

**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND
RESTRICTIONS FOR APACHE MESA SUBDIVISION**

THIS DECLARATION is made this _____ day of _____, 2005, by APACHE MESA, LLC, a New Mexico limited liability company (hereinafter referred to as "Declarant").

WHEREAS, Declarant is the owner of certain real estate in Sandoval County, New Mexico, as described and shown on the Plat, as defined below, and desires to impose the provisions of this Declaration on, and subject all of said real estate to, the covenants, conditions and restrictions, hereinafter stated, including easements, for the purpose of protecting the value and standards of said real estate, the terms of which shall run with the land and be binding upon and insure to the benefit of all parties having any right, title or interest in or to the above described real estate, or any part thereof, and their successors and assigns.

NOW, THEREFORE, Declarant hereby declares that the Subdivision shall be subject to the following covenants, conditions and restrictions:

ARTICLE 1 - DEFINITIONS

- 1.1 **"Architectural Control Committee," "ACC," or "Committee"** shall mean the architectural control committee created pursuant to Article 3.
- 1.2 **"Architectural Control Committee Rules"** shall mean and refer to such rules as are adopted by the ACC pursuant to Article 3.
- 1.3 **"Common Easements"** shall mean and refer to all portions of the Subdivision intended for the common use of some or all of the Lot Owners, and some of which are also intended for the use of the general public, including those areas designated on the Plat and on individually conveyed easements for particular lots as follows:
 - 1.3.1 Ingress, egress and utility easements, including without limitation the Private roads.
 - 1.3.2 Common open space (which may include a "Park and Pedestrian Trail), "pedestrian easement" (which is intended for use by the Lot Owners unless provided for use by the general public in the Subdivision Rules), and drainage easements.
 - 1.3.3 Mailbox easements.
- 1.4 **"Declarant"** shall mean and refer to Apache Mesa L.L.C. and any of its

successors and assigns who acquire(s) the unsold portions of the Subdivision from Declarant for the purpose of development.

- 1.5 **"House"** shall mean the Structure located on each Lot consisting of a single family dwelling intended for use as the principal residence.
- 1.6 **"Lot"** shall mean each and every numbered lot, improved or unimproved, as of the date of this declaration held for sale by Declarant in Apache Mesa Subdivision as shown on the plat.
- 1.7 **"Owner"** shall mean and refer to any contract purchaser or record owner of a fee simple title to any Lot, whether one or more persons or entities, which is part of the Subdivision, but excluding those having such interest merely as security for the performance of an obligation.
- 1.8. **"Plat"** shall mean and refer to that certain plat of survey for the Subdivision filed for record on _____, 2005, with the County Clerk of Sandoval County, New Mexico at Plat Book _____, Page _____ of the records of said County.
- 1.9 **"Structure"** means any residence, house, guest house, garage, wall, fence, gate, sign, driveway, parking area, antenna, utility or communication installation (whether above or below ground), landscaping or any excavation of any kind.
- 1.10 **"Subdivision"** shall mean and refer to the real estate commonly known as the Apache Mesa Subdivision described and shown on the Plat, and such additions as may hereafter be brought within the jurisdiction of this Declaration.
- 1.11 **"Subdivision Rules"** shall mean the rules and architectural guidelines made by Declarant or the Architectural Control Committee pursuant to the authority granted by this Declaration and from time to time in effect.

ARTICLE 2 - LAND USE

- 2.1 **Purpose.** No Lot or any portion thereof shall be used except for single family residential purposes. All property shall be used, improved and devoted exclusively to single family use.
- 2.2 **Business Activity.** No business or commercial activity frequented by and open to the general public (and in any event no business or commercial activity which takes place out of doors) shall be conducted within the Subdivision.

- 2.3 Home Occupations.** Home occupations of the Owner are permissible if conducted in the Home or Studio and are in compliance with any rules and regulations governing home occupations hereafter adopted by the Architectural Control Committee.
- 2.4 Renting, Leasing.** Nothing contained herein shall be deemed to prevent the leasing of all of a Lot to a single person. No portion of a Lot, other than the entire Lot together with the improvements thereon, may be rented or leased and then only to a single family from time to time by the Owner thereof, subject to all the provisions of this Declaration.
- 2.5 Lot Splitting and Consolidation.** No Lot within the Subdivision shall be further subdivided. Two or more Lots within the Subdivision may be consolidated into one Lot.

