egress, any conveyance or encumbrance thereof shall be subject to the Lot Owners' easement thereover. Such conveyances may, however, be subject to any/or all of the following exceptions, liens, and encumbrances:


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- (a) The lien of real property taxes and assessments not delinquent;
- (b) Such easements and rights of way as may have been offered for dedication to a political subdivision or public organization, or public utility corporation;
- (c) Obligations imposed, directly or indirectly, by virtue of any statute, law, ordinance, resolution, or regulation of the United States of America, the State of New Mexico, or any other political subdivision or public organization having jurisdiction over such property, or by virtue of any organization or body politic created pursuant to any such statute, law, ordinance or regulation.

ARTICLE IV

EASEMENTS

Section 4.1. Existing Easements. The Subdivision Plat(s) has or shall dedicate for use as such, subject to the limitations set forth therein, certain roadways, streets, rights-of-way and easements shown thereon and such Subdivision Plat(s) has or will establish dedications, limitations, reservations and restrictions applicable to the Property. Further, Declarant may, prior to the Property becoming subject to this Declaration, grant, create and dedicate by recorded instrument(s) certain other easements, restrictions, rights-of-way and related rights affecting the Property. All dedications, limitations, restrictions and reservations shown on the Subdivision Plat and all grants and dedications of easements, restrictions, rights-of-way and related rights made by Declarant prior to the Property becoming subject to this Declaration, are incorporated herein by reference and made a part of this Declaration for all purposes as if fully set forth herein and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the Property.

Section 4.2. Changes and Additions. Declarant reserves the right to make changes in and additions to the above easements and rights-of-way for the purpose of most efficiently and economically installing the Improvements. Further, Declarant reserves the right, without the necessity of the joinder of any Owner or other person or entity, to grant, dedicate, reserve or otherwise create, at any time or from time to time, rights-of-way and easements for public utility purposes (including, without limitation, gas, water, electricity, telephone and drainage), in favor of any person or entity, along and on either or both sides of any Lot line, which such easement shall have a maximum width of five (5) feet on each side of such Lot line.

Section 4.3. Utility Installation and Maintenance. There is hereby created an easement upon, across, over and under all of the Property for ingress and egress in connection with installing, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, gas, telephone and other communication services, electricity, cable television and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies, and other entities supplying service to install and maintain pipes, wires, conduits, service lines or other utility facilities or appurtenances thereto on, above, across and under the Property, within the public utility easements from time to time existing and from service lines



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situated within such easements to the point of service on or in any Structure. Notwithstanding anything contained in this Section, no electrical lines, water lines or other utilities or appurtenances thereto may be relocated on the Property until approved by Declarant or the ACC. The utility companies furnishing service shall have the right as necessary to remove trees situated within the utility easements shown on the Subdivision Plats and to trim overhanging trees and shrubs located on portions of the Property abutting such easements.

Section 4.4. Maintenance of Perimeter Wall. Each Owner of a Lot bordering the Subdivision perimeter wall covenants and agrees to the creation hereby of a permanent easement in favor of Declarant, the ACC and the Association to enter upon his Lot for the purpose of maintaining and repairing the perimeter wall. Each such Owner further covenants not to add to, remove, color or otherwise modify the perimeter wall. Repair and maintenance of the perimeter wall shall be the responsibility of the Association.

Section 4.5. Easements for Access by Declarant/or ACC. Declarant, the ACC, and the Association shall have the right and permanent easement to enter upon any and all Lots in the Subdivision for the purposes of inspections as to compliance with this Declaration and correcting any violation of any obligation herein.

Section 4.6. Surface Areas. The surface of easement areas for any underground utility services may be used for planting of shrubbery, trees, lawns or flowers. However, neither Declarant nor any supplier of any utility service using any easement area shall be liable to any Owner or to the Association for any damage done by them or either of them or their respective agents, employees, servants or assigns to any of the aforesaid vegetation as a result of any activity relating to the construction, maintenance, operation or repair of any facility in any such easement area.

Section 4.7. Encroachment Easements. Should minor variations between Lot lines as shown on the Plat and actual physical lot boundaries (such as walls, including interior party walls and fences) occur, either due to original construction, reconstruction, repair or due to the settling, shifting or movement of Structures, a valid easement shall exist for the encroaching Improvement(s) for so long as the encroachment exists.

ARTICLE V

STREETS

Section 5.1. Public Streets. All of the streets shown on the Plat are public streets.

ARTICLE VI

IMPROVEMENTS AND STRUCTURES

Section 6.1. Development Plan. Each Owner shall be required to submit a detailed Development Plan, pursuant to the Rules of the ACC, and such plan must be approved in writing prior to the commencement of construction of any Improvement. No construction whatsoever, including, without limitation, site preparation, clearing of trees or excavation, shall commence



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without the prior written approval of the ACC. All construction and development shall comply strictly with the approved Development Plan. Any person purchasing any portion of the Property subject to this Declaration acknowledges that the breach or violation of this Section 6.1 is likely to result in irreparable harm to the rights and interests of other Owners in the Subdivision and that the ACC or the Association, on behalf of such Owners, shall be entitled to injunctive relief, temporary or permanent, in order to prohibit such violation; provided, however, that this provision shall be in addition to any other remedies available hereunder, including fines, or at law or equity.

Section 6.2. Time for Construction. All of the provisions of this Section 6.2. shall not be applicable to Declarant, its affiliates or subsidiaries.

(a) Construction of any Structure or Improvement shall be continuous and proceed in an orderly fashion without interruptions and any Structure or Improvement on a Lot shall be completed in a reasonable time, not to exceed twelve (12) months from the commencement of construction (fourteen (14) months for landscaping).

(b) The foundation for any Structure or Improvement shall be completed as soon as is practically possible after the commencement of construction.

(c) Commencement of construction shall mean the first on-site work for construction, including, but not by way of limitation, clearing of trees, excavation or site preparation for the purpose of foundation.

(d) Materials and equipment necessary for construction, and all debris resulting from clearing or construction, shall be confined to the Lot, and shall not be left on any other Lots, Common Properties or streets.

Section 6.3. Residential Structures. All residential Structures shall be subject to the following requirements, and each enumerated item must be included in the Development Plan submitted and approved in writing by the ACC prior to the commencement of construction; provided, however, that the following requirements shall not be the sole basis for consideration by the ACC (see Section 8.15 of this Declaration). Once approved, no Structure or Improvement may vary from the Development Plan without further approval of the ACC.

(a) Set Backs: No garage shall be erected on any Lot closer than twenty (20) feet to the front of the property line. No residential Structure shall be erected on any Lot closer than fifteen (15) feet from the front property line, or closer than fifteen (15) feet from the rear property line, or closer than five (5) feet from the side lot line. With reference to Corner Lots, no Structure or portion thereof may be erected closer than ten (10) feet from the side property line. Ordinary projections of sills, belt courses, cornices and ornamental features may project as much as twenty-four (24) inches into the side set back lines. For the purpose of this paragraph, eaves, steps, and equipment pads shall not be considered as part of a Structure. Where more than one Lot is acquired as a single building site, the side lot lines shall refer only to the lot lines bordering the adjoining property owners. Notwithstanding anything to the contrary herein, the ACC shall have the right to permit reasonable modifications of the set back requirements where in the discretion of the ACC, strict enforcement of the set back provisions would work an



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extreme hardship or otherwise not be appropriate under the circumstances. However, in no event shall set back requirements be less than required by applicable City Zoning.

(b) Minimum Floor Areas: All single-family residential Structures shall have a fully enclosed heated living area of not less than twelve hundred (1200) square feet, exclusive of portals, porches (open and closed), patios, garages, balconies or decks. Carports are not permitted.

(c) Height Limitations: No Structure shall be erected, altered or permitted to remain on any Lot that will exceed a vertical distance above ground level of twenty-six (26) feet at any point (excluding roof mounted mechanical equipment or any associated screening, chimneys, flues, and vent pipes or stacks). Ground level shall be defined as the highest pad elevation on any single Lot, as shown on the grading plans and/or as directed or approved by the ACC.

(d) Exterior Color Schemes and Materials: Single Family Residential Units shall be constructed with exterior wall surfaces that are predominantly stucco. Masonry veneer or solid masonry (including stone) accents are permitted provided that such accents do not comprise greater than 25% of the surface area of any elevation of the Structure (front, sides, back). Exterior surface colors shall be in earth tones approved by the ACC with no bright or gaudy colors being allowed.

(e) Roofing Materials: Roofs shall be made of concrete tile, in either barrel or flat style and shall be in harmonious color tones approved by the ACC. The ACC shall have the right to impose additional limitations on roofing materials to be used in any Structure.

(f) Driveway: The ACC shall have the right to impose limitations on driveway design, including materials, aprons, location and point of contact with dedicated roads, streets or other private driveways in the Subdivision.

(g) Garbage Containers: The ACC shall have the right to establish rules and regulations for the placement and storage of garbage containers on Lots. Each Lot Owner will be responsible for placing solid waste in plastic bags and/or garage cans, as may be required by the trash removal service or taking the waste to the appropriate landfill site.

(h) Tanks, Air Conditioners and Evaporative Coolers: The ACC shall have the right to approve the location of any tank, air conditioner or evaporative cooler used or proposed in connection with a single-family residential structure, including swimming pool filter tanks. Oil or gasoline tanks are prohibited on any Lot.

(i) Exterior Lighting: The ACC shall have the right to approve the location, number, size and design of all proposed exterior lighting.

(j) Garages: No garage shall be erected, altered, placed or permitted to remain on any lot other than a private garage for not more than three (3) cars, or less than two (2) cars. The interior of any garage may be converted to any use which is otherwise permissible hereunder, however, the exterior facade of any converted garage, including but not limited to exterior doors, shall not be modified in any way. No interior of any garage may be converted for



use as living or office space or to conduct any business or commercial venture if such conversion would result in there being less than 2 parking spaces in the garage.

Section 6.4. Trees, Shrubs and Landscaping. Landscaping is a mandatory element of each Development Plan. The ACC shall have the right to approve the removal and/or addition of trees, shrubs, hedges, ground cover and all other landscaping.

Section 6.5. Windmills, Towers and Antennas. No windmills or towers will be allowed in the Subdivision. No antenna or satellite dishes or other service for the transmission or reception of television signals, radio signals or other form of electromagnetic radiation, visible from the street the home faces, shall be erected, used or maintained on any Lot, whether attached to a building or Structure or otherwise, without prior approval of the ACC. Notwithstanding the foregoing, the ACC shall approve a location visible from the street if such location is the only location where an adequate signal can be received. No radio signals, television signals, or any other form of electromagnetic radiation shall originate from any Lot which may unreasonably interfere with the reception of any television or radio signal on any other Lot.

Section 6.6. Underground Utility Lines. No utility lines, including, but not limited to, wires or other devices for the communication or transmission of telephone or electric current or power, cable television or any other type of line or wire shall be erected, placed or maintained anywhere in or upon any Property, by any Owner other than Declarant, within the Subdivision unless the same shall be contained in conduit or cables installed and maintained underground or concealed in, under or on buildings or other Structures.

Section 6.7. Temporary Structures. No temporary structures of any kind, including but not limited to a trailer, mobile home, basement of any incomplete building, tent, shack, garage, barn or any other temporary building of any kind shall be utilized at any time for a residence on the Property within the Subdivision either on a temporary or permanent basis. Temporary structures may only be used for other purposes if such purposes have received prior written approval from the ACC.

Section 6.8. Out-buildings. Acceptable out buildings include a storage shed, a work shop, a swimming pool, a gazebo and other accessory buildings and improvements strictly incidental and appropriate to single family use. However, all proposed out-buildings must either conform to a guideline promulgated by the ACC, or be included in a Development Plan approved in writing by the ACC.

Section 6.9. Signs. No sign, billboard, or advertising structure, including but not limited to "For Sale" and "For Rent" signs, shall be erected or maintained on any Lot or parcel of property within the Subdivision, unless approved in writing by the ACC or otherwise consistent with any signage rules that may be issued by the ACC. The forgoing provision shall not apply to the Declarant who may erect signs as its deems necessary in connection with its construction and marketing activities.

Section 6.10. Improvements and Alterations. No Structures, Improvements, alterations, repairs, excavations or other work which in any way results in the permanent alteration of the exterior appearance of any Structure within the Subdivision or the appearance of any other Improvements located thereon from its natural or improved state existing on the date such

Property was first conveyed in fee to the current Owner, or Purchaser or annexed by Declarant, whichever is later, shall be made or done without the prior written approval of the ACC.

Section 6.11. Solar Equipment. Request for approval of installation of any type of solar equipment shall be included in the Development Plan and approved in writing by the ACC.

Section 6.12. Chemical Fertilizers, Pesticides or Herbicides. No commercial chemical fertilizers, pesticides or herbicides other than those products which are readily available for consumer use and approved by an agency, such as the Food and Drug Administration, for the purpose intended shall be used on any of the Property, unless the same are being used and applied by duly licensed applicators.

Section 6.13. Water Conservation/Fire Protection. Instruments to facilitate water conservation and fire protection are strongly encouraged. The ACC reserves the right to require the installation of residential sprinklers, low flow toilets and similar devices in all new construction.

ARTICLE VII

RESTRICTIONS

Section 7.1. Animals-Household Pets. No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained or cared for on the Property. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed on the Property other than the Lot of its Owner unless confined to a leash or under voice control. No animal may be stabled, maintained, kept, cared for or boarded for hire or remuneration on the Property and no kennels or breeding operation will be allowed. No animal shall be allowed to run at large and all animals shall be kept within an enclosed area which must be clean, sanitary and reasonably free of refuse, insects and waste at all times.

