

**ACKNOWLEDGMENT, DISCLAIMER AND AGREEMENT**  
**Apache Mesa Subdivision**

This Acknowledgement, Disclaimer and Agreement is executed by the undersigned prospective purchaser, whether one or more ("Purchaser"), concerning one or more residential lots (a "Lot") in the Apache Mesa Subdivision, Sandoval County, New Mexico (the "Subdivision"), at the request of and for the benefit of the subdivider/developer, Apache Mesa, LLC, a New Mexico limited liability company ("Developer").

**A - Receipt of Documents and Information**

Purchaser acknowledges that Purchaser has received, read and understands (i) the Disclosure Statement/Apache Mesa Subdivision (the "Disclosure Statement"), including all items listed under Section 1 of Exhibit A attached hereto, and (ii) the additional items listed under Sections 2, 3, 4 and 5 of Exhibit A attached hereto.

**B - Inspection of Lot**

Purchaser acknowledges that Purchaser has conducted an on-site visual inspection of the Lot or Lots which Purchaser is considering purchasing from Developer.

**C – Specific Disclosures Regarding Soils, Topography and Water**

1. Purchaser has read and understands the specific disclosures of Section 26.B of the Disclosure Statement, entitled "Soil and Topographic Limitations and Purchaser's Duty to Consult Independently with Geotechnical Engineer."
2. Purchaser has read and understands the Water Availability Assessment for Apache Mesa Subdivision prepared by John Shoemaker & Associates, Inc., dated January 2004, and understands that in order to provide the 100-year continuous supply discussed in the Ground-Water Availability section, the water well must be drilled to approximately the level of the test well discussed in the Water Availability Assessment.

**D – Additional Acknowledgments and Agreements**

Purchaser further acknowledges and agrees:

1. That the Lots in the Subdivision are undisturbed Lots, and that the purchase of any Lot in the Subdivision carries with it the obligation on the part of the Purchaser to consult independently with a licensed geotechnical engineer and licensed contractor in order to determine whether the soil on a particular Lot or location on a Lot is suitable for a specific house design, size, or plan or liquid waste disposal system or road type or location on the Lot;
2. That Developer has disclaimed any responsibility for the obligations of Purchaser described above;
3. That the Purchaser will deliver a copy of the Disclosure Statement and a copy of this executed Acknowledgement, Disclaimer and Agreement to any transferee, assignee, or successor in title to Purchaser concerning an unbuilt Lot in the Subdivision, and require the

transferee, assignee, or successor in title to agree to the contents of this Acknowledgement, Disclaimer and Agreement as a condition to acquiring title to any Lot in the Subdivision; and

4. That Developer will be relying upon the agreement of Purchaser to accept full responsibility for the obligations and disclosures set forth above and in the Disclosure Statement, and the agreement set forth in section 3 above, in proceeding with execution of a purchase agreement and other documents concerning the Purchaser's purchase of a Lot in the Subdivision.

SIGNED this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

PURCHASER:

DEVELOPER:

APACHE MESA, LLC

\_\_\_\_\_  
(signature)

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

\_\_\_\_\_  
(print name)

Its: \_\_\_\_\_

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(print name)

Exhibit A

Documents Delivered to Purchaser

1. Disclosure Statement for Apache Mesa Subdivision, with the following exhibits attached thereto:
  - A. Letter from Waste Management Removal Re: Solid Waste (April 2004)
  - B. New Mexico State Engineer's Opinion on Water Availability
  - C. Water Quality Test - "Water Availability Assessment for Apache Mesa ..." John Shoemaker & Associates, Inc. (January 2004)
  - D. NM State Environment Department Opinion of Water Quality / Liquid Waste / Solid Waste
  - E. Coronado Soil & Water Conservation District Opinion on Terrain Management
  - F. County Indemnity Agreement ( to be obtained w/ Sandoval Co. Review)
  - G. NMDOT Opinion on Access - Letter from District 3 Office (January 2004)
  - H. Letter from Bernalillo Public Schools
  - I. Letter from Sandoval County Fire Marshall
  - J. Declaration of Protective Covenants, Conditions and Restrictions
2. Geotechnical Engineering Services, Apache Mesa Subdivision, Placitas, New Mexico, dated December 9, 2003, prepared by GEO-TEST, INC.
3. Phase I Environmental Site Assessment, Apache Mesa Subdivision, Placitas, New Mexico, dated March 11, 2004 prepared by GEO-TEST, INC.
4. Water Availability Assessment for Apache Mesa Subdivision prepared by John Shoemaker & Associates, Inc., dated January 2004.
5. Form of Shared Well Agreement Declaration for Apache Mesa Subdivision;