ARTICLE 3 - STRUCTURES

- 3.1 Permitted Structures.** No Structure shall be erected, altered, placed or permitted to remain on any Lot or building site subject to this Declaration other than one House, a guest house or studio, a private detached garage, attached recreational facilities, solar heating devices, landscaped areas, evaporative cooler or coolers, and improvements incidental to residential use of the Lot. Any guesthouse, studio, detached garage and workshop or other Structure shall be attached to the House or in close proximity, and architecturally aligned, with the House.
- 3.2 Structure Height.** All Structures within the Subdivision shall be one story adhering to the height requirements except for lots as determined by the ACC to have abnormal topographical features.
- 3.3 House Size and Use.** No House, exclusive of the required attached garage, shall be less than Two Thousand Four Hundred (2,400) square feet of interior heated space. A guesthouse, studio or other architecturally aligned structure, shall not be more than one thousand two hundred (1,200) square feet, and shall not be used for rental purposes, except that same may be rented in conjunction with the rental of the House, and to the same tenant. Construction of the House must be commenced before or concurrent with construction of other structures. Each House shall be occupied by no more than one (1) family and no House shall be used as a boarding house or divided into apartments or rooms for rental purposes. This subsection does not prevent the rental or lease of the whole House by the owner thereof, but any such rental or lease must be by a written

agreement which requires the tenant to observe the provisions of this Declaration and the Subdivision Rules, and makes a breach of this Declaration a breach of such rental agreement or lease.

3.4 Prohibited Structures. No modular home, prefabricated structure, mobile home or similar facility or Structure shall be kept, placed or maintained within the Subdivision at any time. No Temporary house, dwelling, garage, outbuilding, trailer or other similar Structure may be placed or erected within the Subdivision. The provisions of this subsection shall not apply to temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any work or improvement permitted by this Declaration.

3.5 Construction and Architectural Style of Structures. Any and all Structures shall be constructed in accordance with the following criteria:

3.5.1 Architectural Style. The architectural style of all Houses shall be based upon, but not need adhere strictly to, "Pueblo Spanish Revival", "Old Santa Fe Style", or "Territorial Style". Modifications of the foregoing styles in reasonable, innovative and creative ways are permitted and encouraged.

3.5.2 Height Limitations. The height of any Structure shall not exceed a horizontal plane eighteen (18) feet in height above the pad elevation as determined by the ACC. Chimneys are allowed to exceed this plane by two (2) feet. Lots 11, 14, 15, 16 & 17 may require special consideration as determined by the ACC. Mechanical components and their screening devices shall not exceed four (4) feet above the exterior roof.

3.5.3 Building Colors. The color of all Structures (other than permitted wooden fences) Shall be predominantly browns and tans. Whites and pinks are specifically prohibited. Generally, darker colors are preferred. Stone surfaces shall be in their natural color and must be local earth tones. Entries, portals and architectural accents may be emphasized by the use of accent colors or materials permitted hereunder.

3.5.4 Wooden Exteriors. No wooden exteriors shall be permitted. This provision shall not apply to "coyote-style" fences of un-peeled juniper or cedar posts.

3.6 Setbacks. No House or garage, including porches, shall be located on any Lot so that any part thereof shall be nearer than twenty (20) feet to

any lot line. The Committee in its discretion may vary the setback requirements from any lot line necessitated by the topography or configuration of the Lot.

- 3.7 Building Envelopes.** All Structures on a Lot shall be constructed within the building envelope as designated by the Architectural Control Committee. The final determination of the siting of a Structure on a Lot shall be subject to approval of the Committee. Such approval may be withheld if the building envelope lies within the only or primary view corridor of another Lot.
- 3.8 Commencement and Completion of Construction.** Construction of Structures shall commence within three (3) months of Architectural Control Committee approval or the approval shall be void. The exterior construction, including the final stucco color coat, paint, trim and landscaping shall be fully completed within one (1) year after commencement of construction. Commencement of construction shall mean the first on-site work for construction, including, clearing of trees, excavation or site preparation for the purpose of foundation.
- 3.9 Conditions for Occupancy of House.** No House placed or erected within the Subdivision shall be occupied in any manner in the course of construction, or prior to the time when the exterior is fully finished as herein required and is fully functional for residential purposes. No House shall be occupied until it complies with the approved plans as evidenced by written Committee approval.
- 3.10 Reflective Materials.** No reflective material shall be used where it would affect any other house site within the Subdivision. If such reflection does occur, the reflective material shall be painted a subdued, neutral color to be approved by the Architectural Control Committee or some other approved treatment shall be applied.
- 3.11 Air Conditioners.** Any roof mounted air conditioning unit that is visible from the front of the street must be screened from view.
- 3.12 Fire Protection.** Apache Mesa Subdivision is located within a volunteer rural fire district. Each individual home shall be equipped with a sprinkler fire suppression system as required by the agreement with the fire protection district. Fire hydrants are not provided within the Subdivision.

ARTICLE 4 - ARCHITECTURAL CONTROL COMMITTEE

- 4.1 Architectural Control Committee.** An "Architectural Control Committee"

(hereinafter sometimes referred to as the "Committee") for the subdivision is hereby established and consists of three (3) persons. The initial members of said Committee are:

Position 1: Joe L. Kruzich
Position 2: Richard Hunemuller
Position 3: James Irwin

None of the members shall be required to be an architect or to meet any other particular qualifications for membership.

The members of the Committee described above, and their successors, shall serve at the pleasure of the Declarant, who shall have the right to appoint, reappoint and /or discharge members of the Committee at will or until Declarant relinquishes the right to appoint members of the Committee, as set forth below.

The affirmative vote of a majority of the members of the Committee shall be required for approval of any matter, provided, however, that a majority of the members of the Committee may designate one member to act on behalf of the Committee.