Section 7.2. Maintenance of Lawns and Plantings. Each Owner, on his Lot, shall keep all shrubs, trees, grass and planting of every kind which are Visible From the Street, or from a Common Property or Common Facility, properly cultivated, pruned and free of trash and other unsightly material. Declarant, the Association and the ACC shall have the right at any reasonable time to enter upon any Lot to replace, maintain and cultivate shrubs, trees, grass or other plantings located thereon, at cost to Owner.

Section 7.3. Clothes Drying Facilities. Outside clothes lines or other facilities for drying clothes or airing clothes shall not be erected, placed or maintained on any Lot.

Section 7.4. Hunting/Trapping/Firearms and Explosives. Hunting, trapping and discharge of firearms or other explosives are expressly prohibited within the Subdivision.

Section 7.5. Dumping. Dumping of ashes, trash, rubbish, sawdust, garbage, land fill, solid waste and any type of refuse and other unsightly or offensive material is expressly prohibited within the Subdivision.



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Section 7.6. Waste. The commission of waste is expressly prohibited within the Subdivision.

Section 7.7. Mineral Exploration. No mining, quarrying, tunneling, excavation or drilling for exploration or removal of any minerals including oil, gas, gravel, rocks, earth or earth substances of any kind shall be permitted within the Subdivision. The provisions of this section do not apply to the normal earthmoving activities associated with construction of improvements in accordance with this Declaration and all applicable laws, regulations and requirements of governmental authorities with jurisdiction over the Property.

Section 7.8 Business Activities. No business or commercial activity frequented by and open to the general public (and in any event no business or commercial activity which takes place out of doors or creates noise audible from neighboring Property) shall be conducted within the Subdivision. Home occupations of the Owner are permissible if conducted in the home and in compliance city ordinances and regulations and with any rules and regulations governing home occupations hereafter adopted by the ACC. Nothing contained herein shall be deemed to prevent the rental or leasing of a Single-family Residential Unit by the Owner thereof, subject to all of the provisions of this Declaration.

Section 7.9. Obnoxious Activities. No nuisance, obnoxious or offensive activities shall be permitted on any Lot, nor shall any rubbish or debris of any kind be placed or permitted to accumulate on or adjacent to any of the Property within the Subdivision, and no odors shall be permitted to arise therefrom, so as to render any such Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provision, no speakers, horns, whistles, bells or any other devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such Property which are audible from neighboring Property. No Lot or portion thereof shall be used in whole or in part for the storage of inoperable vehicles or commercial equipment. No operable vehicles may be parked or stored other than in a garage, on a driveway or on the street during the day time.

Section 7.10. Garbage. No garbage or trash shall be placed or kept on any Lot except in covered containers located in accordance with any rules and regulations promulgated by the ACC in accordance with Section 6.3(g). All rubbish, trash, and garbage shall be removed from Lots and shall not be allowed to accumulate thereon. No incinerator shall be kept or maintained on any Lot. No garbage, trash, or debris shall be permitted to be buried on any Lot at any time nor shall the burning thereof be permitted.

Section 7.11. Vehicles and Equipment. No bus, truck larger than a one-ton pickup, semi-trailer, tractor, machinery, or commercial equipment shall be kept, placed (except during the course of making deliveries for the purpose of loading or unloading), maintained, constructed, reconstructed, or repaired on the Property. No motor vehicle or trailer of any type shall be built, rebuilt or repaired on the Property other than in a garage. Motor homes, recreational house trailers, horse trailers, truck campers, boats, boat trailers and recreational vehicles of any sort or type which are intended to be kept on the Property by the Owner must, to the extent possible, be garaged; and if kept outside must be parked on a concrete driveway behind the privacy wall on the subject Lot, screened or partially screened from view from the



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street, in a location and in a manner approved by the ACC. No motorized vehicle of any kind may be operated in any manner which is dangerous, noisy or which creates a nuisance.

Section 7.12. No Overnight Parking. No vehicle of any kind shall be allowed to park overnight on any street within the Subdivision, without the prior written approval of the ACC.

Section 7.13. Emergency or Temporary Maintenance Vehicles. The provisions of this Declaration shall not prevent any emergency vehicle repairs or operation of an emergency vehicle, ambulance, etc., within the Subdivision. The provisions of this Declaration shall also not prevent the operation or temporary use of construction vans, trucks, and machinery/equipment maintained during and used exclusively in connection with the construction of any Improvement approved in writing by the ACC.

Section 7.14. Motorcycles / All Terrain Vehicles. The use of motorcycles or All Terrain Vehicles shall be limited to those which have been approved and are legal for street use. Such use shall be limited to the public streets.

Section 7.15. Continuing Adequacy of Repair or Maintenance. No Improvement upon the Property within the Subdivision shall be permitted to fall into disrepair, and each Improvement shall at all times be kept in good condition and repair and, if applicable, adequately painted or otherwise finished. Such duty to repair shall include the maintenance of any Structure exterior and finish which was included in the Development Plan approved by the ACC.

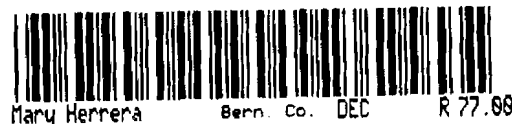
Section 7.16. Wood Piles and Storage Piles. No wood pile or storage pile shall be located on any part of a Lot other than behind the rear yard privacy fence and may not be against any common fence or wall or be higher than the height of any authorized fence or wall. Any Structure of a permanent nature to be built with regard to these items and must be included in the Development Plan and approved in writing by the ACC.

Section 7.17. Gates, Walls, and Fences. All gates, walls, and fences must be described in the Development Plan and approved by the ACC. Retaining walls shall be party walls if placed on the common property line between two (2) Lots and shall not be removed by either Owner. Liability as between the Owners with the respect to the maintenance and/or alteration of any party wall shall be as provided by the laws of the State of New Mexico. Except for necessary retaining walls, which shall be of minimum height, the following requirements shall apply to all walls and fences:

(a) Unless otherwise approved by the ACC, no wall or fence shall be erected or allowed to remain nearer the street than the front of the residential Structure except for retaining walls not higher than 18" from the ground on either side of such retaining wall, and

(b) On Corner Lots, no wall or fence facing the side street shall be erected or allowed to remain nearer to the front street than thirty (30) feet.

(c) All walls and fences shall be built of masonry block, stuccoed block, or frame/stucco and of a color(s) as may be approved by the ACC.



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(d) All builders and/or Owners shall be responsible for the construction of retaining and privacy walls on common property lines including rear property lines in accordance with all applicable Federal, State, City and County codes and ordinances.

(e) No walls or fences shall be erected or placed on any Lot or Lots lower than four (4) feet nor higher than six (6) feet above ground level except as directed or approved by the ACC. Walls previously approved by the ACC at a height less than six (6) feet may be raised to not more than six (6) feet without further approval by the ACC, provided that the masonry block and mortar match the existing wall. "Ground Level", in this instance, is defined as the highest natural ground elevation on either side of the wall.

Section 7.18. Mobile Homes, Modular Dwellings and Odd Shaped Structures. Mobile homes, modular dwellings, and "A" frame, cubicle and dome structures are not allowed.

ARTICLE VIII

ARCHITECTURAL CONTROL COMMITTEE

Section 8.1. Establishment and Composition. There is hereby established an Architectural Control Committee ("ACC"), which shall consist of three (3) regular members and three (3) alternate members. The following persons are hereby designated as the initial members:

<u>Position</u>	<u>Name</u>	<u>Type</u>	<u>Address</u>
Office No. 1	Kathryn M. Rhoades	Regular	4400 Alameda NE, Bldg. B Albuquerque, NM 87113
Office No. 2	Dean Anderson	Regular	4400 Alameda NE, Bldg. B Albuquerque, NM 87113
Office No. 3	Richard Murphy	Regular	4400 Alameda NE, Bldg. B Albuquerque, NM 87113
Office No. 4	Paula Valdez	Alternate	4400 Alameda NE, Bldg. B Albuquerque, NM 87113
Office No. 5	Rick Bressan	Alternate	4400 Alameda NE, Bldg. B Albuquerque, NM 87113

Office No. 6 Declarant will appoint a third alternate within twelve (12) months of the filing of this Declaration.

Members of the ACC shall serve without salary or pay and none of the members shall be required to be an architect or to meet any other particular qualifications for membership.

Section 8.2. Voting and Status of Alternate Members. Except as otherwise provided herein, a vote or written consent of a majority of the regular members of the ACC at a meeting or otherwise shall constitute the act of the Committee. Except as hereinafter provided, alternate members shall not be entitled to vote. In the event of absence or disability of one (1) or more regular members, the remaining member or members, even though less than a quorum, may designate an alternate member to act or substitute for the absent or disabled regular member for



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the duration of such absence or disability. The alternate member so designated shall be entitled to vote in place of the regular member for whom the alternate member so substitutes. Notwithstanding the foregoing provisions, the ACC is not authorized to act unless at least one (1) regular member is present or, in the event action is taken without a meeting, unless at least one (1) regular member consents in writing thereto.

Section 8.3. Terms of Office. Unless the initial members of the ACC have resigned or been removed, their terms of office shall be for the periods of time beginning as of the date of recordation of this Declaration and ending on the dates indicated below, and until appointment of their respective successors:

Office Nos. 1 and 4	January 1, 2006
Office Nos. 2 and 5	January 1, 2006
Office Nos. 3 and 6	January 1, 2006

Thereafter, the term of each ACC member appointed shall be for a period of three (3) years and thereafter until the appointment of a successor. Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term. Members who have resigned or whose terms have expired may be reappointed.

Section 8.4. Appointment and Removal. Except as provided below, the right to appoint and remove all regular members and alternate members of the ACC at any time, with or without cause, shall be, and hereby is, vested solely in Declarant. At such time as Declarant owns less than twenty-five percent (25%) of the Lots (in number) or at such time that Declarant records a waiver of the right herein retained, whichever event occurs first, the right to appoint and remove all regular and alternate members of the ACC shall automatically be transferred to the Board of Directors. Appointment of all regular and alternate members of the ACC shall thereafter be appointed by a majority of the Board of Directors.

Section 8.5. Resignations. Any regular member or alternate member of the ACC may resign at any time from the Committee by giving written notice thereof to Declarant or the Board of Directors as the situation requires.

Section 8.6. Vacancy. Vacancies on the ACC, however caused, shall be, except as provided in Section 8.4 of this Article, filled by the Board of Directors. A vacancy shall be deemed to exist in case of death, resignation or removal of any regular or alternate member.

Section 8.7. Transfer of Authority to the Association. The duties, rights, powers and authority of the ACC constituted hereby may be assigned at any time, at the sole election of a majority of the Board of Directors, to the Homeowners Association, and from and after the date of such assignment, and the acceptance thereof by the Association, the Association shall have full right, authority and powers, and shall be obligated to perform the functions of the ACC as provided herein (and in the Bylaws of the Association).

Section 8.8. Address. The address of the ACC shall be c/o D. R. Horton, Inc., 4400 Alameda NW, Bldg. B, Albuquerque, New Mexico 87113 or such other place as may from time



to time be designated by the ACC by written instrument, a copy of which is sent to all then current owners; and the last such instrument shall be deemed the Committee's proper address.

Section 8.9. Duties.

(a) General: It shall be the duty of the ACC to receive, consider and act upon all proposals, plans, complaints, requests for determination, Development Plans or other matters submitted pursuant to the terms of this Declaration, and to carry out all other duties imposed on it by this Declaration.

(b) Development Plan Compliance Deposit: The ACC may require a building compliance deposit of Fifty Dollars (\$50.00) to assure compliance of the Improvements with this Declaration. The ACC may refund this building compliance deposit after completion of the Improvements if in the ACC's sole discretion the ACC has evidence satisfactory to the ACC that all of the Improvements were completed in compliance with this Declaration.

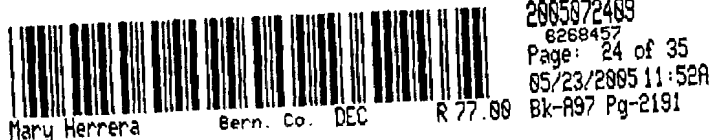
Section 8.10. Meetings. The ACC shall meet from time to time as necessary to perform its duties hereunder. Subject to provisions of Section 8.2 above, and except as otherwise provided herein, the vote or written consent of a majority of the regular members at a meeting or otherwise shall constitute the act of the Committee. The Committee shall keep and maintain written records of all actions taken by it at such meetings or otherwise.

Section 8.11. Action Without Formal Meeting. The ACC, in accordance with Sections 8.2 and 8.10 hereof, may take action without formal meeting by unanimously consenting in writing on any matter which they might consider at a formal meeting. Such unanimous written consent shall constitute the act of the Committee. For the purposes hereof, unanimous written consent shall mean a writing by the three (3) regular members of the ACC except as the provisions of Section 8.2 may apply.

Section 8.12. Procedure for Submission and Approval of Development Plan.

(a) Submission of a Development Plan shall be in accordance with the Rules promulgated by the ACC, as authorized by Section 8.14 hereof.

(b) If the ACC fails to approve or disapprove any material or Development Plan submitted to it hereunder within thirty (30) days after the date shown on the submittal receipt or fails to give notice of its actions as above required, it shall be conclusively presumed that the Committee has approved such materials as submitted; provided no Structure shall be erected which violates any of the Covenants contained herein. If the Committee requests additional or amended materials or an amended Development Plan during the initial thirty (30) day period, or approves on condition that certain additional or amended materials be submitted, such period shall automatically be extended to fifteen (15) days following the date upon which such additional or amended materials are required to be delivered to and received by and receipted for by the Committee. Additional fifteen (15) day extensions shall occur if further additional or amended materials are requested or required during any subsequent extension period. If the additional or amended materials are not received on or before the required date, then the Development Plan shall be automatically disapproved.