**SHARED WELL AGREEMENT  
DECLARATION**

**Apache Mesa Subdivision**

*(Two Lot Well Share)*

This Shared Well Agreement Declaration (the "Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2005, by Apache Mesa, LLC, a New Mexico limited liability company ("Declarant").

**Introductory Provisions**

The following provisions constitute the basis for and are a part of this Agreement:

- A.. Declarant is the owner of Lot \_\_\_\_\_ and Lot \_\_\_\_\_, Apache Mesa Subdivision (the "Subdivision"), as shown on the \_\_\_\_\_ of the Plat of Apache Mesa Subdivision, filed \_\_\_\_\_, 200 \_\_\_\_\_ in Book \_\_\_\_\_, Page \_\_\_\_\_, records of Sandoval County, New Mexico.
- B. Pursuant to requirements of Sandoval County imposed in connection with the creation of the Subdivision, restrictions are imposed upon the amount of water which may be used by residents of the Subdivision.
- C. A water well will be drilled on Lot \_\_\_\_\_ of the Subdivision (the "Well Site Lot"), and this well and its water are for the sole and exclusive use and benefit of Lot \_\_\_\_\_ and Lot \_\_\_\_\_ in the Subdivision.
- D. To facilitate the construction, operation and maintenance of the well described above, and the sharing of its water, Declarant desires to establish the respective rights and obligations of Lot \_\_\_\_\_ and Lot \_\_\_\_\_ in and to the well and its water, so as to give effect the restrictions imposed by Sandoval County, and to make other provisions for the operation of the well and the delivery and use of its water.

NOW, THEREFORE, the Declarant hereby agrees and declares as follows:

**Agreements**

1. Definitions. The following additional terms are defined for use in this Agreement:
- (a) The term "Lots" means Lot \_\_\_\_\_ and Lot \_\_\_\_\_ in the Subdivision, together, and the term "Lot" shall refer to one of the Lots individually, as the context requires.

(b) The term **"Owners"** shall mean the owners of Lot \_\_\_\_ and Lot \_\_\_\_ in the Subdivision, together, and the term **"Owner"** shall refer to them in the singular.

(c) The term **"Well"** shall refer to the well to be drilled on Lot \_\_\_\_, together with the pump, power supply, storage tank(s) and all other equipment and systems necessary or convenient to the proper operation of the well described above.

(d) The term **"Water"** shall refer to that water pumped from and made available from and through the Well.

(e) The term **"Common Pipe"** shall refer to all pipes and other equipment and systems that are necessary or convenient for the delivery or transport of the Water from the Well to the point at which an Owner may connect Individual Pipe to the Common Pipe so that the Well can serve such Owner's Lot.

(f) The term **"Individual Pipe"** shall refer to all pipes and other equipment and systems that are necessary or convenient to the delivery or transport of the Water from the Common Pipe to an individual Lot.

(g) The term **"CC&R Declaration"** shall refer to the Declaration of Protective Covenants, Conditions and Restrictions for Apache Mesa Subdivision, filed \_\_\_\_\_, 2005 in Book \_\_\_\_\_, Page \_\_\_\_\_, records of Sandoval County, New Mexico.

2. Construction and Installation of Well and Common Pipe: Reimbursement.

(a) The Well and Common Pipe shall be constructed and installed on the Well Site Lot by the first Owner to commence construction of improvements on a Lot (the **"Constructing Owner"**), at the location on the Well Site Lot described on Exhibit A attached hereto. The Constructing Owner shall furnish to the well drilling contractor a copy of the Water Availability Assessment for Apache Mesa Subdivision prepared by John Shoemaker & Associates, Inc., dated January 2004, and shall instruct the well drilling contractor to drill the well to the approximate depth of the test well discussed in the Water Availability Assessment. The expense of installation and construction of the Well and Common Pipe, including without limitation the expense of all required permits and governmental approvals (collectively, the **"Construction Expenses"**), shall be paid in the first instance by the Constructing Owner, subject to reimbursement by the Owner of the other Lot (the **"Non-Constructing Owner"**), as set forth below. The Common Pipe shall be installed underground from the location of the Well to a point at or near the boundary of the other Lot to be served by the Well, so that the Non-Constructing Owner may connect to the Common Pipe by the shortest practicable route. In the event that disturbance of the Well Site Lot is necessary for the construction or installation of the Well and Common Pipe,