At the point of occupancy of twelve (12) homes in the subdivision, an election shall be held among the owners of the occupied homes to replace one Declarant-appointed member of the ACC. The individual who receives a majority of the votes in such election shall serve for a term commencing on the date when the results of such first election are determined (the "First Election Date") and continuing until the first (1st) anniversary of the First Election Date. After occupancy of twenty-four (24) homes, an election shall be held among the owners of the occupied homes to replace a second Declarant-appointed member of the ACC. The individual who receives a majority of the votes in such election shall serve for a term commencing on the date when the results of such election are determined and continuing until the next following anniversary of the First Election Date, unless the term so determined would be less than six (6) months, in which case such member's term shall continue until the second following anniversary of the First Election Date. After occupancy of thirty-six (36) homes, an election shall be held among the owners of the occupied homes to replace a third Declarant-appointed member of the ACC. The member who receives a majority of the votes in such election shall serve for a term commencing on the date when the results of such election are determined and continuing until the next following anniversary of the First Election Date, unless the term so determined would be less than six (6) months, in which case such member's term shall continue until

the second following anniversary of the First Election Date. Prior to the expiration of any initial elected member's term, an election shall be held among the owners of the occupied homes to choose the successor for such position. The member who receives a majority of the votes in such election (which may be the same individual whose term as member is expiring) shall serve for a term of one (1) year, at which point (and thereafter annually) another election shall be held for such member position. Notwithstanding the foregoing, a member may resign from the ACC, and a member may be removed from the ACC with or without cause on the vote of not less than two-thirds (2/3) of the owners of occupied homes. In the event of resignation or removal, an election shall be held among the owners of the occupied homes for a replacement, and the individual who receives a majority of the votes in such election shall serve for the remainder of the resigning or removed member's term. No elected member shall be a member of the development group, and none of the elected members shall be subject to discharge or replacement by the Declarant.

- 4.2 Submittal Requirements.** No Structure shall be erected, constructed, installed, painted, stuccoed, remodeled, reconstructed, altered or added on any Lot within the Subdivision, unless and until the final plans, specifications and elevations therefor shall have received written approval of the Committee. Additionally, no grading, tree cutting or other site disturbance may occur without the prior written approval of the Committee. Maintenance of previously approved Structures that do not materially alter the color of appearance of the Structures shall not require Committee approval.
- 4.3. Filing Fee.** In connection with any submission and filing for plan approval, the Committee may require the Lot Owner to pay a filing fee sufficient to pay the Committee's costs and expenses incurred in having the materials so submitted and files examined by a person or firm designated by the Committee. Such fee shall be stated in the Subdivision Rules.
- 4.4 Approval Standards.** The Committee shall act upon any submission within the time specified in the Subdivision rules, which time period shall be no more than thirty (30) days. The Committee shall have the right to disapprove any plans and specifications submitted to it for any one or more of the following reasons:
- 4.4.1** If the plans and specifications are not in sufficient detail or are incomplete.
- 4.4.2** If, in the opinion of the Committee, the architectural design of the

proposed improvements as shown by the plans and specifications, plot plans, including the exterior color scheme, or the location of any Structure, is not in harmony with the general surroundings, or with the improvements, or proposed improvements, near or adjacent to the location at which said improvements are intended to be erected.

4.4.3 If the roof is of either a material or style different than that specified by this Declaration. Roofing materials and surfaces shall be of neutral color and non-reflective.

4.4.4 If the work and/or Structures sought to be approved are not consistent, in the discretion of the Committee, with the character of the Subdivision.

4.4.5 If the plans and specifications are not in compliance with all the requirements and provisions of this Declaration.

4.5 **Architectural Guidelines.** The Committee may, but shall be under no obligation to, adopt, re-adopt or modify from time to time, guidelines and /or standards for approval of plans submitted to it pursuant to this Article. These Committee guidelines as they may exist from time to time shall have the same force and effect and shall be binding upon the Owners as if they were set out in this Declaration. A copy of the Committee guidelines as they exist from time to time shall be kept with the Association's records, and shall be available for the Owners, upon request by the Owners. Generally, the guidelines shall promote the following objectives:

4.5.1 Houses and other Structures shall be nestled into the land, remaining low, so as to be a part of the site rather than perched upon it. Houses, Driveways and other Structures shall be sited so as to minimize their visual prominence and their impact upon adjoining property owners' views.

4.5.2 All landscaping and Structures shall maintain the existing open and natural appearance of the Subdivision. Preservation of the environment by altering the site as little as possible and minimizing site disturbance is a priority because recovery from such disturbance is a long process. Soil erosion and unnatural modifications to the existing drainage shall be avoided. Landscaping and re-vegetation are also an integral part of any improvement.

4.6 Liability. Neither the Committee, the Declarant nor any member thereof shall be liable to any Owner for any damage, loss or prejudice suffered or claimed on account of:

4.6.1 The approval, conditioned approval, or disapproval of any plans, drawings and specifications, whether or not defective.

4.6.2 The construction or performance of any work, whether or not pursuant to approved plans, drawings or specifications.

