

**DECLARATION OF  
RESTRICTIVE AND PROTECTIVE COVENANTS  
FOR  
OCOTILLO SUBDIVISION**

The undersigned are the owners in fee simple of the following described real estate:

Lots 1 through 78 and Parcels A, B and C, Ocotillo Subdivision, as the same are shown and designated on the Plat of said Subdivision, filed in the Office of the County Clerk of Bernalillo County, New Mexico on the 11<sup>th</sup> day of March, 2004, in Book 2004C, Page 76.

All of such real estate is referred to as the "Subdivision", and shall include all property subsequently made subject to this Declaration.

The undersigned hereby establish a general plan for the development, improvement, ownership, use and sale of Lot(s) (as hereinafter defined) in the Subdivision and does hereby establish the manner, provisions, conditions, restrictions and covenants upon and subject to which Lots shall be used, improved, occupied, owned, sold and conveyed. The provisions, conditions, restrictions, and covenants in this Declaration shall run with the land, all of which shall be binding upon and inure to the benefit of the present and future Owners (as hereinafter defined) of Lots, and of any interest or interests in the Lot or Lots, all of which provisions, conditions, restrictions and covenants are, and each of them is, hereby impressed and imposed upon each and every Lot as a servitude in favor of each and every other Lot.

1. Definitions. The following words when used in this Declaration shall have the following meaning:

(a) "Additional Property" shall mean Parcel B and Parcel C, Ocotillo Subdivision, as the same are shown and designated on the Plat of said Subdivision, filed in the Office of the County Clerk of Bernalillo County, New Mexico on the 11<sup>th</sup> day of March, 2004, in Book 2004C, Page 76.

(b) "Association" shall mean Ocotillo Homeowners Association, a New Mexico non-profit corporation.

(c) "Board" shall mean the Board of Directors of the Association.

(d) "Common Areas" shall mean the Private Roads, Private Storm Drainage Easements, Security Gate, Landscape Easements and Perimeter Wall (as hereinafter defined) and related Improvements.



- (e) "Declarant" shall mean Desert Ridge Development, LLC.
- (f) "Declaration" shall mean this Declaration of covenants, conditions, reservations, restrictions and easements, and any amendment or modification thereto.
- (g) "Dwelling" shall mean any building or a portion of a building situated on a Lot designed and intended for use by occupancy as a single family residence.
- (h) "Improvements" shall include, without limitation, buildings, out-buildings (including sheds and storage buildings), roads, driveways, parking areas, fences, gates, retaining walls, stairs, decks, windbreaks, poles, antennas, signs, utility or communication installations (whether above or underground), and any structure and excavation of any type or kind.
- (i) "Lot(s)" shall mean any one of the parcels numbered Lots 1 through 78, inclusive, as shown on the Subdivision Plat of Ocotillo Subdivision, filed in the Office of the County Clerk of Bernalillo County, New Mexico, on March 11<sup>th</sup>, 2004, in Book 2004 C, Page 76, or any lots subsequently made subject to this Declaration.
- (j) "Owner" shall mean the persons or entities, including Declarant, holding legal title or beneficial ownership of the fee, including the purchaser under an installment sales contract of a Lot, or a lessee of a Lot pursuant to a leasehold agreement of a term of twenty (20) years or greater. Owner shall not include a seller under an installment sales contract of a Lot or the lessor of a Lot pursuant to a leasehold agreement with a term of twenty (20) years or greater.
- (k) "Perimeter Wall" shall mean the wall constructed by Declarant or its successor on the perimeter of the Subdivision and on the south boundary line of Lot 33 and the north boundary line of Lot 34 adjoining the Private Storm Drainage Easement.
- (l) "Plat" shall mean the Subdivision Plat of Ocotillo Subdivision filed on March 11, 2004, in Book 2004 C, Page 76, in the Office of the County Clerk of Bernalillo County, New Mexico and all amendments and revisions thereto.
- (m) "Plat Easement Notes" shall mean the "Keyed Notes - New Easements" on the Plat.
- (n) "Private Roads" shall mean Sand Verbena Trail N.E., Desert Lily Lane N.E., Datura Trail N.E., Desert Poppy Lane N.E., Desert Plume Lane N.E. and Chia Way N.E., which are also described as Parcel A of the Subdivision.
- (o) "Private Storm Drainage Easements" shall mean the private storm drainage easements shown on the Plat Easement Notes as number 8.

(p) "Rowe Property" shall mean the property described on Exhibit "A" which is attached hereto and incorporated herein by reference. The Rowe Property includes (2) North Albuquerque Acres lots and portions of Holly Avenue which are not owned by the Rowes, and no provisions contained herein are intended to burden or benefit the portion of the Rowe Property within the boundaries of Holly Avenue, or the two (2) lots not owned by the Rowes, unless said land is acquired by the Rowes.

(q) "Rowes" shall mean Catherine Rowe, as Trustee, her heirs, personal representatives, successors and assigns.

(r) "Security Gate(s)" shall mean the gates on the intersections of Sand Verbenia Trail N.E. and Holbrook N.E. on the western portion of the Subdivision, and the gate on the northern boundary of Parcel C adjoining Holly Avenue, N.E., and any gate constructed within the Rowe Property.

(s) "Temporary Public Drainage Easement" shall mean the temporary public drainage easement shown on the Plat Easement Notes as number 18.

2. Land Use and Building Type. The Subdivision will be a gated community consisting of Private Roads, street signs and street lamps all of which shall be maintained by the Association. No Lot, or portion of a Lot, shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any Lot for use other than one Dwelling with a private garage attached to the Dwelling, for not less than two (2) automobiles. All Dwellings shall be constructed of frame/stucco and shall be of a contemporary southwest style with such stone accents as may be approved by the Committee (as hereinafter defined). The stucco is to be of sanded trowel finish. The stucco colors are to be limited to earth tones approved by the Committee. All buildings, except for covered porches and accessory buildings, shall have a pitched concrete tile roof or a flat roof. Front exterior light fixtures will be ceramic or concealed droplights and the design will be the same for all homes. Dwelling numbers will be ceramic tile or as approved by the Committee. There shall also be permitted, (upon approval of the Committee), but not required, one (1) detached accessory building for storage of garden tools, garden and household furnishings, not to exceed 100 square feet and not to exceed eight (8) feet in height. The accessory building must be located inside required property line setbacks and not be visible from the Private Roads. The exterior of any accessory building shall be roofed and stuccoed to match the exterior color of the Dwelling. The Committee will need to approve anything other than a standard gray concrete driveway or walkway.

3. Architectural Control Committee. An architectural control committee (the "Committee") is hereby established and shall be comprised of five (5) persons, each of whom shall serve until his or her successor is appointed and qualified or his or her obligations otherwise terminate.

The following persons are hereby appointed and declared to comprise the Committee:



Leigh Ann Smidt  
8300 Carmel Ave. NE, Suite 201  
Albuquerque, NM 87122

Justin D. Hoech  
8300 Carmel Ave. NE, Suite 601  
Albuquerque, NM 87122

Donald G. Hoech  
8300 Carmel Ave. NE, Suite 601  
Albuquerque, NM 87122

Nola K. Stofac  
8300 Carmel Ave. NE, Suite 201  
Albuquerque, NM 87122

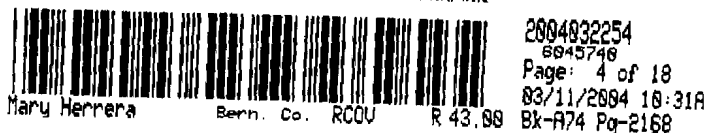
Connie Clark  
7305 Desert Eagle N.E.  
Albuquerque, NM 87113

Successors shall be appointed by a majority of the remaining members of the Committee. After Declarant or its successors has sold the last Lot and Dwelling to a third party purchaser, the duties of the Committee shall be undertaken by the Association, through a committee to be appointed by the Board.