the Constructing Owner shall be responsible for restoring, back filling and compacting the trench and other areas to restore the Well Site Lot to substantially the same condition as it existed prior to such construction or installation, and the expense of such restoration shall be included in the Construction Expenses.

(b) Upon completion of the Well and Common Pipe, the Constructing Owner shall file of record with the Clerk of Sandoval County a notice (the "**Construction Expense Notice**") which shall set forth (i) the name and address of the Constructing Owner, and (ii) the date of completion of the Well and Common Pipe, and (iii) the total amount of the Construction Expenses (as supported by complete and accurate receipts of all Construction Expenses, which shall be retained by the Constructing Owner), and (iv) the accurate amount of the share of the Construction Expenses for which the Non-Constructing Owner is responsible, and (v) accurate and complete legal descriptions of the Constructing Owner's Lot and the Non-Constructing Owner's Lot.

(c) The Non-Constructing Owner shall reimburse the Constructing Owner for one-half (1/2) of the Construction Expenses, as set forth in the Construction Expense Notice, upon the earlier to occur (the "**Construction Expense Due Date**") of the following: (i) the date of first conveyance of the Non-Constructing Owner's Lot (to or by the Non-Constructing Owner) occurring after the date of recording of the Construction Expense Notice, or (ii) the commencement of construction of improvements on the Non-Constructing Owner's Lot. In the case of reimbursement triggered by conveyance, as described in item (i) above, the title company closing the sale to or from the Non-Constructing Owner shall collect at closing, from the purchaser of the Non-Constructing Owner's Lot, the Non-Constructing Owner's share of the Construction Expenses. The Constructing Owner shall promptly furnish copies of complete and accurate receipts of all Construction Expenses to the Non-Constructing Owner, or to any title company which requests same in connection with the sale of a Lot to or by the Non-Constructing Owner. The Constructing Owner shall deliver to the Non-Constructing Owner (or any title company handling the sale of a Lot to or by the Non-Constructing Owner) a Release of Construction Expense Notice, in recordable form, upon payment of the Non-Constructing Owner's share of the Construction Expenses.

(d) The Non-Constructing Owner's share of the Construction Expenses, as set forth in the Construction Expense Notice, shall constitute a lien on the Non-Constructing Owner's Lot (the "**Construction Expense Lien**"), bearing interest from and after the Construction Expense Due Date until the date paid at the rate of ten percent (10%) per annum. In the event that the Non-Constructing Owner's share of the Construction Expenses, as shown in the Construction Expense Notice, is not paid within thirty (30) days after the Construction Expense Due Date, the Construction Expense Lien may be foreclosed in the same manner as a judgment lien under the laws of New Mexico; provided, however, that the Constructing Owner shall first give not less than thirty (30) days advance written notice of the Constructing Owner's intent to proceed with foreclosure of the Construction Expense

Lien. The Construction Expense Lien shall be superior to any and all other charges, liens or encumbrances which may arise or be imposed upon the Non-Constructing Owner's Lot, whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage or other instrument, except for a bona fide first lien mortgage or deed of trust lien placed upon the Non-Constructing Owner's Lot (whether recorded before or after the Construction Expense Lien) and liens for taxes or other public charges as are made superior to the Construction Expense Lien by applicable law.

3. Construction and Installation of Individual Pipe.

(a) Each Owner shall be responsible, at such Owner's sole cost and expense, for the installation of Individual Pipe from the Common Pipe to such Owner's Lot and the improvements constructed thereon. Individual Pipe shall be installed below the surface of the Lot.

(b) In the event that disturbance of another Owner's Lot is necessary for the construction or installation of an Owner's Individual Pipe, the Owner undertaking such construction or installation shall be responsible, at such Owner's sole cost and expense, for restoring, back filling and compacting the trench and other areas to restore the other Owner's Lot to substantially the same condition as it existed prior to construction or installation of the Individual Pipe.