4.6.3 The development or manner of development of any property within the Subdivision.

By the acquisition of title to any Lot in the Subdivision and in consideration thereof, each Owner thereby agrees not to file suit against the Committee or any member thereof, to recover damages in connection with any of the foregoing events. Without in any way limiting the generality of the foregoing, the Committee or any member thereof, may, but is not required to, consult with or hear any Owner with respect to any plans, drawings or specifications, or any other proposals submitted to it.

4.7 Variances. When naturally or artificially occurring circumstances or the necessities of reasonable use and enjoyment of a Lot within the Subdivision require, the owner of said Lot may apply to the Architectural Control Committee for variance approval, and the Architectural Control Committee, upon showing good cause and necessity therefor without significant possibility of detriment to others, and by the affirmative vote of a majority of its members, may allow reasonable variances with respect to any provision of this Declaration, on such terms and conditions as the Committee shall specify by written report. The Committee's authority to grant variances is limited to matters within its jurisdiction under this Declaration, and subject to the limitations imposed herein.

4.8 Compliance with Other Projects. No Owner or builder shall be permitted to commence construction of a new Structure if any other Structure or work currently under construction or previously constructed, by or for that Owner or Builder on any Lot in the Subdivision, does not comply with plans and specifications approved by the Committee for that Structure or other work, the Subdivision Rules and the Covenants. In Connection with its approval of the plans and specifications of the new Structure, the Committee shall provide the Owner with written notice of the specific items not in compliance with approved plans, Covenants and Subdivision Rules for the other Structure or work by the Owner or Builder that is in non-compliance.

ARTICLES 5 - COMMON SCHEME RESTRICTIONS AND REQUIREMENTS

5.1 Exterior Lighting.

5.1.1 All lighting shall be designed to prohibit light pollution. Fixtures shall be fully shielded so that no light is emitted onto adjacent or nearby lots or public roads or at an angle above the horizontal plane. All fixtures shall be capped to eliminate vertical glare.

5.1.2 No flood lights or directional lighting is permitted.

5.1.3 Bright or glaring lights of any nature are prohibited.

5.1.4 Motion lighting is allowed so long as it is placed under patios or portals and the lighting is directed downward.

5.2 Native Growth Preservation. The native growth of the Subdivision, including but not limited to cacti, pinon, cedar and juniper trees, shall not be destroyed or removed, except such native growth as it may be necessary to remove for the construction and maintenance of roads, driveways, the House and other approved Structures, without the prior written approval of the Architectural Control Committee.

5.3 Water Conservation Measures.

5.3.1 Domestic water use is restricted to 0.50 acre-feet (163,000 gallons) per year, per Lot.

5.3.2 Water conserving appliances shall be installed and used, when at the time of construction or replacement of appliances, water conserving models, otherwise reasonably conforming to the needs of the Owner or Occupant, are commercially available in Albuquerque, New Mexico.

5.3.3 Toilets shall be of a type designed to use no more than 1.6 gallons per flush.

5.3.4 Fixtures such as bathtubs and lavatories shall be of normal capacity and fitted with faucets with a maximum capacity of 4.0 gallons per minute. Showerheads shall have a capacity of no more than 3.0 gallons per minute.

5.3.5 One automatic dishwasher per House or guest house may be used, provided it is a model designed to use not more than 13 gallons per

cycle and it has a cycle adjustment which allows reduced amounts of water to be used for reduced loads.

5.4 Landscaping and Water Use.

5.4.1 Well System.

5.4.1.1 Lots will share wells according to the final plat as approved by the State of New Mexico Engineer and Sandoval County. Construction of the well, pump, power supply, storage tank(s) and all other equipment and systems necessary or convenient to the proper operation of the well, as well as pipes and other equipment and systems that are necessary or convenient for the delivery or transport of water from the well to the point at which an Owner may connect such Owner's individual pipe to the common pipe so that the well can serve such Owner's Lot, will be the responsibility of the first Owner to commence construction on a Lot to be served by the shared well. The pro rata cost of such construction and installation will be reimbursed by the non-constructing Owner(s) upon the earlier to occur of commencement of construction by the non-constructing Owner, or upon the conveyance of the Lot of such non-constructing Owner, all of which shall be set forth with further particularity in the Shared Well Agreement Declaration to be recorded with respect to each Lot.

5.4.1.2 Each dwelling unit having access to a shared well shall be metered. The meter must be installed in an exterior location. A permanent and perpetual easement is granted to the State Engineer to monitor well water usage. Maximum water rights granted to each Lot (including outdoor use) is 0.5 acre-feet of water (163,000 gallons) annually. This equates to an average usage of 13,397 gallons per 30-day month.

5.4.2 Permitted Water Use. The only water uses permitted are:

5.4.2.1 For domestic uses normally associated with a residence.

5.4.2.2 For home occupations if conducted in compliance

with this Declaration.