BEFORE ANYONE SHALL COMMENCE THE CONSTRUCTION, RECONSTRUCTION OR ALTERATION OF ANY IMPROVEMENTS ON ANY LOT, THERE SHALL BE SUBMITTED TO THE COMMITTEE PLANS AND SPECIFICATIONS AS FOLLOWS:

- A. Plans and specifications shall clearly show the nature of the work or installation proposed and location on the Lot, which shall include sufficient description of materials, textures, etc., as shall enable the Committee to determine whether the construction, reconstruction or alteration of Improvements will harmonize with the architectural style of the Subdivision and the external design of existing structures within the Subdivision; and
- B. No Improvements of any kind, or alteration, painting, or texturing thereof, shall ever be, or permitted to be, erected, constructed, installed, placed or maintained on a Lot, unless and until the final plans, specifications and elevations shall have written approval of the Committee. All plans shall further include elevations and textures indicating the materials for the same.

The Committee shall have the right and power to disapprove any plans, specifications or details submitted to it, if the Committee finds that the plans and specifications are not in accordance with all provisions of this Declaration, or if the design, materials or color scheme submitted are not in harmony with other Improvements constructed within the Subdivision or if the plans and specifications are incomplete.



Neither the members of the Committee, either in their individual or in their collective capacities, nor the Declarant, shall be responsible, or have any liability, whatsoever for any defect in any plans, specifications or other data submitted to, approved by or revised by the Committee, or in any work done or Improvements made pursuant to such plans and specifications.

The Committee shall approve or disapprove the plans and specifications within thirty (30) days after receipt of the plans and specifications. If the Committee fails to approve or disapprove the plans and specifications within thirty (30) days after receipt, then such approval shall not be required; provided, that no structure, building or other improvement shall be installed, erected, painted, textured, altered or modified which violates any part of this Declaration.

4. Further Subdivision of a Lot. Except as otherwise provided in this Paragraph, and in Paragraph 29, no Lot may be divided into two or more parcels, nor may one Dwelling occupy more than one Lot. Lot 35 may be replatted into two (2) Lots if Holly Avenue adjoining Lot 35 is abandoned and a portion thereof is incorporated into the new Lots. The new Lots shall contain not less than 9,000 square feet. The Owner of Lot 35 shall have the right to subdivide as provided for in this Paragraph without the consent of the Declarant, the Association, the Owners of other Lots or lenders having liens on any of the Subdivision, provided however, the new Lots shall be deemed subject to all provisions of this Declaration upon the filing of a replat creating the new Lots.

5. Grading. No Lot may be landscaped or re-graded in such a manner as to cause the drainage characteristics of the Lot to differ significantly from the grading plan for the Subdivision approved by, and on file with, the City of Albuquerque Engineering Department (the "Drainage Report"). In no case may the drainage from one Lot drain on to any other Lot, except as allowed by the Drainage Report.

Any party constructing, reconstructing or altering Improvements on any Lot shall be required to conform with the Drainage Report, copies of which are available from Declarant, its successors or the City of Albuquerque.

6. Compliance with the Grading Plan and Development Plan. All Improvements constructed on each Lot shall comply with the City of Albuquerque approved "Grading Plan" and "Development Plan" for the Subdivision. All plans and specifications submitted to the Committee must contain sufficient information to enable the Committee to determine compliance with the Grading Plan and Development Plan. However, the Committee shall not be liable to the Owner or any other person for approval of plans, which are contrary to the Grading Plan and Development Plan.

It is the responsibility of the Owner that all Improvements built on each Lot are in compliance with the soils report for the Subdivision, a copy of which is available at the office of Declarant.



If the Improvement is a building which is to be built on any portion of a Lot outside the prepared pad, the Improvement must be built on controlled fill dirt.

7. Minimum Area of Dwelling; Height Restrictions. The total enclosed living area of any Dwelling, exclusive of open porches, garage, and any accessory building shall not be less than 2,000 square feet. Dwellings are restricted to one (1) story in height and are not to exceed eighteen feet (18') above finished grade on the following Lots: Lots 1, 12, 13, 19, 20, 26 and 27. Dwellings on all of the remaining Lots shall not exceed a height of twenty-six feet (26') above finished grade.

8. Setbacks. No Dwelling shall be located on any Lot in contradiction of the following setback requirements:

- A. There shall be a front-yard setback of not less than twenty feet (20') from the front Lot line.
- B. There shall be a garage setback of not less than twenty feet (20') from the front Lot line.
- C. There shall be a rear-yard setback of not less than fifteen feet (15') from the rear Lot line.
- D. There shall be a side yard setback of not less than five feet (5') from each side yard Lot line, except for corner Lots which shall have a side yard setback of not less than ten feet (10') from Private Roads. Pitched roofs overhanging the setback lines not more than two feet (2') shall not be construed as violating the setback requirements provided they are built at the time of construction of the original Dwelling.

9. Landscaping. The builder constructing any Dwelling shall install the front-yard landscaping. The Owner shall ensure the front yard landscaping is maintained in good condition at all times.

10. Tolerance. A four-inch (4") tolerance for mechanical variances in construction is hereby automatically allowed for buildings and other Improvement setback requirements imposed by this Declaration.

11. Completion of Work. Once construction, reconstruction or alteration of new Improvements shall commence, all such construction, reconstruction or alteration shall be finished and completed in all respects in accordance with the Committee-approved plans and specifications within nine (9) months after said commencement. All construction, reconstruction or alteration activities shall be accomplished in such a manner as shall not create unreasonable, unsightly, noisy or objectionable conditions.

12. Nuisances. No noxious or offensive activity shall be carried on, or permitted upon any Lot. Nothing shall be done, placed or stored on any Lot which may be or may become an annoyance or nuisance to the Owner(s) of other Lot(s), or which will occasion any noise or odor which will or might disturb the peace, comfort or serenity of the occupants of Dwellings on other Lot(s). Owners of vacant Lots shall be responsible for keeping, and shall keep, their Lots clear of weeds, trash and other detracting impediments. No trash or garbage shall be burned on any Lot. Garbage and other waste materials shall be placed in the covered containers provided by the City of Albuquerque and shall not be placed out for collection more than 24 hours prior to scheduled collection times. These containers shall be concealed from the street on non-garbage collection days.

A wire receptacle shall be provided by the builder in the construction area and all debris easily displaced by wind shall be placed in the receptacle. The receptacle shall be emptied when full. All Lots shall be maintained in a neat, orderly condition at all times.

13. Temporary Buildings. No Improvement of a temporary character, such as a shack, barn, basement, trailer, tent, garage or other outbuilding, mobile home, or motor home, shall be used on any Lot at any time as a Dwelling, either temporarily or permanently. No Dwelling placed or erected on a Lot shall be occupied in any manner at any time prior to its being fully completed; provided, however, that this provision shall not prevent the occupancy and use of Improvements on a Lot for residential purposes while additions, modifications, or alterations are being made to a completed Dwelling pursuant to plans and specifications duly approved by the Committee.

Notwithstanding anything to the contrary, any Lot may be used for a sales office, model home complex, or storage and construction yard during the initial construction of a Dwelling and the sales period. All such temporary uses must have the prior approval of the Committee, which shall establish the requirements for such uses.

14. Equipment. No satellite dish, radio, television or other antennas shall be erected upon a Lot unless the antenna(s) can be concealed from view behind a parapet or inside the roof structure or attic, or unless approved by the Committee. Where externally visible air conditioners or evaporative coolers are installed, they shall be so installed that they will not be visible from the front or side Private Roads. Roof mounted units shall be allowed, however, they shall be installed so as to comply with this restriction as much as reasonably possible. No clotheslines or basketball goals of any type shall be placed on or at any Dwelling.