Section 8.13. Waiver and Estoppel. The approval by the ACC of any Development Plan, specifications or drawings or any materials accompanying it for matters requiring approval of the ACC shall not be deemed to constitute a waiver of or create any right of estoppel against the Committee's right to withhold approval of any similar Development Plan, drawing, specification or matter subsequently submitted for approval.

Section 8.14. ACC Rules.

(a) The ACC shall have the authority to adopt, amend, add to, replace and rescind, from time to time, procedural or substantive rules to make more definite and certain, and to carry out the purpose of and intent of the provisions of this Declaration. Any conflict between such rule and any provision of this Declaration shall be resolved in favor of the provision of this Declaration. A copy of such rules, as in effect from time to time shall be provided to any Owner requesting the same in writing, upon receipt of the cost of such copy; provided that the failure to deliver a copy of any such rules, or the failure of the ACC from time to time to adopt any such rules shall not in any manner inhibit or impair the requirement that a Development Plan be approved by the ACC prior to construction or any other provision of this Declaration.

Section 8.15. Basis for ACC Approval or Disapproval. The Subdivision is intended by Declarant to be a cohesive development composed of homes of the highest quality and elegant appearance. Toward this end, it is intended that the ACC have the greatest degree of discretion possible in reviewing, approving or disapproving Development Plans. Declarant intends that the ACC shall have the right to consider as the basis for any approval or disapproval of a Development Plan: (a) compliance or noncompliance with certain objective standards set out in this Declaration or in any rules or guidelines subsequently published or adopted by the ACC, (b) the nature and quality of the building materials and methods of construction to be used, (c) the location of the proposed Improvements on the Lot, (d) the visual impact of the proposed Improvements from the standpoint of style and consistency with other Improvements constructed or approved by the ACC for construction in the Subdivision, (e) the experience and expertise of the general contractor, such other subjective factors as the ACC shall, in its discretion, deem relevant or appropriate. ANY PERSON PROPOSING TO PURCHASE ANY LOT IN THE SUBDIVISION IS CAUTIONED TO CONSULT WITH THE ACC CONCERNING INTENDED IMPROVEMENTS PRIOR TO BECOMING UNCONDITIONALLY OBLIGATED TO PURCHASE SUCH LOT.

Section 8.16. Deviation from Approved Plan. All Development Plans approved in writing by the ACC must be complied with strictly and any deviation, change or alteration not in compliance with said Plan must be further approved in writing by the ACC. Violation hereof shall be subject to enforcement in accordance with the provisions of this Declaration.

Section 8.17. Decisions Conclusive. All decisions of the ACC shall be final and conclusive, and no Owner or any other person, association or entity shall have any recourse against the ACC, or any member thereof, for its or such member's approval or refusal to approve all or any portion of a Development Plan or of any materials submitted therewith, or for any other decision rendered under the authority of this Declaration.



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Section 8.18. Liability of the Declarant and ACC.

(a) Generally. Neither the Declarant nor the ACC or any member thereof shall be liable to any Owner, or any other person, association, or entity, for any damage, loss or prejudice suffered or claimed on account of: (i) the approval or disapproval of any Development Plan or any materials submitted therewith, whether or not defective; (ii) the construction or performance of any work, whether or not pursuant to an approved Development Plan or any materials submitted therewith; (iii) the development of the Property; (iv) the structural capacity or safety features of the proposed Improvement or Structure; (v) whether or not the location of the proposed Improvement or Structure on the building site is free from possible hazards from flooding or from any other possible hazards, whether caused by conditions occurring either upon or off the Property; (vi) soil erosion causing sliding conditions; (vii) compliance with governmental laws, ordinances and regulations; (viii) any decision made or action taken or omitted to be taken under the authority of this Declaration; (ix) any act taken or decision made in connection with any land contiguous to the Subdivision, including, but not limited to any decision to annex or refuse to annex to the Subdivision other contiguous land or property; (ix) the execution and filing of any estoppel certificate, whether or not the facts therein are correct, provided, however, that with respect to the liability of a member, such member has acted in good faith on the basis of such information as may be possessed by him. Without in any way limiting the generality of any of the foregoing provisions of this Section, the ACC, or any member thereof, may, but is not required, to consult with or determine the view of any other Owner with respect to any Development Plan, or any materials submitted to the ACC.

(b) Regarding Soils Characteristics. Whether the soil, or a certain site on the Lot, is suitable for the design of the house that the Lot Owner ultimately builds depends on the footing and foundation design and plans used for construction on the Lot. Declarant and the ACC and its members makes no warranty or representation that the soil characteristics, and all locations on the Lot, are suitable for all house designs or plans. Neither does Declarant or the ACC or its members make any warranty or representation regarding any specific house design or plan. The suitability of the soils and the construction needs based on the soils will vary depending on the specific Lot, location of the house, and house design.

Section 8.19. Modifications and Waivers. The ACC, upon such terms and conditions, upon the payment of such fees or expenses, and for such procedures as it may prescribe, may, but is not required to, adopt, review and approve or disapprove, in whole or in part, with or without conditions, applications for the modification or waiver of any requirement of Subsections 6.3(a), (b), (d), (h), (i), and 6.5 through 6.11 of this Declaration or any requirement of the ACC rules applicable to any Improvement or use of, in, on or abutting any Lot. Such applications shall contain such information as the Committee may prescribe and shall affirmatively show that the application of such requirements, under the circumstances, creates unnecessary and undue hardship, and that a modification or waiver will not be detrimental (aesthetically, economically, or otherwise) to the Owner of any other Lot. The Committee may decide the matter upon the application and any materials or written statements accompanying it or may allow oral presentations in support of or in opposition to the application prior to the decision, at its discretion. The Committee shall render a decision in writing, which decision need not contain any reasons, findings, or conclusions for the decision and shall forward one (1) copy to the applicant, and retain one (1) copy in its records. Without limiting the general applications of this



Section 8.19, the provisions of Section 8.15 and Section 8.17 of this Article shall apply to the actions and the decisions of the Committee and its members under this Section.

Section 8.20. Governmental Agency Approval. Nothing in this Declaration shall relieve or be interpreted as purporting to relieve any Owner from also securing such approval(s), certificate(s) or permit(s) of any governmental agency or entity with jurisdiction as may be required by law as a condition to the commencement, construction, maintenance, addition, change or alteration to or of any Improvement, and the Committee may require that a copy of such approval(s), certificate(s) or permit(s) be provided to the Committee as a final condition to approval of a Development Plan, or as additional assurance to the Committee that the Improvements and uses of an approved Development Plan meet governmental requirements, or for both such purposes.

ARTICLE IX

DESERT VISTA HOMEOWNERS ASSOCIATION

Section 9.1. The Association. Declarant has or shall cause the formation and incorporation of the Association as a non-profit corporation organized and existing under the New Mexico Non-Profit Corporation Act, charged with the duties and vested with the powers prescribed by law and set forth in the Articles of Incorporation, Bylaws, and this Declaration. Neither the Articles of Incorporation nor the Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

Section 9.2. Membership. Each Owner (whether one or more persons or entities) of a Lot shall, upon and by virtue of becoming such Owner, automatically become a Member of the Association and shall remain a Member thereof until the Owner's ownership ceases for any reason, at which time the Owner's Membership in the Association shall automatically cease. Membership in the Association shall be appurtenant to and shall automatically follow the legal ownership of each Lot and may not be separated from such ownership. Whenever the legal ownership of any Lot passes from one person to another, by whatever means, it shall not be necessary that any instrument provide for transfer of Membership in the Association, and no certificate of Membership will be issued.

Section 9.3. Voting. Subject to the provisions of Section 9.6, all Members of the Association in good standing shall be entitled to one (1) vote (in person or by proxy) for each Lot owned at any meeting of Members of the Association or with respect to any matters submitted to a vote of the Members of the Association. If more than one person holds an interest in any Lot, all such persons shall be Members of the Association. The vote for such multiply-owned Lot shall be exercised as the Owners among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. The Articles of Incorporation and Bylaws of the Association may provide more specific rights with respect to voting by Members.

Section 9.4. Proxies. At all meetings of Members, each Member may vote in person or by proxy upon such terms as may be determined from time to time by the Board of Directors of the Association. All proxies shall be in writing, sealed and personally delivered by the person executing the proxy to a board member or returned by the United States Postal Service to the person designated by the Board of Directors, and filed with the Association Secretary. Every



proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Lot.

Section 9.5. Board of Directors and Officers. The affairs of the Association shall be conducted by a Board of Directors and such officers as the Directors may elect or appoint, in accordance with the Articles of Incorporation and the Bylaws, as the same may be amended from time to time.

Section 9.6. Control of the Association. Until the first to occur of (a) conveyance by Declarant of seventy-five percent (75%) in number of Lots in the Subdivision or (b) December 31, 2006, Declarant shall be entitled to cast three (3) votes for each lot owned. Thereafter, Declarant shall be entitled to one (1) vote for each Lot it owns.

Section 9.7. Powers and Duties of the Association. The Association shall have such rights, powers and duties as set forth in the Articles of Incorporation and Bylaws, as the same may be amended from time to time.

Section 9.8. Personal Liability. No member of the Board of Directors or any Committee of the Association or any of the Officers of the Association shall be personally liable to any Owner or any other party including the Association for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board of Directors, any Committee, or any other agent, representative or employees of the Association; provided, however, that such person has, upon the basis of such information as may be possessed by him, acted in good faith, without willful or intentional misconduct.

ARTICLE X

ASSESSMENTS

Section 10.1. Operating Expense and Reserve Funds. All monies collected by the Association for the regular operating expense and reserve charges provided for in this Article, shall be separated into two funds which shall constitute and be known as the "Operating Expense Fund" and the "Reserve Fund." The Operating Expense Fund and the Reserve Fund shall be held, used, and expended by the Association for the common benefit of all Members to promote the health, safety, recreation, and welfare of the Members, including, without limitation:

- (a) maintenance and construction of any privately maintained Improvements;
- (b) the installation, construction, erection, and relocation of Improvements related to the enhancement and beautification of the Common Properties and Facilities in the Subdivision;
- (c) the installation, construction, erection, and relocation of Improvements related to the enhancement and beautification of any other areas provided by this Declaration to be developed or maintained by the Association, including landscaping in rights of ways and maintenance of perimeter walls and entry way signs, as well as the construction, repair, maintenance and replacement of properties, services, improvements and facilities devoted to such purposes and related to the use and enjoyment of the Subdivision by the Members;



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(d) payment of utility charges in connection with the operation of Common Properties or use of Common Properties;

(e) payment of charges for maintenance, upkeep, beautification, improvement and replacement of park, right of way, and Common Property landscaping; and other services contracted for by the Association;

(f) charges for liability and property insurance and other insurance related to the Common Facilities, Common Properties and their use and operation; and

(g) property management, accounting and legal fees, including legal fees incurred by the Association while enforcing the provisions of this Declaration.

The Association may, in its sole discretion, determine which monies are to go into each fund and may give one or more of the purposes set forth in this Section 10.1 preference over other purposes. It is agreed that all expenses incurred and expenditures and decisions made by the Association in good faith shall be binding and conclusive on all Members.

Section 10.2. Regular Annual Assessments. Subject to the provisions set forth below in Section 10.3 relating to the rate at which the operating expense and reserve charges and assessments imposed herein shall be paid on unimproved Lots, each and every Lot in the Property is hereby severally subjected to and impressed with a regular annual operating expense and reserve charge or assessment in the amount of One-hundred Dollars and No/100 (\$100.00) semi-annually per year per Lot which charge shall commence upon the Closing of the purchase of each Lot and be due and payable on said date (prorated, if appropriate) and on the first day of each January thereafter, and which shall run with the land, and shall be subject to increase and decrease in accordance with the Articles of Incorporation and Bylaws of the Association.

Section 10.3. Unimproved Lots. Notwithstanding the foregoing, each Owner shall pay Two-hundred Dollars and No/100 (\$200.00) per year for each Lot owned by it, unless and until a residential structure has been built thereon except that Declarant shall not be obligated to pay any operating expense and reserve charge or assessment on any unimproved Lot.

Section 10.4. Covenant for Assessments. Each Owner of a Lot, by the Owner's claim or assertion of ownership or by accepting a deed to any such Lot, whether or not it shall be so expressed in such deed, is hereby conclusively deemed to covenant and agree, as a covenant running with the land, to pay to the Association, its successors or assigns, each and all of the charges and Assessments against the Owner's Lot and/or assessed against the Owner as the same shall become due and payable, without demand. The charges and assessments herein provided for shall be a charge and a continuing lien upon each Lot, together with all improvements thereon, as hereinafter more particularly stated. Each Assessment, together with late fees, interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of the Lot at the time the obligation to pay such assessment accrued, and no Member shall avoid personal liability for the payment of any Assessment by waiver of the use or enjoyment of the Common Properties or Facilities, or any part hereof, or by abandonment of the Owner's Lot or the Owner's interest therein.



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Section 10.5. Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the regular maintenance charges or assessments and any special maintenance charges against each Lot or Owner for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association, or the property manager, if any, and shall be open to inspection by any Owner. Written notice of such assessment shall there upon be sent to every Owner subject thereto. The Association, or the property manager, if any, shall, upon demand at any time, furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, or the property manager, if any, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

The Board of Directors of the Association may impose sanctions (as set forth in Article VI of the By-Laws) for violation of this Declaration and/or the By-Laws, after notice and a hearing in accordance with the procedures set forth in Section 11.3 of this Declaration. The Association shall not be obligated to take any enforcement action if the Board of Directors reasonably determines that the Association's position is not strong enough to justify taking such action. Such a decision shall not be construed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or estop the Association from enforcing any other covenants, restriction or rule.