5.4.2.3 For fire protection.

5.4.3 Encouragements. The following are encouraged: a selection of grasses that are well adapted to local climatic conditions, low water use landscaping, techniques applying the principles of xeriscape, drip irrigation whenever possible, water conserving plumbing fixtures, water harvesting from rooftops into courtyards or underground cisterns to be used for irrigation, irrigation with rain water collected by means confined to the property with recycled household gray water. Gray water systems shall meet the requirements of the New Mexico Construction Industries Division and the Uniform Plumbing Code.

5.4.4 Hot Tubs and Swimming Pools. Hot tubs and spas are allowed but should have covers to minimize loss by evaporation. Swimming pools are not permitted.

5.4.5 There shall be no lawns in excess of nine hundred (900) square feet. Grass shall be of a water-conserving nature. The use of Kentucky bluegrass, tall fescue or other high water requirement grass is prohibited.

5.4.6 Landscape Fountains and Waterfalls. Landscaping fountains and waterfalls are permitted. The total surface area of the pool area shall not exceed twenty-five (25) square feet. More than one pool is permitted provided the total surface area of all pools does not exceed twenty-five (25) square feet.

5.4.7 Owners shall use vegetation cover consistent with existing vegetation, including pinon, juniper, cedar, chamisa and drought resistant grasses.

5.4.8 No poplars, cypress or elms shall be planted or allowed to grow upon any Lot, nor shall any tree be permitted to be planted which exceeds twenty-five (25) feet at maturity, unless in the sole discretion of the Committee, such greater height will not adversely affect the view corridor of any other lots.

5.5 Height of Landscaping. Notwithstanding Section 5.2 above, no shrub, hedge, tree or other landscaping which interferes with the view or solar access of any Lot (except as reasonably determined by the Committee) shall be planted, permitted or maintained on any Lot. If the Owner of a lot

allows a shrub, hedge, tree or other landscaping on his/her Lot not meeting the provisions of this Section, then the Committee shall have the right (but not the obligation) upon ten (10) days prior written notice to the offending Owner to:

5.5.1 Enter upon the offending Lot, and

5.5.2 Cut back or otherwise trim the offending shrub, hedge, tree or landscaping, and

5.5.3 Assess the Owner(s) of said Lot for the cost of such activities.

5.6 **Fences and Walls.** It is the intent of the Declarant to preserve an open and unobstructed terrain free of fences and walls. Accordingly, no fence or wall shall be constructed or allowed to remain on any Lot except as have been approved by the Committee, subject to the following standards:

5.6.1. Owners shall not fence any portion of the perimeter or boundary of their Lots.

5.6.2. Courtyard walls are permitted provided the Owner obtains the prior written approval of the Committee. Walls shall not exceed six (6) feet in height as measured from the side visible to the public and shall be plastered and finished to match the color scheme and texture of the House. Rear courtyard walls not visible from the front street may be constructed of two-sided split faced CMU block of a slump block adobe style and dark brown color; coyote fencing of un-peeled juniper or cedar posts with CMU pilasters stuccoed to match the dwelling; framed construction with a minimum finished thickness of eight inches (8") stuccoed to match the dwelling or straw bale walls stuccoed to match the dwelling.

5.6.3 Board, slate, bark-fenced boards, wire and metal mesh fencing are prohibited, except as allowed elsewhere herein. Natural vegetation and screening of all permitted fences is strongly encouraged.

5.7 **Driveways.** All driveways shall be graded and sloped for proper drainage, and shall have culverts large enough for proper drainage. All driveways shall incorporate clear sight triangles where they intersect the street. No construction or building may occur inside such triangles nor shall any landscaping be planted or maintained inside such triangles that blocks the view of oncoming traffic. A diagram of this triangle is included in the Subdivision Rules.

5.8 Restricted Access. All access to Lots must be by way of the private roads.

5.9 Building Materials. No storage of building materials other than during construction shall be permitted. No storage yard for materials other than those commonly and regularly in residential use or for purposes of construction of the infrastructure of the Subdivision shall be permitted.

5.10 Refuse. No garbage, clippings from trees, shrubs or lawns, trash, ashes or other refuse may be thrown, dumped or allowed to accumulate on any land within the Subdivision. All refuse, trash or waste shall be kept in sanitary containers. These containers shall be kept screened and concealed from view at all times, other than when being placed for pickup.

5.11 Nuisance.

5.11.1 No lot shall be used for the storage of any property or thing that will cause such Lot to appear in an unclean or untidy condition or that will be visually offensive or obnoxious, toxic, dangerous, or unhealthy, and no substance, thing or article may be kept upon any Lot that will emit foul or obnoxious odors, or that will cause any noise that will disturb the peace, quiet, comfort or serenity of any occupants or Owners of Lots in the Subdivision.

5.11.2 No devices emitting noise levels exceeding decibel limits set for residential area shall be permitted in the Subdivision.

5.11.3 During or after construction of improvements to any Lot, no concrete slurry shall be left on any Lot or within the Common Easements.

5.12 Garages and Parking of Vehicles.

5.12.1 An attached garage of sufficient size to accommodate at least two automobiles shall be constructed with each House. Open carports are prohibited.

5.12.2 The garage shall be used primarily for vehicles and not storage. Storage in garages cannot take precedence over the garage's primary function: to park automobiles. No garage shall be used or converted for any use other than parking of vehicles.