15. Parking and Storage of Vehicles, Etc., Within the Subdivision. No camper, recreational vehicle, trailer, mobile home, boat, commercial type vehicle, van, motorcycle, dune buggy, bus, inoperable vehicle or tractor shall be stored or parked on any Lot continuously for a period of more than twenty-four (24) hours. No camper, recreational vehicle, trailer, mobile home, boat, commercial type vehicle, van, motorcycle, dune buggy, bus, inoperable vehicle or tractor shall be parked on the Private Roads overnight. Operable vehicles may only be parked on the Private Roads for up to seventy-two (72) hours continuously and the same vehicle may not be



parked on the Private Roads more than nine (9) days in any calendar month. The Association shall have the right to adopt rules and regulations regarding parking on the Private Roads which amend the requirements of the previous sentence of this paragraph.

16. Flood Lights. No un-shaded exterior lights shall be permitted which project light more than fifteen (15) feet from a Dwelling.

17. No Improvement to Obstruct Vision of Vehicle Operator. No Improvement, including walls, fences, hedges or other obstructions shall be erected, placed, altered or permitted to remain upon any Lot which would obstruct or reduce the vision of an operator of any type of vehicle or obstruct the entrance to the Subdivision and said Improvements shall also comply with the City of Albuquerque's ordinances or guidelines for the clear sight triangle.

18. Party Walls. Party walls include privacy walls. The rights and duties of the Owners with respect to party walls are as follows:

- A. If any party wall is damaged or destroyed through the act of an Owner or any of his/her guests, tenants, licensees, agents or family members, such Owner shall immediately proceed to rebuild and repair the wall to as good a condition as formerly existed without cost to the adjoining Lot Owner.
- B. If any party wall is damaged or destroyed by some cause (including ordinary wear and tear and deterioration from lapse of time), other than the act of one of the Owners, his/her guests, tenants, licensees, agents or family members, then both adjoining Lot Owners shall proceed forthwith to rebuild or repair the wall to as good a condition as existed prior to the damage or destruction at their joint and equal expense.
- C. Any and all resurfacing or repainting of a party wall shall be done in a color to match the original.

19. Privacy Walls & Gates.

- A. Walls for purposes of visual screening or privacy may be constructed within the rear and side yard set back lines, provided the style, color and materials are compatible with those of the Dwelling. Side, front and rear yard walls shall have a maximum height of seventy-two (72) inches. In no case may a wall be in violation of any governmental codes.
- B. All front walls completing court yards that face the Private Roads shall be constructed to match the Dwelling.
- C. No barbed wire, welded wire, welded pipe or wood slats shall be permitted on any Lot. During the construction of the Dwellings, temporary privacy fences





will be permitted between adjoining Lots, until such adjoining Dwellings are completed. All temporary fences must be uniform, provide privacy and be a minimum of five feet (5') in height.

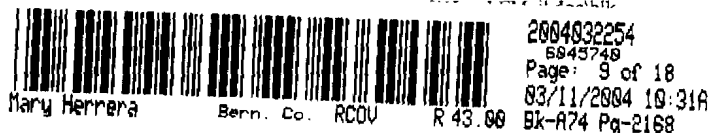
20. Casualty. If any Improvement on any Lot is destroyed, wholly or in part, by fire or other casualty, the Improvement so damaged or destroyed shall be promptly and properly rebuilt or repaired in conformity with the provisions of this Declaration; or, in the alternative, all remaining portions of the Improvement, including all foundations and all debris, shall be removed from the Lot. If the Owner of the Lot elects to clear the Lot, the razing and clearing work shall be completed within one hundred twenty (120) days after the casualty.

21. Animals and Pets. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that domestic dogs and cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial breeding purpose.

22. Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying, or mining operations or exploration of any kind shall be permitted upon any Lot. No oil wells, tanks, tunnels, minerals excavation shafts or other such equipment or activities shall be permitted upon any Lot.

23. Easements and Rights-of-Way

- A. Utility Easements and Rights-of-Way. All areas of the Lots reserved for the installation, removal, repair and maintenance of utilities are reserved and designated as utility easements on the Plat.
- B. Easements and Rights-of-Ways Include Right of Ingress and Egress. All easements and rights-of-ways of whatever type which are shown and designated on the Plat shall include the right of ingress to and egress from such easements and rights-of-way over, upon, or under such easements, for the purpose of installing, removing, repairing and maintaining utilities, trimming or removing of interfering trees or shrubs, and any other purpose for which such easements and rights-of-way may be used.
- C. No Construction or Obstacle on Any Type of Easement or Right-of-Way. No Dwelling, obstacle, or other type of Improvement shall be erected, placed, altered, or permitted to remain upon any portion of a Lot which is the subject of any type of easement or right-of-way which would in any way interfere with the use of such easement or right-of-way; nor shall any trees, shrubs, hedges, or other landscaping be planted or permitted to remain in place, or to remain untrimmed, which would interfere with the use of any easement or right-of-way.



D. Perimeter Walls. The Perimeter Walls shall be Common Areas, constructed by the Declarant or its successors, and shall be maintained by the Association. Each Lot containing a portion of the Perimeter Walls shall be subject to a perpetual non-exclusive easement for said Perimeter Walls which shall be three (3) feet in width ("Perimeter Wall Easements") and shall be located as follows:

- (1) The southern three (3) feet of Lots 33 and 60 through 78.
- (2) The western three (3) feet of Lots 1 through 6 and 78.
- (3) The northern three (3) feet of Lots 6, 7, 13, 14, 20, 21, 27, 28, 31, 34 and 35.
- (4) The eastern three (3) feet of Lots 28, 29, 30, 31, 32, 33, 34 and 60.

The Perimeter Wall Easements shall be perpetual and non-exclusive for the benefit of Declarant, its successors, and the Association for the construction, maintenance and repair of the Perimeter Walls. No Owner shall have the right to tie into or alter the Perimeter Walls on said Owner's Lot without the prior written consent of Declarant, its successors or the Association.

E. Landscape Easements. The Plat has created Landscape Easements in Plat Easement Note number 17, which shall be maintained by the Association. Declarant further declares that the southwestern corner of Lot 1 is subject to a perpetual non-exclusive easement for landscaping outside the Perimeter Wall, which shall be deemed one of the "Landscape Easements". The Landscape Easement on Lot 1 shall be utilized for monument signage for the Subdivision, lighting and landscaping. The Landscape Easements shall be maintained by Declarant, its successors or the Association.

F. Private Access Easement. The Plat has created a private access easement on Parcel C in Plat Easement Notes number 16 which shall be maintained by the Association.

G. Temporary Public Drainage Easement. The Plat has created a temporary public drainage easement on Lot 60 in Plat Easement Notes number 18 which shall be maintained by the Association.

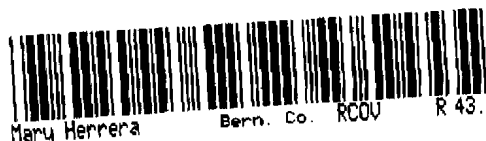
24. Billboards, Poster-Boards, and Advertising. The construction and/or maintenance of billboards, poster-boards, and advertising structures of any kind on any part of any Lot is prohibited, except that real estate agents and/or the Owner of a Lot may display one (1)

temporary "For Sale" sign or one (1) "Open House" sign on any Lot. The sum of the length and width of such signs shall not exceed sixty inches (60"). Declarant and the initial builder of the Improvements on each Lot shall be exempt from the requirements of this Paragraph 24.

25. Common Areas. The Common Areas shall be maintained by the Association. The Board shall have the right to establish rules and regulations related to use of the Common Areas.

26. Association. The Association shall be a New Mexico non-profit corporation which shall be controlled by the articles of incorporation and bylaws thereof.