Section 10.6. Payment of Fines. In the event that any occupant, tenant, employee, guest, or invitee of an Owner violates the Declaration and/or By-Laws, or any rule or regulation, and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board of Directors, the Owner shall pay the fine upon notice from the Association.

Section 10.7. Liens to Secure Assessments. The regular maintenance charges or assessments, any applicable special maintenance charge, and any fines or other fees, as hereinabove provided for (collectively referred to as "Assessments"), shall constitute and be secured by a separate and valid and subsisting lien, hereby created and fixed, and which shall exist upon and against each (or the applicable) Lot and all improvements thereon, for the benefit, as appropriate, of the Association. Subject to the condition that the Association be made a party to any court proceeding to enforce any lien hereinafter deemed to be superior, the lien hereby created shall be subordinate and inferior to:

(a) all liens for taxes or special Assessments levied by City, County and State government, or any political subdivision or special district thereof, and

(b) all liens securing amounts due or to become due under any Real Estate Contract or Contract of Sale, any first mortgage or deed of trust, made in good faith and for value, filed for record, prior to the date payment of any such charges or Assessments become due and payable.

Any judicial foreclosure of any such superior lien under any mortgage, deed of trust, or other security instrument in which the Association has been made a party, shall cut off and extinguish the liens securing Assessments which became due and payable prior to such



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foreclosure date, but no such foreclosure shall free any Lot from the liens securing Assessments thereafter becoming due and payable, nor shall the liability of any Member personally obligated to pay Assessments which become due prior to such foreclosure, be extinguished by any foreclosure.

Section 10.8. Effect of Non-Payment of Assessments. If any Assessment owed to the Association is not paid within thirty (30) days from the due date thereof, a late fee of Twenty-five Dollars (\$25.00) shall be owed, plus the Assessment shall bear interest from the due date until paid at eighteen percent (18%) per annum, and, if placed in the hands of an attorney for collection or if suit is brought thereon or if collected through probate or other judicial proceedings, there shall be paid to the Association, an additional reasonable amount for attorney's fees and costs. The Association, as a common expense of all Members, may institute and maintain an action at law or in equity against any defaulting Member to enforce collection and/or for foreclosure of the liens against the Owner's Lot. All such actions may be instituted and brought in the name of the Association, and may be maintained and prosecuted in a like manner as an action to foreclose the lien of a mortgage or deed of trust on real property.

Section 10.9. Collection and Enforcement. Each Member, by the Member's assertion of title or claim of ownership or by the Member's acceptance of a deed to a Lot, whether or not it shall be so recited in such deed, shall be conclusively deemed to have expressly vested in the Association, and in its officers and agents, the right, power and authority to take all action which the Association shall deem proper for the collection of Assessments and/or for the enforcement and foreclosure of the liens securing the same. Nothing herein shall require mortgagees to collect assessments and failure to pay assessments does not constitute a default under any mortgage.

ARTICLE XI

GENERAL PROVISIONS

Section 11.1. Cost of Performance. Cost and expense in performing any obligation or responsibility in this Declaration shall be borne by the person, association, or entity charged with such performance or responsibility and shall be subject to the provisions of Article X hereof.

Section 11.2. Breach not Ground for Rescission. No breach or continuing breach of the restrictions, covenants, conditions, duties or obligations imposed, allowed or granted by this Declaration shall be grounds for cancellation, termination or rescission of this Declaration or of any provision thereof.

Section 11.3. Enforcement.

(a) Notice: Except where damage or injury to persons or Property is imminent as a result of the performance or failure to perform or the defective performance of any obligation imposed or restricted by this Declaration or where animals are involved, no sanction shall be levied and no legal proceeding for the enforcement of the restrictions, covenants, conditions, rights and duties imposed, allowed or granted by this Declaration shall be commenced, until a ten (10) day written notice of the violation of this Declaration or the wrongful performance, defective performance or failure of performance, is given to the person,



association or entity responsible for such violation, wrongful or defective performance or failure to perform. Such notice shall be deemed to be given if deposited in the U.S. Mail, mailed postage prepaid, certified, return receipt requested to the address of the Lot owned by such person, association or entity, unless the Association has previously been notified by such person, association or entity, in writing, to use some other address, in which case to such other address. The ten (10) days shall commence with the date of mailing thereof. Said notice shall describe (i) the nature of the alleged violation; (ii) the proposed sanction to be imposed; (iii) a period of not less than ten (10) days within which the alleged violator may present a written request for a hearing to the Board of Directors; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within ten (10) days of the notice. If a timely challenge is not made the sanction stated in the notice shall be imposed; provided that the Board of Directors may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the ten (10) 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.

(b) Hearing: If a hearing is requested within the allotted ten (10) day period, the hearing shall be held before the Board of Directors in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. 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 person who delivered such notice. The notice requirements shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

Section 11.4. Additional Enforcement Rights. Declarant, the ACC, the Association, and any Owner shall have the right to enforce by proceeding, at law or in equity, for damages or for injunction or both, all restrictions, covenants, conditions, rights and duties imposed, allowed or granted by the provisions of this Declaration. In any such proceedings, the prevailing party or parties shall be entitled to recover cost and expenses, including reasonable attorney's fees, and such costs and expenses shall be subject to the provisions of Section 10.9. Failure by Declarant, ACC, Association or Owner to enforce any restriction, covenant, condition, duty or right herein contained shall in no event be deemed a waiver of their respective right to do so at a later time. Notwithstanding anything to the contrary elsewhere in this Declaration, the Board of Directors may elect to enforce any provision of the Declaration and/or By-Laws, or any rules and regulations of the Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules) without the necessity of compliance with procedures set forth in Section 11.3 above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including attorney's fees reasonably incurred. Any entry onto a Lot for purposes of exercising this power of self-help shall not be deemed a trespass.

Section 11.5. Attachment of Covenant on Resale or Remodel. This Declaration shall attach following the lease or resale of the Property, or any Lot, and any remodeling or other alteration of any Improvement must be approved by the ACC through the Development Plan process.



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Section 11.6. Covenants to Run with the Land. The restrictions, easements, covenants, conditions, rights and duties of this Declaration shall run with and bind the land within the Property, as defined herein, and shall inure to the benefit of the Owner of any Lot therein, their respective legal representatives, heirs, successors and assigns for a term of twenty (20) years from the date this Declaration is recorded in the real property records of Bernalillo County, New Mexico, after which time such restrictions, easements, covenants, conditions, rights and duties shall automatically be extended for successive periods of ten (10) years, unless amended, modified or repealed as hereinafter provided.

Section 11.7. Modification, Amendment or Repeal. Any of the provisions of this Declaration may be modified, amended or repealed by a recorded written instrument, executed and acknowledged by the Owners of not less than two-thirds (2/3) of the Lots.

Section 11.8. Severability. Invalidation of any of the provisions hereof by a final judgment or decree of any court shall in no way affect or impair the validity of any other provision hereof.

Section 11.9. Joint and Several Obligations. The terms of this Declaration in effect on the date of any lease or recording of a sheriff's deed, trustee's deed, deed in lieu of foreclosure, other deed, other order or decree declaring, settling or confirming title, pursuant to which one or more persons, associations or entities becomes a Lessee or an Owner as hereinbefore defined, shall be binding upon such Lessee or new Owner and such Lessee or new Owner shall be jointly and severally liable with his Lessor or the immediate prior Owner for any continuing performance, failure of performance or defective performance of any act or obligation restricted or imposed hereunder.

Section 11.10. Successors. Deeds of conveyance of any Lot may contain the provisions, restrictions, covenants and conditions contained herein by reference to this Declaration; however, whether or not such reference is made in any or all said deeds, by becoming an Owner as herein defined of any of the Property, each such Owner, for himself or herself or itself, his or hers or its heirs, personal representatives, successors, transferees and assigns, binds himself or herself or itself and such heirs, personal representatives, successors, transferees and assigns to all the provisions, restrictions, covenants and conditions now or hereafter imposed by or under the authority of this Declaration and any amendments thereof.

Section 11.11. Assignment of Rights and Obligations of Declarant. The rights of Declarant hereunder are fully assignable to any person, association or entity and any and all obligations and duties of Declarant are fully delegable and assignable to any person, association or entity.

Section 11.12. Word Meanings. The words such as "herein," "hereafter," "hereof," "hereunder" and "hereinabove" refer to this Declaration as a whole and not merely to a section or paragraph or article in which such words appear unless the context otherwise requires. Singular shall include the plural and the masculine gender shall include the feminine and neuter and vice versa unless the context otherwise requires.

Section 11.13. Captions and Section Headings. The captions and headings of various articles, sections, paragraphs or subparagraphs of this Declaration are for convenience only and



Exhibit "A"
Legal Description

All Lots and Tracts lying and being in Bernalillo County, New Mexico, and being more particularly described on that certain recorded plat for the Desert Vista Subdivision, recorded on February 9, 2005, in Plat Book 2005C, Page 58, of the records of the Bernalillo County Clerk, Bernalillo County, New Mexico.

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FIGURE 12
SUBDIVISION IMPROVEMENTS
AGREEMENT-PUBLIC AND/OR PRIVATE
(Procedure B)

AGREEMENT TO CONSTRUCT
PUBLIC AND/OR PRIVATE SUBDIVISION IMPROVEMENTS

THIS AGREEMENT is made this 11th day of January, 2005, by and between the City of Albuquerque, New Mexico ("City"), a municipal corporation, whose address is P. O. Box 1293 (One Civic Plaza), Albuquerque, New Mexico 87103, and D R Horton, Inc. ("Subdivider"), a [state the type of business entity, for instance, "New Mexico corporation," "general partnership," "joint venture," "individual," etc.]: a Delaware corporation, whose address is 4400 Alameda NE Ste. B, Albuquerque, NM 87113 and whose telephone number is 505.797.4245, is made in Albuquerque, New Mexico, and is entered into as of the date of final execution of this Agreement.

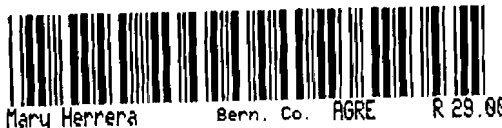
1. Recital. The Subdivider is developing certain lands within the City of Albuquerque, Bernalillo County, New Mexico, known as [describe: LOTS 15-18, BLOCK 6, Tract 3, Unit 3, North Albuquerque Acres; Lots 9-20, Block 5, Tract 3, Unit 3, North Albuquerque Acres], recorded on September 10, 19 31 in the records of the Bernalillo County Clerk at Book D, Folio 121 (the "Subdivision"). The Subdivider certifies that the Subdivision is owned by [state the name of the present real property owner exactly as shown on the real estate document conveying title in the Subdivision to the present owner:] D R Horton, Inc. ("Owner").

The Subdivider has submitted and the City has approved a preliminary plat or Site Development Plan identified as Desert Vista Subdivision describing Subdivider's Property.

As a result of the development of the Subdivision, the Subdivision Ordinance ("S.O.") and/or the Zoning Code, Section 14-16-3-11, require the Subdivider, at no cost to the City, to install certain public and/or private Improvements, which are reasonably related to the development of the Subdivision, or to financially guarantee the construction of the public and/or private Improvements as a prerequisite to approval of the final plat of, or the Site Development Plan for the Subdivision.

2. Improvements and Construction Deadline. The Subdivider agrees to install and complete the public and/or private improvements described in Exhibit A, the required infrastructure listing ("Improvements"), to the satisfaction of the City, on or before the 15TH day of September, 2006 ("Construction Completion Deadline"), at no cost to the City. The improvements are shown in greater detail on the Subdivider's proposed and approved plans, which have been filed with the City Engineer and are identified as Project No. 7503.81.

Note: To compute the Construction Completion Deadline: If a final plat will be filed after Subdivider meets the requirements of this Agreement, the Construction Completion Deadline can be no later than two years after execution of this Agreement. (See Subdivision Ordinance Section 14-14-3.) If a final plat will not be filed pursuant to this Agreement, the Construction Completion Deadline can be no later than one year after approval of the preliminary plat by the Development Review Board (DRB), unless the DRB grants an extension, not to exceed one additional year per extension, and the Subdivider processes an amendment to the Agreement. (See Subdivision Ordinance Section 14-14-3.) If this Agreement, with any amendments does not utilize the maximum time allowed for completion of construction, the Subdivider may obtain an extension of the Construction Completion Deadline if Subdivider shows adequate reason for



the extension.

Work Order Requirements. The City agrees to issue a Work Order after:

A. The Subdivider causes to be submitted all documents, and meets all requirements listed in Development Process Manual, Volume 1, Chapter 5, Work Order Process, and figure 1, including submitting a Certificate of Insurance in a form acceptable to the City. The certificate must establish that the Subdivider has procured or has caused to be procured public liability insurance in the amount of not less than One Million Dollars (\$1,000,000) combined single limit for accidents or occurrences which cause bodily injury, death or property damage as a result of any condition of the Subdivision, the Improvements or the Subdivider's construction activities within, or related to the Subdivision. The insurance policy must name the City of Albuquerque, its employees and elected officials, as their interest may appear, as additional insured's. The Subdivider must maintain the insurance until the City accepts the public Improvements and/or approves the private Improvements. The cancellation provision must provide that, if the policy is either canceled prior to the expiration date of the policy or is materially changed or not renewed, the issuing company will mail 30 days written notice to the City, attention City Engineer.

B. The Subdivider complies with all applicable laws, ordinances and regulations, including, but not limited to the City Excavation Ordinance and Sidewalk Ordinance, and pays the following required engineering, staking, testing fees, and other related City fees and County Clerk recording fees:

<u>Type of Fee</u>	<u>Amount</u>
<u>Engineering Fee</u>	<u>3.25% of Actual Construction Cost</u>
<u>Excavation & Sidewalk Fees</u>	<u>As required per City-approved estimate</u>
<u>Street Restoration Fees</u>	<u>As required per City-approved estimate (Fig. 7)</u>

(Note: The Subdivider must pay the City all City fees which have been incurred during construction before the City will accept the Public Improvements.)