4. Easement. The Declarant, for itself and its successors in title, does hereby grant an easement on the Well Site Lot (a) for the benefit of the Constructing Owner (if the Constructing Owner is not the Owner of the Well Site Lot), for the construction and installation of the Well and the Common Pipe, and (b) for the Owners other than the Owner of the Well Site Lot, for the maintenance and repair of the Well and the Common Pipe. The location of the easement is shown and designated on Exhibit A attached hereto. In the event that it becomes necessary to move the location of the Well and Common Pipe, the easement granted hereby shall be relocated to accommodate such move.

5. Operation, Maintenance, Repair and Replacement Expenses.

(a) All costs and expenses of operating, maintaining, repairing, improving and replacing the Well and the Common Pipe ("**Maintenance Expenses**") shall be shared equally by the Owners; provided, however, that an Owner shall not be responsible for Maintenance Expenses, and an Owner's Lot shall not be subject to a Maintenance Expense Lien under subsection (d) below, and an Owner shall not have a voice in maintenance decisions under subsection (e) below, until the date when an Owner's Individual Pipe is connected to the Common Pipe.

(b) The electricity serving the Well shall be separately metered.

(c) The costs and expenses of installing, maintaining, repairing, improving and replacing all Individual Pipe shall be borne solely by the Owner whose Lot is served by the Individual Pipe.

(d) Within thirty (30) days of receipt of any bill or account for Maintenance Expenses, each Lot Owner shall pay or reimburse such Owner's pro rata share thereof. A Lot Owner's pro rata share of the Maintenance Expenses shall constitute a lien on the Lot (a "**Maintenance Expense Lien**"), bearing interest from and after the above-described due date until the date paid at the rate of ten percent (10%) per annum. In the event that an Owner fails to pay or reimburse such Owner's share of the Maintenance Expenses within thirty (30) days after written notice, the Maintenance Expense Lien may be foreclosed by the other Owner, if the other Owner has paid the full amount of such Maintenance Expenses (the "**Foreclosing Owner**"), in the same manner as a judgment lien under the laws of New Mexico; provided, however, that the Foreclosing Owner shall first give not less than thirty (30) days advance written notice of the Foreclosing Owner's intent to proceed with foreclosure of the Maintenance Expense Lien. The Maintenance Expense Lien shall be superior to any and all other charges, liens or encumbrances which may arise or be imposed upon the Lot subject to the Maintenance Expense Lien, whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage or other instrument, except for a bona fide first lien mortgage or deed of trust lien placed upon such Lot (whether recorded before or after the Maintenance Expense Lien) and liens for taxes or other public charges as are made superior to the Maintenance Expense Lien by applicable law.

(e) The Owners shall cooperate with one another in good faith to insure the efficient administration of the Well, the Water and the Common Pipe. The Well and Common Pipe shall be maintained and repaired as needed. The Well and Common Pipe shall be improved or replaced as needed to insure the Well and Common Pipe are producing and delivering potable water in the quantity necessary to provide each lot with 0.50 acre-feet (163,000 gallons) per year. At the request of any Owner, the Owners shall meet to determine how and when to effect any maintenance, repair, improvement or replacement which may be necessary or appropriate. In the event of an inability of the Owners to agree as to maintenance, repair, improvement or replacement of the Common Pipe, or any other issue having to do with the Well or Common Pipe, the matter shall be resolved in conformity with the dispute resolution provisions set forth in Article 8 of the CC&R Declaration.

(f) In the event of an emergency, an Owner may make such repairs to the Well or Common Pipe as are necessary to rectify the conditions causing or constituting the emergency. The costs and expenses of such repair shall be shared as provided in Section 5 above.

6. Ownership of Well, Water and Common Pipe. Upon construction of the Well and Common Pipe, the Constructing Owner shall own same. From and after the date when the Non-Constructing Owner pays such Owner's share of the Common Expenses, the



Owners shall own the Well, Water and Common Pipe as tenants in common, each owning an undivided fifty percent (50%) interest in the Well, Water and Common Pipe.