- A. Every Lot shall be entitled to one (1) membership in the Association which shall be vested in the Owner or Owners thereof. If an Owner owns more than one (1) Lot, said Owner shall have only one (1) Membership in the Association, however, said Owner shall have one (1) vote for each Lot. Membership shall be appurtenant to and may not be separated from the ownership of any Lot. Ownership of a Lot shall be the sole qualification for membership.
- B. The Association shall have one (1) class of voting membership.
- C. The expenses of the Association shall be paid through assessments against each Lot. Such assessments shall be fixed, established and collected from time to time as hereinafter provided. The assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on each Lot and shall be a continuing lien upon each Lot against which each such assessment is made. These assessments and costs shall also be the personal obligation of each person or entity who was the Owner of the Lot when the assessment became due. Assessments will begin on the date set by the Board and will be prorated for partial assessment years.
- D. The assessments shall be used exclusively for the Common Areas and costs of the Association.
- E. The initial annual assessments for each of the Lots shall be \$480.00, prorated from the date each Owner closes on the purchase of a Lot and Dwelling from Declarant or the initial builder. Annual assessments thereafter shall be due and payable on January 1 of each successive year and shall be delinquent each February 1 if not paid in full; provided however, the Association may decide to assess the Owners monthly or quarterly for the annual assessments. Neither Declarant nor a builder holding a Lot for development or a Lot with a Dwelling for initial sale shall be required to pay any assessments for Lots it owns; provided



however, if any Dwelling owned by Declarant or the initial builder is occupied as a residence prior to the sale the annual assessments shall commence on the date of occupancy and shall be paid by the Owner of said Lot. The \$480.00 annual assessment shall remain in effect until modified by a two-thirds (2/3) vote of the members of the Association at a meeting held for the purpose of determining said assessments, which meeting shall be called at least thirty (30) days in advance thereof, except in the event of an emergency.

- F. Written notice of the annual assessments shall be sent to every member at the time of its determination by the Board. The Association shall, upon demand at any time, furnish to a member a certificate in writing signed by an officer designated by the Board as the one responsible for keeping the records, or for this purpose, 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.
- G. If any installment of an assessment is not paid within thirty (30) days after it is due, then such assessment shall become delinquent and shall, together with interest thereon, and the cost of collection thereof, as provided herein, become a continuing lien on the Lot which shall bind such Lot in the hands of the then Owner of that Lot, and any subsequent Owner. The personal obligation of the then Owner to pay such assessment, however, shall remain its personal obligation for the statutory period and shall not pass to its successors in title until expressly assumed by them. If the assessment is not paid within thirty (30) days after the delinquency date, a reasonable late charge may be assessed at the discretion of the Board and the assessment shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum until paid. The Association may bring an action at law against the Owner personally obligated to pay the same or an action to foreclose the lien against the Lot, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided, reasonable attorney's fees to be fixed by the court, together with the costs of the action.
- H. The lien for the assessments shall be subordinate to the lien of any first mortgage placed upon the Lot in good faith and for value; however, such subordination applies only to the assessments due before the sale or transfer of the Lot pursuant to a decree of foreclosure, or any transfer in lieu of foreclosure. The sale or transfer of a Lot does not relieve the Lot from the liability for or lien of assessments thereafter becoming due.

27. No Business or Commercial Enterprise Permitted. No business, whether or not for profit, and no commercial enterprise of whatever kind, except from time to time as may be



permitted by the City of Albuquerque Comprehensive Zoning Ordinance for the Subdivision, shall be undertaken or carried on, upon, or from any Lot, except only the original sales and subsequent sales of the Lots and the Dwellings constructed and to be constructed thereon. No stores, shops, businesses, commercial, or industrial buildings, or other such structures of whatever type shall be erected, placed, altered, or permitted to remain upon any Lot, except only in connection with the original development and sales of the Lots and construction and sales of the Dwellings, such as model homes or a show home, or a sales office.

Home offices shall be allowed in occupied Dwellings under the following guidelines:

- A. There shall be no signs and/or advertising of the home office;
- B. The garage shall remain a garage and shall not be converted to an office; and
- C. There shall be a maximum of one customer and the Owner of the Lot conducting business at any one time from the home office.

28. Additional Property. The owner(s) of the Additional Property shall have the right, without the consent of the Association, or any Owners, or lenders having liens on any of the Subdivision, to subdivide the Additional Property and make the Additional Property subject to this Declaration. Each parcel of the Additional Property which is platted for single family residential use shall be deemed a Lot for purposes of this Declaration, including membership in the Association and liability for assessments, on the date the replat creating said Lot(s) is filed. The Additional Property may be replatted into a maximum of (2) Lots if Holly Avenue adjoining the Additional Property is abandoned and a portion thereof is incorporated into the new Lots. The new Lots shall contain not less than 9,000 square feet each.

29. Rowe Property. Upon the written notice from the owner of the Rowe Property, and upon the owner of the Rowe Property filing a supplemental declaration to this Declaration, without the consent of the Association or any Owner, or lenders having liens on any portion of the Subdivision, the Rowe Property shall be subjected to this Declaration, as hereinafter qualified, and the owner of the Rowe Property shall have access rights to and from the Private Roads and use of the Security Gate on Holbrook N.E. without the obligation of the owners of the Rowe Property to contribute to the initial construction costs of the original Subdivision and the Common Areas' Improvements. The Rowe Property shall only be platted into single family residential lots and necessary private roads and easements (including Perimeter Wall Easements), and shall include a security gate providing access to Holly Avenue, N.E., if required by the City of Albuquerque. Each single family residential lot shall be deemed a Lot for purposes of membership in the Association and assessments. The obligation for payment of the annual assessments by the Owners of the Lots within the Rowe Property shall commence as to each such Lot upon the substantial completion of the Dwelling thereon and the consummation of the initial sale thereof by the builder or occupancy of the Dwelling, whichever occurs first. All Lots created within the Rowe Property shall contain not less than 9,000 square feet and Dwellings

shall be comparable in design and cost per square foot to the Dwellings constructed on the southernmost Lots of the Subdivision. Prior to the construction of any Improvements thereon, the initial plans shall be submitted to the Committee, but Committee approval shall not be required. Notwithstanding the preceding sentence, all other provisions of this Declaration shall apply to the Lots created within the Rowe Property and the construction of Improvements thereon, including subsequent renovations to the initial Improvements. The owner of the Rowe Property shall pay all costs for infrastructure (including separate metering of utilities within the Common Areas) and other Improvements required by governmental authorities, as well as the cost for a perimeter wall, which shall be of the same materials and colors as the Perimeter Wall. The owner of the Rowe Property shall also pay for a security gate to provide access to and from Holly Avenue, N.E., if a road connecting to Holly Avenue N.E. is required by the City of Albuquerque. All rights and obligations of this Declaration with respect to the Rowe Property shall run with the Rowe Property. Nothing contained herein shall preclude the owner of the Rowe Property from electing not to be subjected to this Declaration and to put the Rowe Property to use for purposes other than as set forth herein, provided said election is made before the election to subject the Rowe Property to this Declaration.

30. Enforcement of Covenants. The violation or breach of any provision, condition, restriction or covenant in this Declaration, after notice of such violation or breach has been presented to an Owner, shall give each other Owner, Declarant, the Association and the Committee the right to prosecute at law or in equity, the person or persons who have violated or are attempting to violate any provision, condition, restriction or covenant in this Declaration, to enjoin or prevent them from doing so, to cause the violations to be remedied or to recover damages for the violation. Any one of the above-listed persons or entities may so enforce this Declaration and the cooperation of any other person or entity is not required.

The result of every action or omission whereby any provision, condition, restriction or covenant in this Declaration is violated in whole or in part, is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or equity against an Owner, either public or private, shall be applicable against every such action or omission.

The failure of Declarant, the Committee, the Association or any Owner to enforce any provision, condition, restriction or covenant in this Declaration shall not be deemed to be a waiver of the right to do so thereafter nor of the right to enforce any other provision, condition, restriction or covenant in this Declaration.