4. Surveying, Inspection and Testing. The improvements shall be inspected, surveyed and tested in accordance with all applicable laws, ordinances, and regulations, and according to the following terms:

A. Construction Surveying. Construction surveying for the construction of the Public Improvements shall be performed by SURV-TEK, and construction surveying of the Private Improvements shall be performed by SURV-TEK. If the construction surveying is performed by an entity other than the City, the City may monitor the construction surveying and the Subdivider shall ensure that the construction surveying entity provides all construction surveying field notes, plats, reports and related data to the City which the City requires for review. Record drawings shall be provided by the entity performing the survey. The Subdivider shall pay the City a reasonable fee for any construction surveying performed by the City.

B. Construction Inspection methods. Inspection of the construction of the Public Improvements shall be performed by TIERRA WEST LLC, and inspection of the Private Improvements shall be performed by TIERRA WEST LLC, both New Mexico Registered Professional Engineers. If the inspection is performed by an entity other than the City, the City may monitor the inspection and the Subdivider shall ensure that the inspecting entity provides all inspection results, reports and related data to the City, which the City requires for review. The City retains the right to perform its own general overall inspection of the construction project at any time prior to final acceptance of the Improvements, if deemed necessary or advisable by the City engineer. The Subdivider shall pay the City a reasonable fee for the level of inspection performed by the City.



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C. Field Testing. Field-testing of the construction of the Public Improvements shall be performed by VINYARD & ASSOC., and field testing of the Private Improvements shall be performed by VINYARD & ASSOC., both certified testing laboratories under the supervision of a New Mexico Registered Professional Engineer, in accordance with the current City of Albuquerque Standard Specifications for the Public Works Construction. If any field-testing is performed by an entity other than the City, the City may monitor the field testing and the Subdivider shall ensure that the field testing entity provides all field testing results, reports, and related data to the City which the City requires for review. The Subdivider shall pay the City a reasonable fee for any field-testing performed by the City.

D. Additional Testing. The City retains the right to perform all additional testing which the City Engineer deems is necessary or advisable and the Subdivider shall pay the City a reasonable fee therefore.

5. Financial Guaranty. If final plat approval is not requested prior to construction of the Subdivision, a financial guaranty is not required. If final plat approval is requested, the Subdivider must provide the City with a financial guaranty in an amount of not less than 125% of the estimated cost of constructing the Improvements, as approved by the City Engineer. The financial guaranty must be irrevocable and may be in the form of a letter of credit, escrow deposit or loan reserve letter issued by a Federally Insured Financial Institution; a bond issued by a surety qualified to do business in New Mexico; or other pledge of liquid assets which meets all City requirements. The City must be able to call the financial guaranty at any time within the sixty (60) days immediately following the Construction Completion Deadline.

To meet the Subdivision Ordinance requirements, the Subdivider has acquired or is able to acquire the following "Financial Guarantee:"

Type of Financial Guaranty: Subdivision Bond #1010664
Amount: \$ 1,153,423.15
Name of Financial Institution or Surety providing Guaranty:
Lexon Insurance Company
Date City first able to call Guaranty: September 15, 2006
[Construction Completion Deadline]: September 15, 2006
If Guaranty other than a Bond, last day City able to call on Guaranty is:
November 15, 2006
Additional information: INFRASTRUCTURE

6. Notice of Start of Construction. Before construction begins, the Subdivider shall deliver an acceptable Notice to Proceed to the City and shall arrange or a preconstruction conference and all required inspections.

7. Completion, Acceptance and Termination. When the City receives Subdivider's final acceptance package, the City shall review it for completeness and accuracy. (See DPM Volume 1, Chapter 5, Work Order Process, Step 9.) If the package is acceptable, the City shall approve the package and issue a Certificate of Completion and Acceptance for the Public Improvements and a Certificate of Completion for the Private Improvements. Thereafter, the Subdivider's obligations to the City pursuant to this Agreement shall terminate, with the exception of the bond or other guarantee which the Subdivider has provided to assure the materials and workmanship, as required by the Subdivision Ordinance. After the City approves the final acceptance package, the City will promptly release this Agreement and the Financial Guaranty.

8. Conveyance of Property Rights. When the Improvements are completed, if the City does not own the real property upon or in which the Public Improvements are

8. Conveyance of Property Rights. When the Improvements are completed, if the City does not own the real property upon or in which the public Improvements are constructed, the Subdivider will convey to the City all real and personal property rights which the City deems reasonably necessary, and all public Improvements, free and clear of all claims, encumbrances and liens before the City will accept the public Improvements. Conveyance may be made by appropriate dedication on the final plat of the Subdivision.

9. Reduction of Financial Guaranty Upon Partial Completion. The Subdivider shall be entitled to a reduction of the Financial Guaranty as a result of completing construction of part of the Improvements if the following conditions are met:

A. Loan Reserve Financial Guaranty. If a loan reserve letter was provided as the Financial Guaranty, the Subdivider must follow the procedures and meet the requirements detailed in the Development Process Manual, Volume 1, Chapter 5.

B. Non-Loan Reserve Financial Guaranty. If a Financial Guarantee other than a loan reserve letter has been provided, the completed Improvements must be free-standing, functionally independent of any Improvements which have not yet been completed and completed in substantial compliance with the approved construction plans, as determined by City on-site inspection in order to qualify for a Financial Guaranty reduction. If the Improvements which have been completed meet all City requirements, the City Engineer will estimate the cost of completing the remaining Improvements. Thereafter, the subdivider must submit the following documents to the City for review and approval:

(1) A revised Financial Guaranty in an amount of not less than 125% of the cost of completing the remaining Improvements, as estimated by the City;

(2) A bond or other instrument acceptable to the City, which guarantees the completed Improvements against defective materials and workmanship for the period required by the Subdivision Ordinance.

(3) Conveyance of real and personal property rights which meet the requirements of section 8 of this Agreement.

After the City receives and approves the required documents, the City shall issue a Partial Certificate of Completion and Acceptance for the completed public Improvements and a Certificate of Partial Completion for the completed private Improvements.

10. Indemnification. Until the Improvements are accepted by the City, the Subdivider shall be solely responsible for maintaining the premises upon which the Improvements are being constructed in a safe condition. The Subdivider agrees to defend, indemnify and hold harmless the City and its officials, agents and employees from any claims, actions, suits or other proceedings arising from or out of the negligent acts or omissions of the Subdivider, its agents, representatives, contractors or subcontractors or arising from the failure of the Subdivider, its agents, representatives, contractors or subcontractors to perform any act or duty required of the Subdivider herein; provided, however, to the extent, if at all, Section 56-7-1 NMSA 1978 is applicable to this Agreement, this Agreement to indemnify will not extend to liability, claims, damages, losses or expenses, including attorney fees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications by the indemnitee, or the agents or employees of the indemnitee; or (2) the giving of or the failure to give directions or instructions by the indemnitee, where such giving or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to property. The indemnification required hereunder shall not be limited as a result of the specifications of any applicable insurance coverage. Nothing herein is intended to impair any right or immunity under the laws of the State of New Mexico.



11. Assignment. This Agreement shall not be assigned without the prior written consent of the City and the Subdivider and the express written concurrence of any financial institution or surety, which has undertaken to guarantee the completion of the Improvements. The City's approval will not be withheld unreasonably. If so assigned, this Agreement shall extend to and be binding upon the successors and assigns of the parties hereto.

12. Release. If the Subdivision or any part thereof is sold, conveyed or assigned, the City will not release the Subdivider from its obligations under this Agreement and will continue to hold the Subdivider responsible for all Improvements until a successor in interest to the Subdivider has posted a suitable financial guaranty and entered into a Subdivision Improvements Agreement with the City. Thereafter, when the Subdivider's successor in interest has provided a substitute financial guaranty acceptable to the City, the City will release this Agreement and any related Financial Guaranty.

13. Payment for Incomplete Improvements. If the Subdivider fails to satisfactorily complete construction of the Improvements by the Construction Completion Deadline, the City may construct or cause the Improvements to be constructed as shown on the final plat and in the approved plans and specifications. The Subdivider shall be jointly and severally liable to pay to, and indemnify the City for the total cost, including, but not limited to engineering, legal and contingent costs, together with any damages, either direct or consequential, which the City may sustain as a result of Subdivider's failure to perform as required by this Agreement. If the direct or indirect costs and damages to the City exceed the amount of the City's Claim of Lien or any Financial Guaranty, the Subdivider shall be liable to, and shall pay, the City for all such costs and damages. The surety or sureties shall be jointly and severally liable to pay to and indemnify the City for the total cost to the extent of their obligations pursuant to the Financial Guaranty.

14. Binding on Subdivider's Property. The provisions of this Agreement constitute covenants running with Subdivider's Property for the benefit of the City and its successors and assigns until terminated, and are binding on the Subdivider and the Owner and their heirs, successors and assigns.

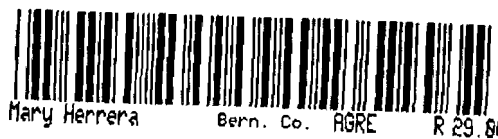
15. Notice. For purposes of giving formal written notice, including notice of change of address, the Subdivider's and the City's addresses are as stated in the first paragraph of this Agreement. Notice may be given either in person or by certified U.S. mail, postage paid. Notice will be considered to have been received within six days after the notice is mailed if there is no actual evidence of receipt.

16. Entire Agreement. This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

17. Changes to Agreement. Changes to this Agreement are not binding unless made in writing, signed by both parties.

18. Construction and Severability. If any part of this Agreement is held to be invalid or unenforceable, the remainder of the Agreement will remain valid and enforceable if the remainder is reasonably capable of completion.

19. Captions. The captions to the sections or paragraphs of this Agreement are not



part of this Agreement and will not affect the meaning or construction of any of its provisions.

20. Form not Changed. Subdivider agrees that changes to this form are not binding unless initialed by the Subdivider and signed by the City's Legal Department on this form.

21. Authority to Execute. If the Subdivider signing below is not the Owner of the Subdivision, the Owner must execute the Power of Attorney below.

Executed on the date stated in the first paragraph of this Agreement.

SUBDIVIDER:

CITY OF ALBUQUERQUE

By [Signature]: *J. Mark Ferguson*
Name: J. Mark Ferguson
Title: Div. President
Dated: December 17, 2004
D R Horton, Inc.

Approved by: *[Signature]*
City Engineer
Dated: 1-11-05
1-5-05
KJH 1/10/05

SUBDIVIDER'S NOTARY

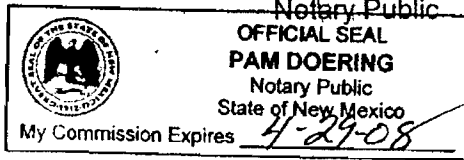
STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on 17th day of December, 20 04
by [name(s) of person(s):] Mark Ferguson, [title or capacity, for instance, "President" or
"Owner":] Div. President of [Subdivider:] D R Horton, Inc.

Pam Doering
Notary Public

My Commission Expires:

4-29-08



CITY'S NOTARY

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on 11th day of January, 2005 by
Richard Burste, City Engineer, of the City of Albuquerque, a municipal corporation, on
behalf of said corporation.

Gloria N. Saavedra
Notary Public

My Commission Expires:

11-25-2007

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Page: 7 of 11
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Current DRC
Project Number: _____

FIGURE 12

Marilyn

Date Site Plan Approved: 9/13/04
Date Preliminary Plat Approved: 4/15/05
Date Preliminary Plat Expires: 4/15/05
Application # A-01254
DRB Project No: 1002473

ORIGINAL

INFRASTRUCTURE LIST

**EXHIBIT "A"
TO SUBDIVISION IMPROVEMENTS AGREEMENT
DEVELOPMENT REVIEW BOARD (D.R.B.) REQUIRED INFRASTRUCTURE LIST**

Desert Vista Subdivision
PROPOSED NAME OF PLAT AND/OR SITE DEVELOPMENT PLAN

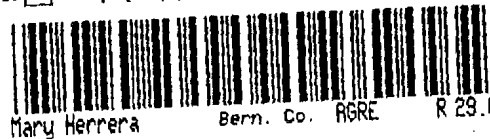
Lots 9-20 Block 5 & Lots 15-18 Block 6, Tract 3 Unit 3 North Albuquerque Acres
EXISTING LEGAL DESCRIPTION PRIOR TO PLATTING ACTION

Following is a summary of PUBLIC/PRIVATE Infrastructure required to be constructed or financially guaranteed for the above development. This Listing is not necessarily a complete listing. During the SIA process and/or in the review of the construction drawings, if the DRC Chair determines that appurtenant items and/or unforeseen items have not been included in the infrastructure listing, the DRC Chair may include those items in the listing and related financial guarantee. Likewise, if the DRC Chair determines that appurtenant or non-essential items can be deleted from the listing, those items may be deleted as well as the related portions of the financial guarantees. All such revisions require approval by the DRC Chair, the User Department and agent/owner. If such approvals are obtained, these revisions to the listing will be incorporated administratively. In addition, any unforeseen items which arise during construction which are necessary to complete the project and which normally are the Subdivider's responsibility will be required as a condition of project acceptance and close out by the City.