5.12.3 All garages shall be equipped with an automatic opener.

- 5.12.4** No trucks or other commercial vehicles, motorcycles, campers, motor homes, boats, trailers, horse trailers or similar vehicles shall be kept or maintained in the Subdivision, except within garages, and except where customary or required for the limited purposes of building, repairing, refinishing, or maintaining the Subdivision or House, or for the purpose of moving household goods or other necessary or customary furnishings, equipment, or supplies in or out of the Subdivision.
- 5.12.5** Guests or visitors may park at a residence for a period not to exceed fifteen (15) days.
- 5.12.6** No vehicles, parts of vehicles of any type, or large unsightly equipment or machinery shall be permanently or semi-permanently parked in any portion of the Subdivision visible from the Lots, Common Easements and public roads, for purposes of repairs or reconstruction or storage. All guest-parking areas shall be screened from the view of other Lots with trees, walls and/or fences approved by the Committee.
- 5.12.7** No vehicle of any type, except maintenance vehicles and machinery, motorized or otherwise, shall be operated on any Common Open Space or Pedestrian/Hiking Trail. No automobiles or other motor vehicles shall be parked in the Common Open Space, the Pedestrian/Hiking Trail, or in any public or private street within the Subdivision. No vehicles shall be kept or stored on any Common Open Space, the Pedestrian/Hiking Trail or in any public street, private street or driveway within the Subdivision for purposes of accomplishing repairs thereto or the reconstruction thereof.
- 5.13** **Sheds**. No temporary-type sheds shall be permitted. Storage sheds of a permanent character constructed of permanent-quality materials on a concrete foundation and finished with stucco to match the House, shall be permitted in the rear of a House, as approved by the ACC.
- 5.14** **Stored Items**. All clothes lines, mechanical and other equipment, wood piles (except fire logs of one (1) cord or less in size), storage piles, campers, horse trailers, extra automobiles, boats, boat trailers, trailer homes, recreational vehicles and similar vehicles are prohibited within the Subdivision in all areas outside of houses and garages.
- 5.15** **Storage Tanks**. No tanks of any kind shall be erected, placed or permitted within the Subdivision, except for the common fire protection surface water storage tank(s) required by the County Fire Marshall.

5.16 Utilities. All extensions of utilities shall be underground to all Structures at all locations. No electrical or telephone lines shall be maintained above ground except during construction. Any disturbance of natural ground cover and vegetation necessitated by the installation of utility service lines on a Lot shall be restored by the Owner by replanting. All meter locations shall be subject to approval by the Committee. All utilities except septic systems shall be installed in or adjacent to the driveway.

5.17 Billboards and Signs. No billboards or advertising signs will be permitted on any Lot or any Structure except:

5.17.1 The nameplates of the occupant and address of any residence. All such nameplates shall not exceed one (1) square foot in size. All such signs must be of a uniform shape and location as designated by Declarant.

5.17.2 Such signs as may be required by legal proceedings or are useful for such proceedings.

5.17.3 During the time of construction of any Structure, a job identification sign having a maximum face area of six (6) square feet and of the type usually employed by a contractor.

5.17.4 Appropriate safety, directional and identification and safety signs installed adjacent to the Common Easements or public rights-of-way by Declarant, the County of Sandoval, or as required by law.

5.17.5 Not more than one (1) "For Sale" or "For Rent" sign having a maximum face area of six (6) square feet to be placed on each Lot, except as may be provided in the Subdivision Rules.

5.17.6 Such residential or commercial identification signs, e.g., street names and subdivision signs, as Declarant has the right to maintain.

5.18 Antennas, Wind Generators and Towers.

5.18.1 No exterior antenna of any sort, including television antennas and satellite dishes shall be installed or maintained on any Lot, except those specifically permitted by Federal Communications Commission Rule. Ham radio antennas are prohibited. The committee shall specify the location of such antenna and, in compliance with FCC rule, shall require screening from other Lots,

Common Easements and public roads. No radio or television transmission towers shall be erected, placed or permitted.

5.18.2 No wind-driven machinery shall be permitted within the Subdivision.

5.19 **Animals.** Except as provided herein, no animals of any kind may be kept on any Lot whether for personal or commercial purposes:

5.19.1 Each Lot may have a maximum of two dogs and/or cats more than sixteen (16) weeks old (exclusive of litters of such pets), which must be confined on the property. No animals may be kept or maintained on any Lot in any manner or number which is a nuisance or offensive to the neighboring Lots, whether by reason of noise, habits, odors or otherwise. The owner of any animal shall at no time allow such animal to run unrestrained within the Subdivision except for enclosed yards or patios.

5.19.2 Small household pets which remain inside the residence on a Lot such as caged birds, aquarium fish or guinea pigs, shall be allowed at the Lot owner's discretion so long as the nuisance portions of this provision are not violated.

5.19.3 The Committee shall have the right to order removal of any animals that are kept in violation of this Declaration.