The prevailing party or parties in any judicial proceedings to enforce this Declaration shall be entitled to reasonable attorney's fees and court costs from the non-prevailing party.

All questions of interpretation or construction of the terms of this Declaration shall be resolved by the Association.

31. Severability. If any one or more of the provisions, conditions, covenants and restrictions in this Declaration are held by any court of competent jurisdiction to be null and

void, all remaining provisions, conditions, covenants and restrictions shall continue unimpaired and in full force and effect.

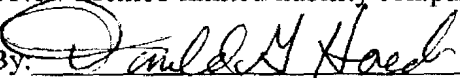
32. Assignment of Declarant's Rights. The Declarant shall have the right to assign, transfer and convey all of Declarant's rights to a third party or parties acquiring the remaining undeveloped Lots owned by Declarant in the Subdivision. Said assignee(s) or successor(s) shall have the same rights as Declarant hereunder.

33. Duration of These Covenants. The provisions, conditions, covenants and restrictions in this Declaration shall run with the land and continue in full force and effect for a period of thirty (30) years from the date of the filing of this Declaration in the office of the County Clerk of Bernalillo County, New Mexico, at which time they shall be automatically extended for a period of ten (10) years and thereafter for successive ten year periods, unless before the commencement of any extension period the then Owners of the fee simple estate of seventy-five percent (75%) or more of the Lots by written instrument, duly executed and recorded, shall declare a termination of this Declaration. Any such termination shall become effective upon the date upon which otherwise the automatic extension would take effect.

34. Amendment. At any time after the date of the filing this Declaration, the Owners of not less than seventy-five percent (75%) of the Lots may release one or more of the Lots from, or may modify, change or amend all or any portion of the provisions, conditions, covenants or restrictions contained in this Declaration by executing and acknowledging an appropriate agreement or agreements in writing for such purposes and filing the same for record in the office of the County Clerk of Bernalillo County, New Mexico. No amendment to this Declaration which impairs the rights of the owner(s) of the Rowe Property may be made without the written consent of the owner(s) of the Rowe Property; provided however, after submission of the Rowe Property to this Declaration, the above requirements for amendment shall apply, except as to matters which only affect or disproportionately affect the Lots which were originally part of the Rowe Property, in which case unanimous consent of the Owners of those Lots must be obtained to amend this Declaration.



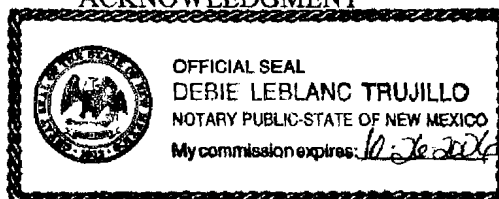
DESERT RIDGE DEVELOPMENT, LLC,  
a New Mexico limited liability company

By:   
DONALD G. HOECH  
Managing Member

Dated: February 23, 2004

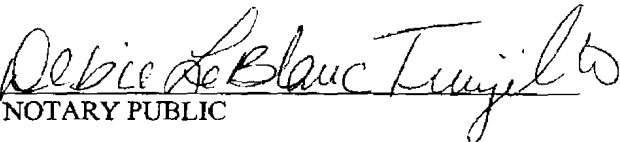
ACKNOWLEDGMENT

STATE OF NEW MEXICO )  
 )  
COUNTY OF BERNALILLO )



This instrument was acknowledged before me on 23 February 2004, by DONALD G. HOECH, Managing Member of DESERT RIDGE DEVELOPMENT, LLC, a New Mexico limited liability company.

MY COMMISSION EXPIRES:  
October 26, 2004

  
NOTARY PUBLIC





JASON DASKALOS

CINDY LANE DASKALOS

*Lynn CD*

STATE OF NEW MEXICO )  
COUNTY OF BERNALILLO )



This instrument was acknowledged before me on October 26, 2004, by JASON DASKALOS and CINDY LANE DASKALOS.

Debie Leblanc Trujillo  
NOTARY PUBLIC

MY COMMISSION EXPIRES:

October 26, 2004



## **EXHIBIT "A"**

### **Rowe Property**

Lots 5 and 6, Block 20, North Albuquerque Acres, Tract 3, Unit 1, as the same is shown and designated on the plat thereof filed in the office of the County Clerk of Bernalillo County, New Mexico on March 23, 1931, in Book D, page 132.



**FIRST AMENDMENT TO DECLARATION OF  
RESTRICTIVE AND PROTECTIVE COVENANTS  
FOR  
OCOTILLO SUBDIVISION**

**THIS AMENDMENT** is entered into effective the 3/27 day of March, 2004, by and between DESERT RIDGE DEVELOPMENT, LLC, a New Mexico limited liability company ("Desert Ridge"), and JASON DASKALOS and CINDY LYNN DASKALOS, husband and wife, ("Daskalos").

WHEREAS, Desert Ridge and Daskalos are the owners of the following described real property located in the County of Bernalillo, State of New Mexico, to-wit:

Lots 1 through 78 and Parcels A, B and C, Ocotillo Subdivision, as the same are shown and designated on the Plat of said Subdivision, filed in the Office of the County Clerk of Bernalillo County, New Mexico on the 11th day of March, 2004, in Book 2004C, Page 76.

("Property"); and

WHEREAS, a Declaration of Restrictive and Protective Covenants related to the Property was filed March 11, 2004 in Book A74, Page 2168, as Documents No. 2004032254, records of Bernalillo County, New Mexico ("Declaration"); and

WHEREAS, the parties desire to amend the Declaration.

NOW, THEREFORE, in consideration of the above and other good and valuable consideration, the receipt of which is hereby acknowledged, it is agreed as follows:

1. All capitalized terms shall have the definitions set forth in the Declaration, unless otherwise defined herein.

2. Paragraph 28 of the Declaration is amended to substitute the following for the last sentence of said paragraph:

"The new Lots shall contain not less than 7,500 square feet each."

3. Paragraph 23.D. is amended to substitute the following:

"D. Perimeter Walls. The Perimeter Walls shall be Common Areas, constructed by the Declarant or its successors, and shall be maintained by the Association. Each Lot containing a portion of the Perimeter Walls shall be subject to a perpetual non-exclusive easement for said Perimeter Walls ("Perimeter Wall Easements") which shall be of the widths and locations as set forth hereinafter:

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Mary Herrera      Bern. Co. AMND      R 15.00

- (1) The southern three (3) feet of Lots 1, 33 and 60 through 62, 64 through 66, 68 through 70, 72 through 74 and 76 through 78.
- (2) The southern five (5) feet of Lots 63, 67, 71 and 75.
- (3) The western three (3) feet of Lot 78.
- (4) The western seven (7) feet of Lots 1 through 6.
- (5) The northern three (3) feet of Lots 6, 7, 13, 14, 20, 21, 27, 28, 31, 34 and 35.
- (6) The eastern three (3) feet of Lots 28, 29, 30, 31, 32, 33, 34 and 60.

The Perimeter Wall Easements shall be perpetual and non-exclusive for the benefit of Declarant, its successors, and the Association for the construction, maintenance and repair of the Perimeter Walls. No Owner shall have the right to tie into or alter the Perimeter Walls on said Owner's Lot without the prior written consent of Declarant, its successors or the Association."

4. Except as herein modified and amended the remaining terms and provisions of the Declaration shall remain in full force and effect.

5. This Amendment shall be binding upon the undersigned, their heirs, personal representatives, successors and assigns in all respects and shall be deemed to run with the land in the same manner as provided for in the Declaration.

IN WITNESS WHEREOF, the undersigned have executed this First Amendment to Declaration of Restrictive Covenants for Ocotillo Subdivision effective the date first hereinabove set forth.