SIA Sequence #	COA DRC Project #	Size	Type of Improvement	Location	From	To	Private Inspector	City Inspector	City Crst Engineer
		28' F-F	Residential Paving, Curb & Gutter 4' Sidewalks (Both Sides) -Deferred	Hampton Avenue	Ashton Loop (East)	145' West of Mendocino Drive	/	/	/
		28' F-F	Residential Paving, Curb & Gutter 4' Sidewalks (Both Sides) -Deferred	Ashton Loop	Hampton Avenue (East)	Hampton Avenue (West)	/	/	/
		28' F-F	Residential Paving, Curb & Gutter 4' Sidewalks (Both Sides) -Deferred	Waterford Court	Ashton Loop	South End	/	/	/
		28' F-F	Residential Paving, Curb & Gutter 4' Sidewalks (Both Sides) -Deferred	Wilshire Avenue	Ventura Boulevard	Waterford Court	/	/	/
		28' F-F	Residential Paving, Curb & Gutter 4' Sidewalks (Both Sides) -Deferred	Mendocino Drive	Hampton Avenue	150' South of Hampton Avenue	/	/	/
		28' F-F	Residential Paving -Deferred Curb & Gutter - Deferred 4' Sidewalks (Both Sides) -Deferred	Mendocino Drive	Hampton Avenue	Signal Avenue	/	/	/
		30' F-F	Arterial Paving, Curb & Gutter 6' Sidewalk (West Side Only)	Ventura Boulevard	Signal Avenue	Corona Avenue	/	/	/
		24' F-F	Residential Paving -Deferred Curb & Gutter (South Side)-Deferred 6' Sidewalks (South Side)-Deferred	Signal Avenue	Ventura Avenue	145' West of Mendocino Drive	/	/	/

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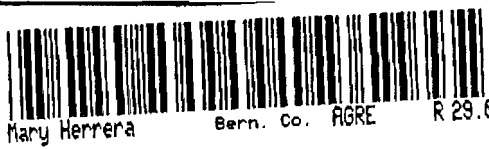
SIA Sequence #	COA DRC Project #	Size	Type of Improvement	Location	From	To	Private Inspector	City Inspector	City Const Engineer
		28' F.F	Residential Paving Curb & Gutter (North Side Only) 4' Sidewalk (North Side Only)	Corona Avenue	Ventura Boulevard	West Property Line	/	/	/
		18' F.F	Residential Paving, Curb & Gutter	Stub Street	Ashton Loop	South end	/	/	/
		8"	SAS Gravity Line	Hampton Avenue	Ashton Loop (East)	West Property Line	/	/	/
		8"	SAS Gravity Line	Ashton Loop	Stub Street	150' East of Waterford Court	/	/	/
		8"	SAS Gravity Line	Stub Street	Ashton Loop	Vallejo Place	/	/	/
		8"	SAS Gravity Line	Waterford Court	Wilshire Avenue	Corona Avenue	/	/	/
		8"	SAS Gravity Line	Wilshire Avenue	Waterford Court	Ventura Boulevard	/	/	/
		8"	SAS Gravity Line - Deferred	Signal Avenue	West Property Line	Ventura Boulevard	/	/	/
		6"	Water PVC Line	Hampton Avenue	West Property Line	Ashton Loop (East)	/	/	/
		6"	Water PVC Line	Ashton Loop	Waterford Court	Hampton Avenue	/	/	/
		12"	Water PVC Line	Ashton Loop	Waterford Court	Hampton Avenue	/	/	/
		6"	Water PVC Line	Waterford Court	Wilshire Avenue	Corona Avenue	/	/	/
		12"	Water PVC Line	Waterford Court	Wilshire Avenue	Ashton Loop	/	/	/
		12"	Water PVC Line	Wilshire Avenue	Waterford Court	Ventura Boulevard	/	/	/
		12"	Water PVC Line	Ventura Boulevard	Signal Avenue	Corona Avenue	/	/	/
		8"	Water PVC Line - Deferred /	Signal Avenue	West Property Line	Ventura Boulevard	/	/	/



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ORIGINAL

SIA Sequence #	COA DRC Project #	Size	Type of Improvement	Location	From	To	Private Inspector	City Inspector	City Chst Engineer
		36"	RCP Storm Sewer	Ventura Boulevard	340' South of Signal Avenue	250' North of Corona Avenue	/	/	/
		36"	RCP Storm Sewer (Stub)	Wilshire Avenue	Ventura Boulevard	16' East of Ventura Boulevard	/	/	/
		24"	RCP Storm Sewer	Hampton Avenue	Medocno Drive	Public Easement Lot 24	/	/	/
		24"	RCP Storm Sewer	Mendocino Drive	Hampton Avenue	Signal Avenue	/	/	/
		24"	RCP Storm Sewer	Drainage Easement Lot 24	Hampton Avenue	Public Drainage Pond (Tract A-1)	/	/	/
		8'	Surface Rundown (Concrete)	Public Drainage Easement Lot 59	Waterford Court	Corona Avenue	/	/	/
		8'	Surface Rundown (Concrete)	Drainage Easement Tract A	Ashton Loop	Vajello Place	/	/	/
		12"	WATER PVC LINE	MENDOCINO	HAMPTON AVE	SOUTH PROBABLY LINE	/	/	/
		6'	SIDWALK	PEDESTRIAN CONCRESSTONES (2 EACH)	HAMPTON AVE	SIGNAL AVE	/	/	/
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NAME OF PLAT AND/OR SITE PLAN

SIA	COA DRC	Sequence #	Project #	Size	Type of Improvement	Location	From	To	Private	City	Inspector	City Cnst

NOTES

- 1 Water infrastructure to include valves, fittings, valve boxes, fire hydrants as required.
- 2 Sanitary sewer to include manholes and service connections as required.
- 3 Residential street rights per DPM
- 4 Certified grading and drainage with private walls & private drainage (not-work order item) required for SIA/ Financial Release.
- 5 Perimeter Walls per DPM approved perimeter wall Design
- 6 Wall & landscaping certification from registered engineer and/or registered landscape architect required prior to release of financial guarantees
- 7 Agreement and covenant for maintenance of existing drainage pond on Mendocino

DEVELOPMENT REVIEW BOARD MEMBER APPROVALS

DRB CHAIR - date 9/15/04 *[Signature]*
 PARKS & GENERAL SERVICES - date 9/15/04 *[Signature]*

AMAFCA - date _____

NMUI - date _____

_____ - date _____

AGENT / OWNER

NAME (prin) Vicent Garcia

FIRM TERRA WEST, LLC

SIGNATURE - date 9-13-04 *[Signature]*

MAXIMUM TIME ALLOWED TO CONSTRUCT THE IMPROVEMENTS WITHOUT A DRB

EXTENSION: _____

DESIGN REVIEW COMMITTEE REVISIONS

AGENT / OWNER	USER DEPARTMENT	DRC CHAIR	DATE	REVISION



FIGURE 12

**SUBDIVISION IMPROVEMENTS
AGREEMENT-PUBLIC AND/OR PRIVATE
(Procedure B Modified Non-Work Order)**

**AGREEMENT TO CONSTRUCT
PUBLIC AND/OR PRIVATE SUBDIVISION IMPROVEMENTS**

THIS AGREEMENT is made this 1st day of January, 2005, by and between the City of Albuquerque, New Mexico ("City"), a municipal corporation, whose address is P. O. Box 1293 (One Civic Plaza), Albuquerque, New Mexico 87103, and D R Horton, Inc. ("Subdivider"), a [state the type of business entity, for instance, "New Mexico corporation," "general partnership," "joint venture," "individual," etc.:] a Delaware corporation, whose address is 4400 Alameda NE Ste. B, Albuquerque, NM 87113 and whose telephone number is 505.797.4245, is made in Albuquerque, New Mexico, and is entered into as of the date of final execution of this Agreement.

1. Recital. The Subdivider is developing certain lands within the City of Albuquerque, Bernalillo County, New Mexico, known as [describe:] LOTS 15-18, BLOCK 6, Tract 3, Unit 3, North Albuquerque Acres; Lots 9-20, Block 5, Tract 3, Unit 3, North Albuquerque Acres, recorded on September 10, 19 31 in the records of the Bernalillo County Clerk at Book D, Folio 121 (the "Subdivision"). The Subdivider certifies that the Subdivision is owned by [state the name of the present real property owner exactly as shown on the real estate document conveying title in the Subdivision to the present owner:] D R Horton, Inc. ("Owner").

The Subdivider has submitted and the City has approved a preliminary plat or Site Development Plan identified as Desert Vista Subdivision describing Subdivider's Property.

As a result of the development of the Subdivision, the Subdivision Ordinance ("S.O.") and/or the Zoning Code, Section 14-16-3-11, require the Subdivider, at no cost to the City, to install certain public and/or private Improvements, which are reasonably related to the development of the Subdivision, or to financially guarantee the construction of the public and/or private improvements as a prerequisite to approval of the final plat of, or the Site Development Plan for the Subdivision.

2. Improvements and Construction Deadline. The Subdivider agrees to install and complete the public and/or private improvements described in Exhibit A, the required infrastructure listing ("Improvements"), to the satisfaction of the City, on or before the 15TH day of September, 20 06 ("Construction Completion Deadline"), at no cost to the City.

Note: To compute the Construction Completion Deadline: The Construction Completion Deadline can be no later than two years after execution of this Agreement. (See Subdivision Ordinance Section 14-14-3.) If this Agreement, with any amendments does not utilize the maximum time allowed for completion of construction, the Subdivider may obtain an extension of the Construction Completion Deadline if Subdivider shows adequate reason for the extension.

3. Financial Guaranty. the Subdivider must provide the City with a financial guaranty in an amount of not less than 125% of the estimated cost of constructing the Improvements, as approved by the City Engineer. The financial guaranty must be irrevocable and may be in the form of a letter of credit, escrow deposit or loan reserve letter issued by a Federally Insured Financial Institution; a bond issued by a surety qualified to do business in New Mexico; or other pledge of

liquid assets which meets all City requirements. The City must be able to call the financial guaranty at any time within the sixty (60) days immediately following the Construction Completion Deadline.

To meet the Subdivision Ordinance requirements, the Subdivider has acquired or is able to acquire the following AFinancial Guarantee:≅

Type of Financial Guaranty: Subdivision Bond #1010666
Amount: \$ 218,942.93

Name of Financial Institution or Surety providing Guaranty:
Lexon Insurance Company

Date City first able to call Guaranty: September 15, 2006
[Construction Completion Deadline]: September 15, 2006

If Guaranty other than a Bond, last day City able to call Guaranty is:

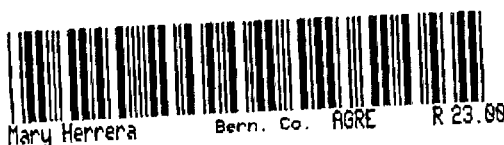
Additional information: Deferred Improvements

4. Completion, Acceptance and Termination. Upon completion of the required infrastructure, the Subdivider shall notify the City Engineer and the Design Review Section of Public works Department. After the City Engineer approves the construction, the City will promptly release this Agreement and the Financial Guaranty.

5. Indemnification. Until the Improvements are accepted by the City, the Subdivider shall be solely responsible for maintaining the premises upon which the Improvements are being constructed in a safe condition. The Subdivider agrees to defend, indemnify and hold harmless the City and its officials, agents and employees from any claims, actions, suits or other proceedings arising from or out of the negligent acts or omissions of the Subdivider's agents, representatives, contractors or subcontractors or arising from the failure of the Subdivider's agents, representatives, contractors or subcontractors to perform any act or duty required of the Subdivider herein; provided, however, to the extent, if at all, Section 56-7-1 NMSA 1978 is applicable to this Agreement, this Agreement to indemnify will not extend to liability, claims, damages, losses or expenses, including attorney fees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications by the indemnitee, or the agents or employees of the indemnitee; or (2) the giving of or the failure to give directions or instructions by the indemnitee, where such giving or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to property. The indemnification required hereunder shall not be limited as a result of the specifications of any applicable insurance coverage. Nothing herein is intended to impair any right or immunity under the laws of the State of New Mexico.

6. Assignment. This Agreement shall not be assigned without the prior written consent of the City and the Subdivider and the express written concurrence of any financial institution or surety which has undertaken to guarantee the completion of the Improvements. The City's approval will not be withheld unreasonably. If so assigned, this Agreement shall extend to and be binding upon the successors and assigns of the parties hereto.

7. Release. If the Subdivision or any part thereof is sold, conveyed or assigned, the City will not release the Subdivider from its obligations under this Agreement and will continue to hold the Subdivider responsible for all Improvements until a successor in interest to the Subdivider has entered into a Subdivision Improvements Agreement with the City. Thereafter, if the Subdivider's successor in interest has provided a substitute financial guaranty acceptable to the City, the City will release this Agreement and any related Financial Guaranty.



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Page: 2 of 8
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8. Payment for Incomplete Improvements. If the Subdivider fails to satisfactorily complete construction of the Improvements by the Construction Completion Deadline, the City may construct or cause the Improvements to be constructed as shown on the final plat and in the approved plans and specifications. The Subdivider shall be jointly and severally liable to pay to, and indemnify the City for the total cost, including, but not limited to engineering, legal and contingent costs, together with any damages, either direct or consequential, which the City may sustain as a result of Subdivider's failure to perform as required by this Agreement. If the direct or indirect costs and damages to the City exceed the amount of the City's Claim of Lien or any Financial Guaranty, the Subdivider shall be liable to, and shall pay, the City for all such costs and damages. The surety or sureties shall be jointly and severally liable to pay to and indemnify the City for the total cost to the extent of their obligations pursuant to any Financial Guaranty.

9. Binding on Subdivider's Property. The provisions of this Agreement constitute covenants running with Subdivider's Property for the benefit of the City and its successors and assigns until terminated, and are binding on the Subdivider and the Owner and their heirs, successors and assigns.

10. Notice. For purposes of giving formal written notice, including notice of change of address, the Subdivider's and the City's addresses are as stated in the first paragraph of this Agreement. Notice may be given either in person or by certified U.S. mail, postage paid. Notice will be considered to have been received within six days after the notice is mailed if there is no actual evidence of receipt.