5.20 **Home Occupation.** No business or commercial activity of any nature shall be conducted upon or from any Lot, except that so-called home occupations shall be permitted if such activity does not disturb Owners of other Lots or increase traffic upon public or private roadways to undesirable levels.

5.21 **Solar and Mechanical Devices.** No mechanical or other device, including solar panels, shall be installed or maintained on the roof or exterior surface of any Structure within the Subdivision if such device is visible from the highest point of any other Lot or from the private or public streets, unless the device is screened, enclosed or otherwise approved by the Architectural Control Committee.

5.22 **Drainage.** Surface drainage courses within Lots must be kept free and clear of debris and obstructions that prevent free flow of storm waters. Owners shall, prior to construction of any Structure, submit to the Committee, for construction approval, the design and engineering of appropriate drainage control structures that will retain excess water runoff from the impervious structures within said Lot. Thereafter, Owner shall

also obtain the approval of the County of Sandoval for design and engineering of said drainage control structures. Prior approval of both the County of Sandoval and the Committee are required as conditions for construction. Drainage control devices may include yard ponding, grading, landscaping. French drains and other appropriate structures or devices that shall be located inside of courtyard walls or otherwise screened so as not to be visible from other Lots, the common Easements or public roads. Notwithstanding the foregoing Committee and County approval, the responsibility for drainage control is and shall be that of the Lot Owner, and no one else.

- 5.23 Hunting and Firearms.** No hunting or discharge of firearms shall be permitted within the Subdivision.
- 5.24 Mining and Drilling.** In no event shall the Subdivision be used for the purpose of mining, quarrying, drilling, boning or exploring for or removal of oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth.
- 5.25 Mailboxes and Street Address Signs.** All owners shall use centralized mailboxes, provided by the Declarant. Newspaper delivery receptacles are permitted, provided the placement and design of such receptacles are as designated in the Subdivision rules.
- 5.26 Motor Vehicles; Off-Road Vehicles.** No mini-bikes, dirt bikes, off-road vehicles or any unlicensed vehicles of any kind shall be driven or permitted except along driveways providing for ingress to and egress from an Owner's House. No person who is not licensed to operate motor vehicles by the State of New Mexico or any other state shall be permitted to operate any motor-driven vehicle on any road within the Subdivision.
- 5.27 Rate of Insurance Increase.** No portion of the Subdivision shall be used for any purpose or in any manner which would increase the rate at which insurance against loss or damage by fire and the perils covered by extended coverage, bodily injury, or property damage liability insurance covering any other House may be obtained or which would cause any other House to be uninsurable or to have such insurance cancelled or suspended.
- 5.28 No Access to Adjoining Properties.** Except as permitted by existing easements, no Lot Owner shall grant an easement to, or permit access by, the owners of property outside the Subdivision, across that Owner's Lot.
- 5.29 No Inconsistent Uses.** No uses are permitted that are or would be

inconsistent with the single-family, residential character of the Subdivision.

5.30 Final Subdivision Plat. Owners shall be bound by the conditions set forth on the Plat as recorded. In the event of any inconsistency between this Declaration and the Plat, the Owner shall be bound by the condition that is more restrictive, regardless of whether it appears on the Plat or in this Declaration.

5.31 Waiver of Provisions. Any of the above prohibitions or requirements may be waived by the Committee where the proposed waiver is not inconsistent with the purpose and intent of this Declaration and said waiver is granted pursuant to Section 3.8 dealing with variances.

ARTICLE 6 - DUTIES AND RESPONSIBILITIES OF OWNERS

6.1 Owner's Responsibility to Repair. Each Owner shall be responsible for the maintenance and repair of his House and his Lot including, without limitation, the exterior structure of, and surrounding the House, the glass doors, windows and screens, the interior structure, the plumbing, electrical, heating and air conditioning systems servicing the House, the parking areas, the House's exterior surface and roof, including painting and surfacing, and for prompt rebuilding of his/her House in the event of partial or complete destruction. All maintained areas shall be kept in clean and orderly condition.

6.2 Parking Areas; Vehicles. For overnight parking, each Owner shall park his/her vehicle in his/her garage, unless there are more vehicles used by the Owner than his/her garage will accommodate.

6.3 Maintenance of Landscaping. Each Owner shall maintain the landscaping of his/her Lot in a neat and attractive manner. All grass, mass plantings and other plantings shall be mowed, trimmed and cut as necessary at regular intervals.

6.4 Observance of Responsibilities. Each Owner shall comply with the provisions of this Article 6 and will cause and be responsible for the Owner's family, agents, guests, contractors, employees and any person renting or leasing Owner's House doing likewise.

6.5 Rights of Action. The Declarant and/or The Architectural Control Committee shall have a right of action against owners for failure to comply with the provisions of this Article 6 of the Declaration. In addition to any other enforcement rights, if a Lot Owner fails to fulfill his maintenance responsibilities after reasonable notice from the Declarant and/or The

Committee and an opportunity for the Lot Owner to cure such failure, the Declarant may enter the Lot and perform such maintenance. The Declarant shall be entitled to recover all costs, expenses and reasonable attorney's fees incurred in the enforcement of this Article 6.