Signature Page  
First Amendment to Declaration of  
Restrictive and Protective Covenants  
for  
Ocotillo Subdivision

DESERT RIDGE DEVELOPMENT, LLC,  
a New Mexico limited liability company

By   
Donald G. Hoech, Managing Member

ACKNOWLEDGMENT

STATE OF NEW MEXICO    )  
                                      )  
COUNTY OF BERNALILLO )

This instrument was acknowledged before me on 3-31, 2004, by DONALD G. HOECH, Managing Member of DESERT RIDGE DEVELOPMENT, LLC, a New Mexico limited liability company.

MY COMMISSION EXPIRES:  
August 31, 2004

  
NOTARY PUBLIC



Mary Herrera

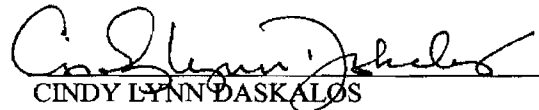
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Signature Page  
First Amendment to Declaration of  
Restrictive and Protective Covenants  
for  
Ocotillo Subdivision

  
JASON DASKALOS


  
CINDY LYNN DASKALOS

STATE OF NEW MEXICO    )  
                                      )  
COUNTY OF BERNALILLO    )

This instrument was acknowledged before me on 3-31, 2004, by JASON DASKALOS and CINDY LYNN DASKALOS, husband and wife.

  
NOTARY PUBLIC

MY COMMISSION EXPIRES:  
August 31, 2004

  
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**SECOND AMENDMENT TO DECLARATION OF  
RESTRICTIVE AND PROTECTIVE COVENANTS  
FOR  
OCOTILLO SUBDIVISION**

**THIS SECOND AMENDMENT** is entered into effective the 21<sup>st</sup> day of July, 2004, by and among DESERT RIDGE DEVELOPMENT, LLC, a New Mexico limited liability company ("Desert Ridge"); JASON DASKALOS and CINDY LYNN DASKALOS, husband and wife ("Daskalos"); TIERRA VISTA LLC, a New Mexico limited liability company ("Tierra Vista"); and THE LOWE COMPANY, a New Mexico corporation ("Lowe").

WHEREAS, Desert Ridge, Daskalos, Tierra Vista and Lowe are the owners of the following described real property located in the County of Bernalillo, State of New Mexico, to-wit:

Lots 1 through 78 and Parcels A, B and C, Ocotillo Subdivision, as the same are shown and designated on the Plat of said Subdivision, filed in the Office of the County Clerk of Bernalillo County, New Mexico on the 11th day of March, 2004, in Book 2004C, Page 76.

("Property"); and

WHEREAS, a Declaration of Restrictive and Protective Covenants related to the Property was filed March 11, 2004 in Book A74, Page 2168, as Documents No. 2004032254, records of Bernalillo County, New Mexico ("Declaration"); and

WHEREAS, the Declaration was amended by a First Amendment to Declaration of Restrictive and Protective Covenants for Ocotillo Subdivision filed April 1, 2004, as Document No. 2004042743, records of Bernalillo County, New Mexico ("First Amendment"); and

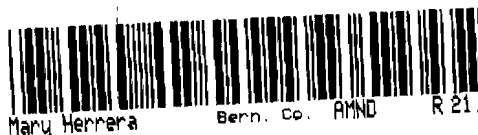
WHEREAS, the parties desire to further amend the Declaration.

NOW, THEREFORE, in consideration of the above and other good and valuable consideration, the receipt of which is hereby acknowledged, it is agreed as follows:

1. All capitalized terms shall have the definitions set forth in the Declaration, unless otherwise defined herein.

2. Paragraph 2 of the Declaration is amended to substitute the following:

"2. Land Use and Building Type. The Subdivision will be a gated community consisting of Private Roads, street signs and street lamps all of which shall be maintained by the Association. No Lot, or portion of a Lot, shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any Lot for use other than one Dwelling with a private



garage attached to the Dwelling, for not less than two (2) automobiles. All Dwellings shall consist of a stucco exterior with such stone accents as may be approved by the Committee (as hereinafter defined). The Committee will approve the exterior colors of each Dwelling. All buildings shall have a pitched concrete, slate or clay tile roof, a flat roof, or a combination thereof, with the color of pitched portions to be approved by the Committee. There shall also be permitted, (upon approval of the Committee), but not required, one (1) detached accessory building for storage of garden tools, garden and household furnishings, not to exceed 100 square feet and not to exceed eight (8) feet in height. The accessory building must be located inside required property line setbacks. The exterior of any accessory building shall match the stucco color and roof style and color of the Dwelling. The Committee will need to approve anything other than a standard gray concrete driveway or walkway. Rain gutters and downspouts are to match the exterior colors of the Dwelling."

3. Paragraph 9 of the Declaration is amended to substitute the following:

"9. Landscaping. The builder constructing any Dwelling shall install the front-yard landscaping prior to occupancy. The Owner shall ensure the front yard landscaping is maintained in good condition at all times."

4. Paragraph 14 of the Declaration is amended to substitute the following:

"14. Equipment. No satellite dish, radio, television or other antennas shall be erected upon a Lot unless the antenna(s) can be concealed from view behind a parapet or inside the roof structure or attic, or unless approved by the Committee. Roof mounted mechanical units, such as evaporative coolers or air conditioners, are allowed so long as they are installed on a flat roof and hidden behind parapet walls. No clotheslines shall be used outside any Dwelling. No basketball goal shall be permanently located on a Lot, except in the backyard."

5. Paragraph 27 of the Declaration is amended to substitute the following for Paragraph C:

"C. Traffic, as a result thereof, shall not exceed more than two (2) vehicles at any one (1) time."

6. Except as herein modified and amended the remaining terms and provisions of the Declaration and First Amendment shall remain in full force and effect.

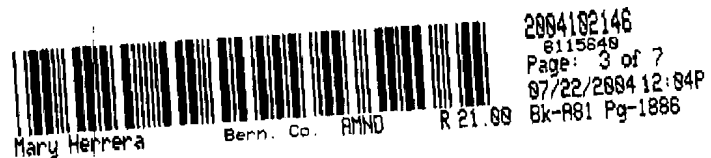
7. This Amendment shall be binding upon the undersigned, their heirs, personal representatives, successors and assigns in all respects and shall be deemed to run with the land forever.





8. This Agreement may be executed in several counterparts and all so executed counterparts shall constitute one agreement binding on all parties hereto, notwithstanding that all of the parties are not signatories to the original or same counterpart.

IN WITNESS WHEREOF, the undersigned have executed this Second Amendment to Declaration of Restrictive and Protective Covenants for Ocotillo Subdivision effective the date first hereinabove set forth.



Signature Page  
Second Amendment to Declaration of  
Restrictive and Protective Covenants  
for  
Ocotillo Subdivision

DESERT RIDGE DEVELOPMENT, LLC,  
a New Mexico limited liability company

By Donald G. Hoech  
Donald G. Hoech, Managing Member

ACKNOWLEDGMENT

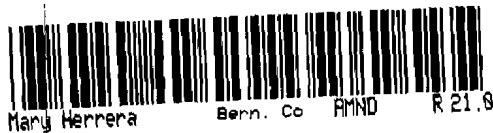
STATE OF NEW MEXICO    )  
                                      )  
COUNTY OF BERNALILLO )

This instrument was acknowledged before me on 2-20, 2004, by DONALD G. HOECH, Managing Member of DESERT RIDGE DEVELOPMENT, LLC, a New Mexico limited liability company.