11. Entire Agreement. This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

12. Changes to Agreement. Changes to this Agreement are not binding unless made in writing, signed by both parties.

13. Construction and Severability. If any part of this Agreement is held to be invalid or unenforceable, the remainder of the Agreement will remain valid and enforceable if the remainder is reasonably capable of completion.

14. Captions. The captions to the sections or paragraphs of this Agreement are not part of this Agreement and will not affect the meaning or construction of any of its provisions.

15. Form not Changed. Subdivider agrees that changes to this form are not binding unless initialed by the subdivider and signed by the City's Legal Department on this form.

16. Authority to Execute. If the Subdivider signing below is not the Owner of the Subdivision, the Owner must execute the Power of Attorney below.

Executed on the date stated in the first paragraph of this Agreement.

SUBDIVIDER:

D R Horton, Inc.

By [Signature]: J. Mark Ferguson
Name: J. Mark Ferguson
Title: Div. President
Dated: December 17, 2004

CITY OF ALBUQUERQUE

[Signature]
City Engineer
Dated: 1-11-05

WJ photos
Page 3 of 4

05-05

SUBDIVIDER'S NOTARY

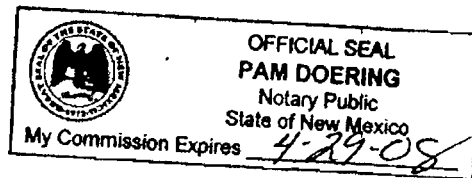
STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on 17th day of December, 2004 by [name of person: Mark Ferguson] [title or capacity, for instance, "President" or "Owner":] Div President of [Subdivider:] D.R. Horton, Inc.

Pam Doering
Notary Public

My Commission Expires:

4-29-08



CITY'S NOTARY

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on 11th day of January, 2005 by Richard Court, City Engineer, Planning Director, Public Works Department, of the City of Albuquerque, a municipal corporation, on behalf of said corporation.

Gloria S. Saavedra
Notary Public

My Commission Expires:

11-25-2007



Current DRC
Project Number: _____

FIGURE 12

INFRASTRUCTURE LIST

ORIGINAL

EXHIBIT "A"

TO SUBDIVISION IMPROVEMENTS AGREEMENT
DEVELOPMENT REVIEW BOARD (D.R.B.) REQUIRED INFRASTRUCTURE LIST

Marilyn
Date Site Plan Approved: 9/15/04
Date Preliminary Plat Approved: 4/15/05
Date Preliminary Plat Expires: 4/15/05
Application # 01254
DRB Project No. 1002473

Desert Vista Subdivision

PROPOSED NAME OF PLAT AND/OR SITE DEVELOPMENT PLAN

Lots 9-20 Block 5 & Lots 15-18 Block 6, Tract 3 Unit 3 North Albuquerque Acres
EXISTING LEGAL DESCRIPTION PRIOR TO PLATING ACTION

Following is a summary of PUBLIC/PRIVATE Infrastructure required to be constructed or financially guaranteed for the above development. This Listing is not necessarily a complete listing. During the SIA process and/or in the review of the construction drawings, if the DRC Chair determines that appurtenant items and/or unforeseen items have not been included in the infrastructure listing, the DRC Chair may include those items in the listing and related financial guarantee. Likewise, if the DRC Chair determines that appurtenant or non-essential items can be deleted from the listing, those items may be deleted as well as the related portions of the financial guarantees. All such revisions require approval by the DRC Chair, the User Department and agent/owner. If such approvals are obtained, these revisions to the listing will be incorporated administratively. In addition, any unforeseen items which arise during construction which are necessary to complete the project and which normally are the Subdivider's responsibility will be required as a condition of project acceptance and close out by the City.

SIA Sequence #	COA DRC Project #	Size	Type of Improvement	Location	From	To	Private Inspector	City Inspector	City Cmt Engineer
		28' F-F	Residential Paving, Curb & Gutter 4' Sidewalks (Both Sides) -Deferred	Hampton Avenue	Ashton Loop (East)	145' West of Mendocino Drive	/	/	/
		28' F-F	Residential Paving, Curb & Gutter 4' Sidewalks (Both Sides) -Deferred	Ashton Loop	Hampton Avenue (East)	Hampton Avenue (West)	/	/	/
		28' F-F	Residential Paving, Curb & Gutter 4' Sidewalks (Both Sides) -Deferred	Waterford Court	Ashton Loop	South End	/	/	/
		28' F-F	Residential Paving, Curb & Gutter 4' Sidewalks (Both Sides) -Deferred	Wishire Avenue	Ventura Boulevard	Waterford Court	/	/	/
		28' F-F	Residential Paving, Curb & Gutter 4' Sidewalks (Both Sides) -Deferred	Mendocino Drive	Hampton Avenue	150' South of Hampton Avenue	/	/	/
		28' F-F	Residential Paving -Deferred Curb & Gutter - Deferred 4' Sidewalks (Both Sides) -Deferred	Mendocino Drive	Hampton Avenue	Signal Avenue	/	/	/
		30' F-F	Arterial Paving, Curb & Gutter 6' Sidewalk (West Side Only)	Ventura Boulevard	Signal Avenue	Corona Avenue	/	/	/
		24' F-F	Residential Paving -Deferred Curb & Gutter (South Side)-Deferred 6' Sidewalks (South Side)-Deferred	Signal Avenue	Ventura Avenue	145' West of Mendocino Drive	/	/	/

Harry Herrera

Bern. Co. RGR

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SIA Sequence #	COA DRC Project #	Size	Type of Improvement	Location	From	To	Private Inspector	City Inspector	City Cost Engineer
		28' F-F	Residential Paving Curb & Gutter (North Side Only) 4' Sidewalk (North Side Only)	Corona Avenue	Ventura Boulevard	West Property Line	/	/	/
		18' F-F	Residential Paving, Curb & Gutter	Stub Street	Ashton Loop	South end	/	/	/
		8"	SAS Gravity Line	Hampton Avenue	Ashton Loop (East)	West Property Line	/	/	/
		8"	SAS Gravity Line	Ashton Loop	Stub Street	150' East of Waterford Court	/	/	/
		8"	SAS Gravity Line	Stub Street	Ashton Loop	Vallejo Place	/	/	/
		8"	SAS Gravity Line	Waterford Court	Wilshire Avenue	Corona Avenue	/	/	/
		8"	SAS Gravity Line	Wilshire Avenue	Waterford Court	Ventura Boulevard	/	/	/
		8"	SAS Gravity Line - Deferred	Signal Avenue	West Property Line	Ventura Boulevard	/	/	/
		6"	Water PVC Line	Hampton Avenue	West Property Line	Ashton Loop (East)	/	/	/
		6"	Water PVC Line	Ashton Loop	Waterford Court	Hampton Avenue	/	/	/
		12"	Water PVC Line	Ashton Loop	Waterford Court	Hampton Avenue	/	/	/
		6"	Water PVC Line	Waterford Court	Wilshire Avenue	Corona Avenue	/	/	/
		12"	Water PVC Line	Waterford Court	Wilshire Avenue	Ashton Loop	/	/	/
		12"	Water PVC Line	Wilshire Avenue	Waterford Court	Ventura Boulevard	/	/	/
		12"	Water PVC Line	Ventura Boulevard	Signal Avenue	Corona Avenue	/	/	/
		8"	Water PVC Line - Deferred /	Signal Avenue	West Property Line	Ventura Boulevard	/	/	/

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ORIGINAL

SIA Sequence #	COA DRC Project #	Size	Type of Improvement	Location	From	To	Private Inspector	City Inspector	City Onst Engineer
		36"	RCP Storm Sewer	Ventura Boulevard	340' South of Signal Avenue	250' North of Corona Avenue	/	/	/
		36"	RCP Storm Sewer (Slub)	Wilshire Avenue	Ventura Boulevard	16' East of Ventura Boulevard	/	/	/
		24"	RCP Storm Sewer	Hampton Avenue	Medocino Drive	Public Easement Lot 24	/	/	/
		24"	RCP Storm Sewer	Mendocino Drive	Hampton Avenue	Signal Avenue	/	/	/
		24"	RCP Storm Sewer	Drainage Easement Lot 24	Hampton Avenue	Public Drainage Pond (Tract A-1)	/	/	/
		6'	Surface Rundown (Concrete)	Public Drainage Easement Lot 29	Waterford Court	Corona Avenue	/	/	/
		6'	Surface Rundown (Concrete)	Drainage Easement Tract A	Ashion Loop	Vajello Place	/	/	/
		12"	WATER PVC LINES	MENDOCINO	HAMPTON AVE	SOUTH PROTERBY LINE	/	/	/
		6"	SIDWALK	PEDESTRIAN CONCRESLUBS (2 EACH)	HAMPTON AVE	SIGNAL AVE	/	/	/
							/	/	/
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NAME OF PLAT AND/OR SITE PLAN _____

SIA Sequence #	COA DRC Project #	Size	Type of Improvement	Location	From	To	Private Inspector	City Inspector	City Cnst Engineer
							/	/	/
							/	/	/
							/	/	/
							/	/	/

NOTES

- Water infrastructure to include valves, fittings, valve boxes & fire hydrants as required.
- Sanitary sewer to include manholes and service connections as required.
- Residential street lights per DPM
- Certified grading and drainage with private walls & private drainage (non-work order item) required for SIA/ Financial Release.
- Perimeter Walls per DPM approved perimeter wall Design
- Wall & landscaping certification from registered engineer and/or registered landscape architect required prior to release of financial guarantees
- Agreement and covenant for maintenance of existing drainage pond on Mendocino

AGENT / OWNER

VINCENT CARRICA
NAME (print)

TIERRA WEST, LLC
FIRM

[Signature] 9-13-04
SIGNATURE - date

MAXIMUM TIME ALLOWED TO CONSTRUCT THE IMPROVEMENTS WITHOUT A DRB

EXTENSION: _____

DEVELOPMENT REVIEW BOARD MEMBER APPROVALS

[Signature] 9/15/04
DRB CHAIR - date

Christina Sandoral 9/15/04
PARKS & GENERAL SERVICES - date

[Signature] 9-15-04
TRANSPORTATION DEVELOPMENT - date

AMAFCA - date

[Signature] 9/15/04
UTILITY DEVELOPMENT - date

NMUI - date

Bradley A. Bingham 9/15/04
CITY ENGINEER - date

- date

DESIGN REVIEW COMMITTEE REVISIONS

REVISION	DATE	DRC CHAIR	USER DEPARTMENT	AGENT / OWNER

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FIGURE 12
SUBDIVISION IMPROVEMENTS
AGREEMENT-PUBLIC AND/OR PRIVATE
(Procedure B)

AGREEMENT TO CONSTRUCT
PUBLIC AND/OR PRIVATE SUBDIVISION IMPROVEMENTS

THIS AGREEMENT is made this 7th day of March, 2005, by and between the City of Albuquerque, New Mexico ("City"), a municipal corporation, whose address is P. O. Box 1293 (One Civic Plaza), Albuquerque, New Mexico 87103, and D R Horton Inc. ("Subdivider"), a [state the type of business entity, for instance, "New Mexico corporation," "general partnership," "joint venture," "individual," etc.]:] A CORPORATION, whose address is 4400 Alameda NE Ste. B, Albuquerque, NM 87113 and whose telephone number is 505.797.4245, is made in Albuquerque, New Mexico, and is entered into as of the date of final execution of this Agreement.

1. Recital. The Subdivider is developing certain lands within the City of Albuquerque, Bernalillo County, New Mexico, known as [describe:] LOTS 15-18, BLOCK 6, Tract 3, Unit 3, North Albuquerque Acres; Lots 9-20, Block 5, Tract 3, Unit 3, North Albuquerque Acres, recorded on September 10, 19 31 in the records of the Bernalillo County Clerk at Book D, Folio 121 (the "Subdivision"). The Subdivider certifies that the Subdivision is owned by [state the name of the present real property owner exactly as shown on the real estate document conveying title in the Subdivision to the present owner:] D R Horton Inc. ("Owner").

The Subdivider has submitted and the City has approved a preliminary plat or Site Development Plan identified as Desert Vista Subdivision describing Subdivider's Property.

As a result of the development of the Subdivision, the Subdivision Ordinance ("S.O.") and/or the Zoning Code, Section 14-16-3-11, require the Subdivider, at no cost to the City, to install certain public and/or private improvements, which are reasonably related to the development of the Subdivision, or to financially guarantee the construction of the public and/or private Improvements as a prerequisite to approval of the final plat of, or the Site Development Plan for the Subdivision.

2. Improvements and Construction Deadline. The Subdivider agrees to install and complete the public and/or private improvements described in Exhibit A, the required infrastructure listing ("Improvements"), to the satisfaction of the City, on or before the 15TH day of September, 2006 ("Construction Completion Deadline"), at no cost to the City. The improvements are shown in greater detail on the Subdivider's proposed and approved plans, which have been filed with the City Engineer and are identified as Project No. 7503.82.

Note: To compute the Construction Completion Deadline: If a final plat will be filed after Subdivider meets the requirements of this Agreement, the Construction Completion Deadline can be no later than two years after execution of this Agreement. (See Subdivision Ordinance Section 14-14-3.) If a final plat will not be filed pursuant to this Agreement, the Construction Completion Deadline can be no later than one year after approval of the preliminary plat by the Development Review Board (DRB), unless the DRB grants an extension, not to exceed one additional year per extension, and the Subdivider processes an amendment to the Agreement. (See Subdivision Ordinance Section 14-14-3.) If this Agreement, with any amendments does not utilize the maximum time allowed for completion of construction, the Subdivider may obtain an extension of the Construction Completion Deadline if Subdivider shows adequate reason for the



extension.