7. Water Use; Restrictions. Each Owner shall be entitled to use and consume not more than 0.50 acre-feet (163,000 gallons) per year of Water from the Well, as provided in Section 5.2 of the CC&R Declaration, and each Owner shall comply with all other water conservation measures described in Sections 5.2 and 5.3 of the CC&R Declaration. No Owner, by first commencing to use the Well or the Water, shall obtain as against the other Owner or Lot, any priority right to use the Well or to extract and use any particular quantity of Water. The Owners shall be entitled to equal amounts of Water from the Well. The Owners accept the principles of water conservation set forth in Sections 5.2 and 5.3 of the CC&R Declaration and understand that the Well will not be designed or intended to provide unlimited quantities of Water. In the event that demand ever exceeds the capacity of the Well such that each Owner is not able to obtain an equal share of the Water, or if the use of Water exceeds the limits set hereby and in the CC&R Declaration, the Owner whose use of Water exceeds such Owner's permitted usage shall immediately curtail such excess use.

8. Connection; Meters. Prior to commencing use of the Well and the Water, each Owner, at such Owner's expense, and in a manner conforming to good engineering practice and applicable law and regulation, shall connect to the Well from the Common Pipe and shall install a meter which accurately measures on a continuing basis the amount of Water drawn from the Well for the exclusive use of such Lot. Thereafter, each Owner, at such Owner's expense, shall cause such meter to be operated and maintained in good and accurate repair. Each Owner, and the New Mexico Office of the State Engineer or its designee, shall have the right, during daylight hours, to examine the meter of each other Owner, upon reasonable notice to the Owner whose meter is to be inspected, and the right of ingress and egress upon the property of such Owner for such limited purpose.

9. Dispute Resolution. In the event the Owners are unable to reach agreement as to any issue relating to the Well, the Water or the Common Pipe, or any other matter arising out of this Agreement, the matter shall be resolved in conformity with the dispute resolution provisions set forth in Article 8 of the CC&R Declaration.

10. Specific Performance. This Agreement may be enforced by specific performance, as well as any other remedy provided at law or in equity, subject to the provisions of Section 9 above.

11. Agreement to Run With Land; Acknowledgment. This Agreement, its terms, provisions, covenants and restrictions, are and shall be binding upon and inure to the benefit of the Owners, and each of them, and their respective successors in title, and shall run with the land and bind the Lots, and each of them. Upon the sale of each of the Lots by Declarant, Declarant shall require the purchaser of each Lot to execute an Acknowledgment

and Acceptance in substantially the form of Exhibit B attached hereto, and shall cause such Acknowledgment and Acceptance to be filed in the records of Sandoval County, New Mexico.

IN WITNESS WHEREOF, the undersigned has executed this Agreement effective as of the date of acknowledgment set forth below.

DECLARANT: **APACHE MESA, LLC**  
a New Mexico limited liability company

By: \_\_\_\_\_  
Joe L. Kruzich, Manager

STATE OF NEW MEXICO )  
) )  
COUNTY OF \_\_\_\_\_ ) ss

The foregoing instrument was acknowledged before me on this the \_\_\_\_\_ day of \_\_\_\_\_, 2005, by Joe L. Kruzich, Manager of Apache Mesa, LLC, a New Mexico limited liability company.

My commission expires: \_\_\_\_\_  
\_\_\_\_\_  
Notary Public

EXHIBIT A  
Well Location  
and  
Easement Location

EXHIBIT B

**ACKNOWLEDGMENT AND ACCEPTANCE**

The undersigned, purchaser(s) of Lot \_\_\_\_\_, Apache Mesa Subdivision, as shown on the of the Plat of Apache Mesa Subdivision, filed \_\_\_\_\_, 2005 in Book \_\_\_\_\_, Page \_\_\_\_\_, records of Sandoval County, New Mexico, acknowledges the terms and conditions of that certain Shared Well Agreement Declaration, dated recorded \_\_\_\_\_ in the office of the County Clerk of Sandoval County, New Mexico, at Book \_\_\_\_\_, Page \_\_\_\_\_ (the "Shared Well Declaration"), and accepts the terms thereof and agrees to be bound by the Shared Well Declaration, as if a signatory thereto.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Purchaser

\_\_\_\_\_  
Purchaser

STATE OF NEW MEXICO )

) ss.

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me on this the \_\_\_\_\_ day of \_\_\_\_\_, by \_\_\_\_\_.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public