MY COMMISSION EXPIRES:

August 31, 2004

Bonnie A. Schroeder  
NOTARY PUBLIC



Mary Herrera

Bern. Co

RMND

R 21.00

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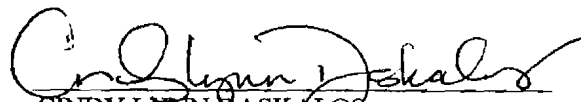
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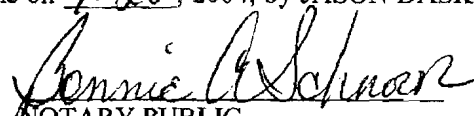
Signature Page  
Second Amendment to Declaration of  
Restrictive and Protective Covenants  
for  
Ocotillo Subdivision

  
\_\_\_\_\_  
JASON DASKALOS

  
\_\_\_\_\_  
CINDY LYNN DASKALOS

STATE OF NEW MEXICO    )  
                                  )  
COUNTY OF BERNALILLO   )

This instrument was acknowledged before me on 2-20, 2004, by JASON DASKALOS and  
CINDY LYNN DASKALOS, husband and wife.

  
\_\_\_\_\_  
NOTARY PUBLIC

MY COMMISSION EXPIRES:

August 31, 2004



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Signature Page  
Second Amendment to Declaration of  
Restrictive and Protective Covenants  
for  
Ocotillo Subdivision

TIERRA VISTA LLC,  
a New Mexico limited liability company

By: [Signature]  
Its: President

STATE OF NEW MEXICO    )  
                                      )  
COUNTY OF BERNALILLO )

This instrument was acknowledged before me on 2/16, 2004, by Jim L. Clark,  
President of TIERRA VISTA LLC, a New Mexico limited liability company.  
[Signature]  
NOTARY PUBLIC

MY COMMISSION EXPIRES:  
August 31, 2004

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Benn. Co. AMND  
Mary Herrera

Signature Page  
Second Amendment to Declaration of  
Restrictive and Protective Covenants  
for  
Ocotillo Subdivision

THE LOWE COMPANY,  
a New Mexico corporation

By:   
JOHN LOWE, President

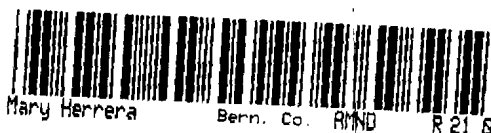
STATE OF NEW MEXICO )  
COUNTY OF BERNALILLO )

This instrument was acknowledged before me on 15, July, 2004, by JOHN LOWE, President of  
THE LOWE COMPANY, a New Mexico corporation.

  
NOTARY PUBLIC

MY COMMISSION EXPIRES:

August 31, 2004



Mary Herrera

Bern. Co. AMND

R 21.00

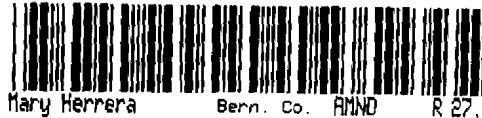
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**THIRD AMENDMENT TO DECLARATION OF  
RESTRICTIVE AND PROTECTIVE COVENANTS  
FOR  
OCOTILLO SUBDIVISION**

THIS THIRD AMENDMENT is entered into effective the 24<sup>th</sup> day of November, 2004, by and among DESERT RIDGE DEVELOPMENT, LLC, a New Mexico limited liability company ("Declarant"); and the parties set forth on Exhibit "A", which is attached hereto and incorporated herein by reference (collectively "Builders/Owners").

WHEREAS, Declarant and Builders/Owners are the owners of seventy-five percent (75%) of the following described real property located in the County of Bernalillo, State of New Mexico, to wit:

Lots 1 through 78 and Parcels A, B and C, Ocotillo Subdivision, as the same are shown and designated on the Plat of said Subdivision, filed in the Office of the County Clerk of Bernalillo County, New Mexico, on the 11th day of March, 2004, in Book 2004C, Page 76.

"Property"); and

WHEREAS, a Declaration of Restrictive and Protective Covenants for Ocotillo Subdivision was filed on March 11, 2004 in Book A74, Page 2168, as Document No. 2004032254, records of Bernalillo County, New Mexico ("Declaration"); and

WHEREAS, the Declaration was amended by a First Amendment to Declaration of Restrictive and Protective Covenants for Ocotillo Subdivision was filed on April 1, 2004, in Book A75, Page 2613, as Document No. 2004042743, records of Bernalillo County, New Mexico ("First Amendment"); and

WHEREAS, the Declaration was further amended by a Second Amendment to Declaration of Restrictive and Protective Covenants for Ocotillo Subdivision was filed on July 22, 2004, in Book A81, Page 1888, as Document No. 2004102146, records of Bernalillo County, New Mexico ("Second Amendment"); and



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WHEREAS, the Declaration encumbers the Property; and

WHEREAS, Declarant and Builders/Owners desire to amend the Declaration.

NOW, THEREFORE, in consideration of the above and other good and valuable consideration, the receipt of which is hereby acknowledged, it is agreed as follows:

1. All capitalized terms shall have the definitions set forth in the Declaration, unless otherwise defined herein.

2. Declarant and Builders/Owners hereby declare that Paragraphs 1(d) and (k) of the Declaration are amended and the following substituted therefor:

"(d) "Common Areas" shall mean the Private Roads, Private Storm Drainage Easements, Security Gate, Landscape Easements, Common Perimeter Walls, Common Retaining Wall and related Improvements."

"(k) "Private Perimeter Walls" shall mean the walls constructed by Declarant or its successor on the perimeter of the Subdivision on the boundaries of some of the Lots."

3. Declarant and Builders/Owners hereby declare that Paragraph 1 of the Declaration is amended to add the following:

"(t) "Common Perimeter Walls" shall mean the portion of the perimeter walls on Parcels A, B and C of the Subdivision."

"(u) "Common Retaining Wall" shall mean the outer and separate retaining wall constructed by Declarant on the western boundaries of Lots 1 through 6 adjoining Holbrook Avenue."

4. Declarant and Builders/Owners hereby declare that Paragraph 23.D. of the Declaration is amended and the following substituted therefor:

"D. Walls. The Common Perimeter Walls and Common Retaining Wall shall be Common Areas maintained by the Association. The Private Perimeter Walls shall be owned by the Owner of each Lot upon which a portion of the Private Perimeter Wall exists. The Private Perimeter Walls shall be maintained by the Owner of each Lot upon which a portion of the Private Perimeter Wall exists. Notwithstanding the ownership of the Private Perimeter Walls, the Association shall maintain the façade facing away from the Subdivision, including graffiti removal, and each Owner will be responsible for all other maintenance, repair and replacement of the Private Perimeter Wall on said Owner's Lot, including maintaining the structural integrity thereof. Each Lot containing a portion of the

Private Perimeter Walls and Common Retaining Wall shall be subject to a perpetual non-exclusive easement as follows:

- (1) The southern three (3) feet of Lots 1, 33 and 60 through 62, 64 through 66, 68 through 70, 72 through 74 and 76 through 78.
- (2) The southern five (5) feet of Lots 63, 67, 71 and 75.
- (3) The western three (3) feet of Lot 78.
- (4) The western seven (7) feet of Lots 1 through 6.
- (5) The northern three (3) feet of Lots 6, 7, 13, 14, 20, 21, 27, 28, 31, 34 and 35.
- (6) The eastern three (3) feet of Lots 28, 29, 30, 31, 32, 33, 34 and 60.

(collectively "Wall Easements").

The Wall Easements shall be perpetual and non-exclusive for the benefit of Declarant, its successors, and the Association for the maintenance and repair of the Common Retaining Wall and the exterior of the Private Perimeter Walls. No Owner shall have the right to alter the exterior of the Private Perimeter Walls or to alter or tie into the Common Retaining Wall on said Owner's Lot without the prior written consent of Declarant, its successors or the Association."

5. Declarant and Builders/Owners hereby declare that Paragraph 23.E. of the Declaration is amended and the following substituted therefor:

"Landscape Easement. The Plat has created Landscape Easements in Plat Easement Note number 17, which shall be maintained by the Association. Declarant further declares that the southwestern corner of Lot 1 is subject to a perpetual non-exclusive easement for landscaping outside the Private Perimeter Wall, which shall be deemed one of the "Landscape Easements". The Landscape Easement on Lot 1 shall be utilized for monument signage for the Subdivision, lighting and landscaping. The Landscape Easements shall be maintained by Declarant, its successors or the Association."