Work Order Requirements. The City agrees to issue a Work Order after:

A. The Subdivider causes to be submitted all documents, and meets all requirements listed in Development Process Manual, Volume 1, Chapter 5, Work Order Process, and figure 1, including submitting a Certificate of Insurance in a form acceptable to the City. The certificate must establish that the Subdivider has procured or has caused to be procured public liability insurance in the amount of not less than One Million Dollars (\$1,000,000) combined single limit for accidents or occurrences which cause bodily injury, death or property damage as a result of any condition of the Subdivision, the Improvements or the Subdivider's construction activities within, or related to the Subdivision. The insurance policy must name the City of Albuquerque, its employees and elected officials, as their interest may appear, as additional insured's. The Subdivider must maintain the insurance until the City accepts the public Improvements and/or approves the private Improvements. The cancellation provision must provide that, if the policy is either canceled prior to the expiration date of the policy or is materially changed or not renewed, the issuing company will mail 30 days written notice to the City, attention City Engineer.

B. The Subdivider complies with all applicable laws, ordinances and regulations, including, but not limited to the City Excavation Ordinance and Sidewalk Ordinance, and pays the following required engineering, staking, testing fees, and other related City fees and County Clerk recording fees:

<u>Type of Fee</u>	<u>Amount</u>
<u>Engineering Fee</u>	<u>3.25% of Actual Construction Cost</u>
<u>Excavation & Sidewalk Fees</u>	<u>As required per City-approved estimate</u>
<u>Street Restoration Fees</u>	<u>As required per City-approved estimate (Fig. 7)</u>

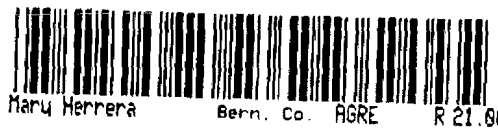
(Note: The Subdivider must pay the City all City fees which have been incurred during construction before the City will accept the Public Improvements.)

4. Surveying, Inspection and Testing. The improvements shall be inspected, surveyed and tested in accordance with all applicable laws, ordinances, and regulations, and according to the following terms:

A. Construction Surveying. Construction surveying for the construction of the Public Improvements shall be performed by CARTESIAN SURVEYS, and construction surveying of the Private Improvements shall be performed by CARTESIAN SURVEYS. If the construction surveying is performed by an entity other than the City, the City may monitor the construction surveying and the Subdivider shall ensure that the construction surveying entity provides all construction surveying field notes, plats, reports and related data to the City which the City requires for review. Record drawings shall be provided by the entity performing the survey. The Subdivider shall pay the City a reasonable fee for any construction surveying performed by the City.

B. Construction Inspection methods. Inspection of the construction of the Public Improvements shall be performed by TIERRA WEST LLC, and inspection of the Private Improvements shall be performed by TIERRA WEST LLC, both New Mexico Registered Professional Engineers. If the inspection is performed by an entity other than the City, the City may monitor the inspection and the Subdivider shall ensure that the inspecting entity provides all inspection results, reports and related data to the City, which the City requires for review. The City retains the right to perform its own general overall inspection of the construction project at any time prior to final acceptance of the Improvements, if deemed necessary or advisable by the City engineer. The Subdivider shall pay the City a reasonable fee for the level of inspection performed by the City.

Figure 12 - page 2



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C. Field Testing. Field-testing of the construction of the Public Improvements shall be performed by VINYARD & ASSOC., and field testing of the Private Improvements shall be performed by VINYARD & ASSOC., both certified testing laboratories under the supervision of a New Mexico Registered Professional Engineer, in accordance with the current City of Albuquerque Standard Specifications for the Public Works Construction. If any field-testing is performed by an entity other than the City, the City may monitor the field testing and the Subdivider shall ensure that the field testing entity provides all field testing results, reports, and related data to the City which the City requires for review. The Subdivider shall pay the City a reasonable fee for any field-testing performed by the City.

D. Additional Testing. The City retains the right to perform all additional testing which the City Engineer deems is necessary or advisable and the Subdivider shall pay the City a reasonable fee therefore.

5. Financial Guaranty. If final plat approval is not requested prior to construction of the Subdivision, a financial guaranty is not required. If final plat approval is requested, the Subdivider must provide the City with a financial guaranty in an amount of not less than 125% of the estimated cost of constructing the Improvements, as approved by the City Engineer. The financial guaranty must be irrevocable and may be in the form of a letter of credit, escrow deposit or loan reserve letter issued by a Federally Insured Financial Institution; a bond issued by a surety qualified to do business in New Mexico; or other pledge of liquid assets which meets all City requirements. The City must be able to call the financial guaranty at any time within the sixty (60) days immediately following the Construction Completion Deadline.

To meet the Subdivision Ordinance requirements, the Subdivider has acquired or is able to acquire the following "Financial Guarantee:"

Type of Financial Guaranty: "Guaranteed under COA# 7503.81"

Amount: \$ _____

Name of Financial Institution or Surety providing Guaranty: _____

Date City first able to call Guaranty: September 15, 2006

[Construction Completion Deadline]: September 15, 2006

If Guarantee other than a Bond, last day City able to call on Guaranty is:

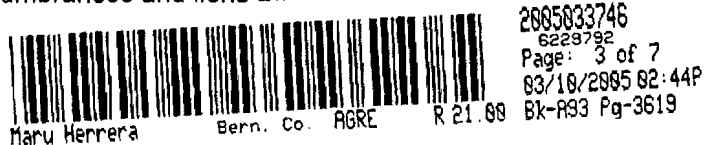
November 15, 2006

Additional information: _____

6. Notice of Start of Construction. Before construction begins, the Subdivider shall deliver an acceptable Notice to Proceed to the City and shall arrange or a preconstruction conference and all required inspections.

7. Completion, Acceptance and Termination. When the City receives Subdivider's final acceptance package, the City shall review it for completeness and accuracy. (See DPM Volume 1, Chapter 5, Work Order Process, Step 9.) If the package is acceptable, the City shall approve the package and issue a Certificate of Completion and Acceptance for the Public Improvements and a Certificate of Completion for the Private Improvements. Thereafter, the Subdivider's obligations to the City pursuant to this Agreement shall terminate, with the exception of the bond or other guarantee which the Subdivider has provided to assure the materials and workmanship, as required by the Subdivision Ordinance. After the City approves the final acceptance package, the City will promptly release this Agreement and the Financial Guaranty.

8. Conveyance of Property Rights. When the Improvements are completed, if the City does not own the real property upon or in which the Public Improvements are constructed, the Subdivider will convey to the city all real and personal property rights which the City deems reasonably necessary, and all Public Improvements, free and clear of all claims, encumbrances and liens before the City will



8. Conveyance of Property Rights. When the Improvements are completed, if the City does not own the real property upon or in which the public Improvements are constructed, the Subdivider will convey to the City all real and personal property rights which the City deems reasonably necessary, and all public Improvements, free and clear of all claims, encumbrances and liens before the City will accept the public Improvements. Conveyance may be made by appropriate dedication on the final plat of the Subdivision.

9. Reduction of Financial Guaranty Upon Partial Completion. The Subdivider shall be entitled to a reduction of the Financial Guaranty as a result of completing construction of part of the Improvements if the following conditions are met:

A. Loan Reserve Financial Guaranty. If a loan reserve letter was provided as the Financial Guaranty, the Subdivider must follow the procedures and meet the requirements detailed in the Development Process Manual, Volume 1, Chapter 5.

B. Non-Loan Reserve Financial Guaranty. If a Financial Guarantee other than a loan reserve letter has been provided, the completed Improvements must be free-standing, functionally independent of any Improvements which have not yet been completed and completed in substantial compliance with the approved construction plans, as determined by City on-site inspection in order to qualify for a Financial Guaranty reduction. If the Improvements which have been completed meet all City requirements, the City Engineer will estimate the cost of completing the remaining Improvements. Thereafter, the subdivider must submit the following documents to the City for review and approval:

(1) A revised Financial Guaranty in an amount of not less than 125% of the cost of completing the remaining Improvements, as estimated by the City;

(2) A bond or other instrument acceptable to the City, which guarantees the completed Improvements against defective materials and workmanship for the period required by the Subdivision Ordinance.

(3) Conveyance of real and personal property rights which meet the requirements of section 8 of this Agreement.

After the City receives and approves the required documents, the City shall issue a Partial Certificate of Completion and Acceptance for the completed public Improvements and a Certificate of Partial Completion for the completed private Improvements.

10. Indemnification. Until the Improvements are accepted by the City, the Subdivider shall be solely responsible for maintaining the premises upon which the Improvements are being constructed in a safe condition. The Subdivider agrees to defend, indemnify and hold harmless the City and its officials, agents and employees from any claims, actions, suits or other proceedings arising from or out of the negligent acts or omissions of the Subdivider, its agents, representatives, contractors or subcontractors or arising from the failure of the Subdivider, its agents, representatives, contractors or subcontractors to perform any act or duty required of the Subdivider herein; provided, however, to the extent, if at all, Section 56-7-1 NMSA 1978 is applicable to this Agreement, this Agreement to indemnify will not extend to liability, claims, damages, losses or expenses, including attorney fees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications by the indemnitee, or the agents or employees of the indemnitee; or (2) the giving of or the failure to give directions or instructions by the indemnitee, where such giving or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to property. The indemnification required hereunder shall not be limited as a result of the specifications of any applicable insurance coverage. Nothing herein is intended to impair any right or immunity under the laws of the State of New Mexico.



11. Assignment. This Agreement shall not be assigned without the prior written consent of the City and the Subdivider and the express written concurrence of any financial institution or surety, which has undertaken to guarantee the completion of the Improvements. The City's approval will not be withheld unreasonably. If so assigned, this Agreement shall extend to and be binding upon the successors and assigns of the parties hereto.

12. Release. If the Subdivision or any part thereof is sold, conveyed or assigned, the City will not release the Subdivider from its obligations under this Agreement and will continue to hold the Subdivider responsible for all Improvements until a successor in interest to the Subdivider has posted a suitable financial guaranty and entered into a Subdivision Improvements Agreement with the City. Thereafter, when the Subdivider's successor in interest has provided a substitute financial guaranty acceptable to the City, the City will release this Agreement and any related Financial Guaranty.

13. Payment for Incomplete Improvements. If the Subdivider fails to satisfactorily complete construction of the Improvements by the Construction Completion Deadline, the City may construct or cause the Improvements to be constructed as shown on the final plat and in the approved plans and specifications. The Subdivider shall be jointly and severally liable to pay to, and indemnify the City for the total cost, including, but not limited to engineering, legal and contingent costs, together with any damages, either direct or consequential, which the City may sustain as a result of Subdivider's failure to perform as required by this Agreement. If the direct or indirect costs and damages to the City exceed the amount of the City's Claim of Lien or any Financial Guaranty, the Subdivider shall be liable to, and shall pay, the City for all such costs and damages. The surety or sureties shall be jointly and severally liable to pay to and indemnify the City for the total cost to the extent of their obligations pursuant to the Financial Guaranty.

14. Binding on Subdivider's Property. The provisions of this Agreement constitute covenants running with Subdivider's Property for the benefit of the City and its successors and assigns until terminated, and are binding on the Subdivider and the Owner and their heirs, successors and assigns.

15. Notice. For purposes of giving formal written notice, including notice of change of address, the Subdivider's and the City's addresses are as stated in the first paragraph of this Agreement. Notice may be given either in person or by certified U.S. mail, postage paid. Notice will be considered to have been received within six days after the notice is mailed if there is no actual evidence of receipt.

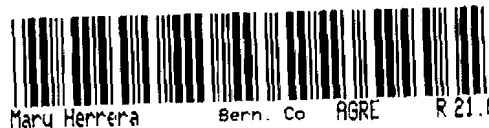
16. Entire Agreement. This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

17. Changes to Agreement. Changes to this Agreement are not binding unless made in writing, signed by both parties.

18. Construction and Severability. If any part of this Agreement is held to be invalid or unenforceable, the remainder of the Agreement will remain valid and enforceable if the remainder is reasonably capable of completion.

19. Captions. The captions to the sections or paragraphs of this Agreement are not part of this Agreement and will not affect the meaning or construction of any of its provisions.

20. Form not Changed. Subdivider agrees that changes to this form are not binding unless initialed by the Subdivider and signed by the City's Legal Department on this form.



21. Authority to Execute. If the Subdivider signing below is not the Owner of the Subdivision, the Owner must execute the Power of Attorney below.

Executed on the date stated in the first paragraph of this Agreement.

SUBDIVIDER:

CITY OF ALBUQUERQUE

By [Signature]: *Mark Ferguson*
Name: J. MARK FERGILSON
Title: DIVISION PRESIDENT
Dated: 2-24-05
D R Horton Inc.

Approved by: *[Signature]*
City Engineer
Dated: 3-07-05

[Handwritten initials]
[Handwritten initials]



Mary Herrera

Bern. Co. AGRE

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SUBDIVIDER'S NOTARY

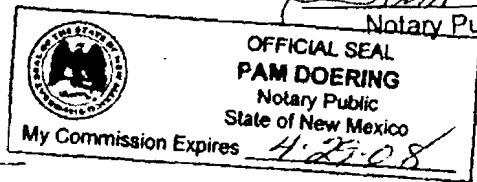
STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on 24 day of Feb, 2004⁰⁵
by [name(s) of person(s)]: Mark Ferguson, [title or capacity, for instance, "President" or
"Owner":] Div. President of [Subdivider:] DR Horton Inc.

Pam Doering
Notary Public

My Commission Expires:

4-29-08



CITY'S NOTARY

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on 1st day of March, 2005 by
Richard Bourie, City Engineer, of the City of Albuquerque, a municipal corporation, on
behalf of said corporation.

Gloria D. Saunders
Notary Public

My Commission Expires:

11-25-2007

EXHIBIT A AND POWER OF ATTORNEY ATTACHED

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