ARTICLE 7 - GENERAL PROVISIONS

- 7.1 Enforcement.** Except as restricted in Article 6, the Declarant or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by a party to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Declarant or any Owner shall be entitled to recover all costs, expenses and reasonable attorney's fees incurred in the enforcement of the provisions of this Declaration.
- 7.2 Notices.** Any notice required or permitted under this Declaration shall be delivered to the respective addressee or deposited in the United States Mails, postage prepaid, certified or registered mail, return receipt requested, and addressed to the Owners at the respective address as shown in records maintained by Declarant. An Owner may change his address by giving notice thereof to Declarant at the following address:
- Apache Mesa, LLC
P.O. Box 699
Bernalillo, NM 87004
- 7.3 Severability.** Invalidation of any provision of this Declaration by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.
- 7.4 Amendment.** The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be extended automatically for successive periods of the (10) years each. Every amendment must be recorded in the Office of the County Clerk, Sandoval County, New Mexico.
- 7.5 Annexation.** No property may be incorporated into the Subdivision without Declarant's consent. No persons other than Lot Owners shall be entitled to the use of the Common Easements.
- 7.6 Binding Effect.** This Declaration shall be binding upon and shall inure to

the benefit of Declarant, the Owners and their respective heirs, successors and assigns, and shall run with the land.

ARTICLE 8 - DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

8.1 Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes. The Association, Declarant, all Persons subject to the Declaration, Bylaws and Subdivision Rules and any Person not otherwise subject to the Declaration, Bylaws and Subdivision Rules who agrees to submit to same, (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Subdivision properties, and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party involving the Subdivision properties, including, without limitation, claims, grievances or disputes arising out of or related to the interpretation, application or enforcement of the Declaration, the Bylaws, the Subdivision Rules (Collectively "Claim"), except as exempted below, shall be subject to the procedures set forth in Section 8.3 prior to initiating litigation.

8.2 Exempt Claims. The following Claims ("Exempt Claims") shall be exempt from the provisions of Section 8.3

8.2.1 Any suit by the Declarant to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Declarant's ability to enforce the provisions of the Declaration and/or Subdivision Rules; and

8.2.2. Any suit between Owners (other than the Declarant) seeking redress on the basis of a Claim which would constitute a cause of action under the law of the State of New Mexico in the absence of a claim based on the Declaration, Articles or Rules of the Association, if the amount in controversy exceeds \$5,000.00.

8.2.3 Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 8.3, but there shall be no obligation to do so.

8.3 Mandatory Procedures for All Other Claims. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent"), other than a Claim exempted from this provision by Section 8.2, shall not file suit in any court or initiate any proceeding before any administrative tribunal

seeking redress or resolution of such Claim until it has complied with the following procedures:

8.3.1 The Claimant shall notify each Respondent in writing of the Claim (the "Notice"), stating plainly and concisely:

8.3.1.1 The nature of the Claim, including date, time, location, persons involved, Respondent's role in the Claim and the provisions of the Declaration, the Bylaws, and the Subdivision Rules or other authority out of which the claim arises;

8.3.1.2 The basis of the Claim (i.e., the provision of the Declaration or Subdivision Rules triggered by the Claim);

8.3.1.3 What Claimant wants Respondent to do or not do to resolve the Claim; and

8.3.1.4 That Claimant wishes to resolve the Claim by mutual agreement with Respondent, and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

8.3.2 Negotiation.

8.3.2.1 Each Claimant and Respondent (the "Parties") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.

8.3.2.2 Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Declarant or the Committee may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the community.

8.3.3 Mediation.

8.3.3.1 If the Parties do not resolve the Claim through negotiation within thirty (30) days of the date of the

Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have thirty (30) additional days within which to submit the Claim to Mediation under the auspices of the New Mexico Center for Dispute Resolution or the Albuquerque Mediation Center in Albuquerque, New Mexico, or such other independent entity providing similar services upon which the Parties may mutually agree.

8.3.3.2 If Claimant does not submit the Claim to Mediation within thirty (30) days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

8.4 **Allocation of Costs of Resolving Claims.** Each Party shall bear all of its own costs incurred prior to and during the proceedings described in Sections 8.3.1, 8.3.2 and 8.3.3 including all fees of its attorney or other representative. Each Party shall share equally all charges rendered by the mediator(s) pursuant to Section 8.3.

8.5 **Enforcement of Resolution.** If the Parties agree to resolve any Claim through negotiation or mediation in accordance with Section 8.3 and any Party thereafter fails to abide by the terms of such Agreement, then any Party may file suit or initiate administrative proceedings to enforce such Agreement without the need to again comply with the procedures set forth in Section 8.3. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such Agreement, including, without limitation, attorney's fees and court costs.

(Signature Page Follows)

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date first set forth above

APACHE MESA, L.L.C.

Joe L. Kruzich, Manager

ACKNOWLEDGEMENT

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

The foregoing instrument was duly acknowledge before me this _____ day of _____, 2005 by Joe L. Kruzich, Manager of Apache Mesa, LLC, a New Mexico limited liability company.

NOTARY PUBLIC

My Commission Expires _____

(Seal)

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