6. Declarant and Builders/Owners hereby declare that Paragraph 26.E. of the Declaration is amended and the following substituted therefor:

"The annual assessments may be increased by the Board of Directors of the Association each year in an amount not to exceed twenty percent (20%) of the prior year's annual assessments without the vote of the members of the Association. If the annual assessments are to be increased by more than twenty





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percent (20%) from the previous year's annual assessments, said increase must be approved by the affirmative vote of not less than two-thirds (2/3) of the members of the Association at a meeting held for the purpose of determining said annual assessments, which meeting shall be called at least thirty (30) days in advance thereof, except in the event of an emergency."

7. Declarant and Builders/Owners hereby declare that Paragraph 26 of the Declaration is amended to add the following new subparagraph:

"26. I. The Association may also levy "special assessments" for the purpose of defraying, in whole or in part, the cost of any non-recurring maintenance, or the acquisition, construction, reconstruction, repair or replacement of a capital improvement upon any of the Common Areas, including fixtures and personal property. A special assessment shall require the affirmative vote or written consent of two-thirds (2/3) of the members of the Association at a meeting held for the purpose of determining said special assessment, which meeting shall be called at least thirty (30) days in advance thereof, except in the event of an emergency."

8. Declarant and Builders/Owners hereby declare that Paragraph 34 of the Declaration is amended to substitute the follows:

Amendment. At any time after the date of the filing of this Declaration:

(a) The Owners of not less than seventy-five percent (75%) of the Lots may release one or more of the Lots from, or may modify, change or amend all or any portion of the provisions, conditions, covenants or restrictions contained in this Declaration by executing and acknowledging an appropriate agreement or agreements in writing for such purposes and filing the same for record in the office of the County Clerk of Bernalillo County, New Mexico; or

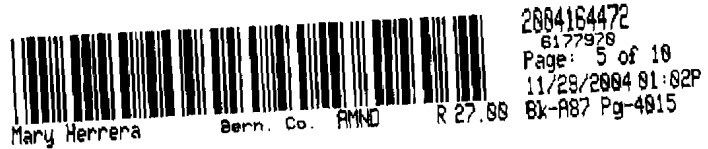
(b) Notwithstanding the provisions of Subparagraph (a), Declarant may amend, modify or terminate this Declaration by a recorded instrument of amendment or correction: (i) at any time during which Declarant is the Owner of at least one (1) Lot in the Subdivision; or (ii) at any other times, where the only effect of such amendment is to correct manifest errors, omissions or inconsistencies within this Declaration; or

(c) Notwithstanding the provisions of Subparagraphs (a) and (b) above, no amendment to this Declaration which impairs the rights of the owner(s) of the Rowe Property may be made without the written consent of the owner(s) of the Rowe Property; provided however, after submission of the Rowe Property to this Declaration, the above requirements for amendment shall apply, except as to matters which only affect or disproportionately affect the Lots which were originally part of the Rowe Property, in which case unanimous consent of the Owners of those Lots must be obtained to amend this Declaration.

9. This Third Amendment shall be binding upon the undersigned, their heirs, personal representatives, successors and assigns in all respects.

10. Except as herein modified and amended, the remaining terms and provisions of the Declaration, First Amendment and Second Amendment shall remain in full force and effect.

SIGNATURE PAGES TO FOLLOW



SIGNATURE PAGE TO THIRD AMENDMENT TO  
DECLARATION OF RESTRICTIVE AND PROTECTIVE COVENANTS  
FOR OCOTILLO SUBDIVISION

Owner(s) of Lot No. 1, 4, 6, 7, 13, 20, 22, 23, 24, 25, 26, 27  
28, 30, 37, 43, 45, 47, 49, 50, 51, 52,  
55, 59, 66, 68, 72, 73, 74, 75 & 76

DESERT RIDGE DEVELOPMENT, LLC,  
a New Mexico limited liability company

By: Donald G. Hoech

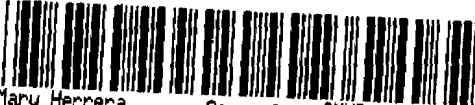
Its: Managing Member

STATE OF NEW MEXICO       )  
  )  
COUNTY OF BERNALILLO    )

This instrument was acknowledged before me on November 24, 2004,  
2004, by Donald G. Hoech, Managing Member of DESERT  
RIDGE DEVELOPMENT, LLC, a New Mexico limited liability company.

MY COMMISSION EXPIRES:  
August 31, 2008

Louise A. Schrock  
NOTARY PUBLIC

  
Mary Herrera      Bern. Co. RMND      R 27.00      2004164472  
8177879  
Page: 6 of 10  
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SIGNATURE PAGE TO THIRD AMENDMENT TO  
DECLARATION OF RESTRICTIVE AND PROTECTIVE COVENANTS  
FOR OCOTILLO SUBDIVISION

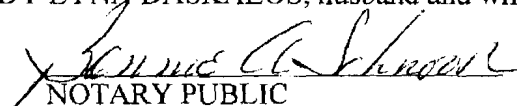
Owner(s) of Lot No. 31, 32, 33, 34, 35  
60, 61, 62, 63, 64 & 65

  
JASON DASKALOS

  
CINDY LYNN DASKALOS

STATE OF NEW MEXICO     )  
  )  
COUNTY OF BERNALILLO    )

This instrument was acknowledged before me on November 24, 2004  
2004, by JASON DASKALOS and CINDY LYNN DASKALOS, husband and wife.

MY COMMISSION EXPIRES: August 31, 2008  
  
NOTARY PUBLIC

  
Mary Herrera     Bern. Co. AMND     R 27.00     2004164472  
6177879  
Page: 7 of 10  
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SIGNATURE PAGE TO THIRD AMENDMENT TO  
DECLARATION OF RESTRICTIVE AND PROTECTIVE COVENANTS  
FOR OCOTILLO SUBDIVISION

Owner(s) of Lot No. 3, 5, 9, 16, 29, 46, 58 & 71

TIERRA VISTA, LLC,  
a New Mexico limited liability company

By: 

JIM L. CLARK, President

STATE OF NEW MEXICO )

COUNTY OF BERNALILLO )

This instrument was acknowledged before me on November 24, 2004  
2004, by JIM L. CLARK, President of TIERRA VISTA, LLC, a New Mexico limited liability  
company.

MY COMMISSION EXPIRES:

August 31, 2008

  
NOTARY PUBLIC



Mary Herrera

Bern. Co. AMND

R 27.00

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SIGNATURE PAGE TO THIRD AMENDMENT TO  
DECLARATION OF RESTRICTIVE AND PROTECTIVE COVENANTS  
FOR OCOTILLO SUBDIVISION

2, 12, 14, 15, 17, 19, 36,  
44, 50, 51, 56, 57, 67, 77 & 78

Owner(s) of Lot No. \_\_\_\_\_

THE LOWE COMPANY,  
a New Mexico corporation

By: \_\_\_\_\_

JOHN LOWE, President

STATE OF NEW MEXICO )

COUNTY OF BERNALILLO )

This instrument was acknowledged before me on December 23, 2004, by JOHN LOWE, President of THE LOWE COMPANY, a New Mexico corporation.

MY COMMISSION EXPIRES:

August 31, 2008

Bonnie G. Schwan  
NOTARY PUBLIC



Mary Herrera

Bern. Co. AMND

R 27.00

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Page: 9 of 10  
11/29/2004 01:02P  
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**EXHIBIT "A"**

**Builders/Owners**

JASON DASKALOS and CINDY LYNN DASKALOS, husband and wife

TIERRA VISTA, LLC, a New Mexico limited liability company

THE LOWE COMPANY, a New Mexico corporation

