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THIRD AMENDED AND RESTATED
 DECLARATION OF COVENANTS, CONTITIONS AND RESTRICTIONS OF KOKOPELLI MESA
 LINCOLN COUNTY, NEW MEXICO

PRIOR AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF KOKOPELLI MESA IN LINCOLN COUNTY, NEW MEXICO WERE ADOPTED AND THEREAFTER RECORDED IN THE OFFICE OF THE LINCOLN COUNTY CLERK. PURSUANT TO ARTICLE, XV, SECTION 2 B) OF THOSE AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, AMENDMENTS MAY BE MADE BY A 50% VOTE OF THEN OWNER OF LOTS IN KOKOPELLI MESA. IT IS THEREFORE AGREED THAT THE COVENANTS, CONDITIONS AND RESTRICTIONS FOR KOKOPELLI MESA IN LINCOLN COUNTY, NEW MEXICO ARE HEREBY AMENDED AND RESTATED IN THEIR ENTIRETY ASSET FORTH HEREIN:

**ARTICLE I
 DEFINITIONS**

1. "Amended Declaration" means this Amended Declaration of Covenants, Conditions and Restrictions, including any subsequent amendments or modifications.
2. "Architectural Control Committee" {which may also be referred to as the "Committee"} and/or "ACC" which means the Architectural Control Committee consistent with the requirements of Article V of this Declaration. The ACC of Kokopelli will act under the authority of the Board and any other governing authorities the Board shall require.
3. "Association" and/or "HOA" shall mean and refer to Kokopelli Mesa Homeowner's Association, Inc., a New Mexico corporation.
4. "Board" shall mean and refer to the Board of Directors of the Kokopelli Mesa Homeowners Association as established in the Association's By-Laws.
5. "By-Laws" means the By-Laws of the Kokopelli Mesa Homeowner's Association, Inc., a New Mexico corporation.
6. "Club" shall mean Alto Lakes Golf & Country Club after the acquisition agreement is closed.
7. "Common Area" shall mean and refer to all real property governed by the Association for the common use and enjoyment of the owners. The Common Area shall specifically include the areas designated as such upon the Plat of Kokopelli Mesa as "Common Area" and shall include all private streets and rights-of-way, paved or unpaved, perimeter fences, and primary entry/exit gates into the subdivision, unless otherwise designated, as well as any other areas which are to be or are governed by the Association and designated as "Common Area" or "private street" by subsequent Declaration. "Common Area" in the Kokopelli Mesa Subdivision specifically excludes the Golf Course Tracts.

8. "Common Expense" means the actual and estimated expenses of operating the Association; expenses of security, insurance, ad valorem taxes, snow removal, administrative, maintenance, repair or replacement of the Common Area as well as golf course and club house, electricity, landscaping, accounting, payroll, supplies, equipment, road maintenance, water for irrigation purposes, sewer, and any reasonable reserves as set forth by the Association or governmental mandates.
9. "Garden Home" shall mean the type of home located on each of the Unit Lots. All Garden Homes located on a Unit Lot must conform in continuity with the exterior architectural theme and design of the other Garden Homes on an adjacent lot, unless otherwise approved by the Architectural Review Committee in writing.
10. "Garden Home Unit Lot" means each Unit Lot or part therein of said Unit Lot as set forth on the plat or any amendment thereof, upon which a garden home has been constructed and/or upon which a building permit or other similar authorization to begin construction thereon has been issued by an appropriate governmental entity and/or each Unit Lot whether improved or unimproved.
11. "Governing Documents" shall include the following and be considered the documents which govern Kokopelli Mesa; 1) this Declaration and any supplements or amendments intended to be applicable to all of Kokopelli Mesa; 2) Unified Covenants of Club; 3) the Association's Articles of Incorporation and Bylaws; 4) Club's Articles of Incorporation and Bylaws; 5) plat of Kokopelli Mesa which is intended to apply to the entire Subdivision; and 4) such resolutions or "Rules and Regulations" as the Association's Board of Director's shall adopt which are intended to apply to the whole of Kokopelli Mesa.
12. "Lot(s)/Units" shall mean each parcel designated on the original or amended plat as a lot or Unit lot. No more than one (1) single family residence may be located on each Lot. Unit Lot shall mean the attached Garden Homes.
13. "Member" shall mean and refer to every person or entity who holds a membership in the Association, and the Club, pursuant to these Covenants.
14. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot or Unit Lot within Kokopelli Mesa but excluding those having such interest merely as security for the performance of an obligation.
15. "Private Street" shall mean all roadways designated as such upon the plat of Kokopelli Mesa (and any amendments thereto). As previously recited, all private streets are specifically designated as a part of the Common Area. The private drive indicated on Golf Course Tract 3 of the plat as Stargazer Path and Unit Lot 13 Lare specifically excluded from this definition.
16. "PUD" shall mean a residential Planned Unit Lot Development as described by Lincoln County Ordinance.
17. "Subdivision" shall mean the Kokopelli Mesa Subdivision as shown by the plat filed thereof (and any amendments thereto)

18. "Subsequent Declaration" shall mean a Declaration which adds contiguous properties to the properties covered by this Declaration. Such Subsequent Declaration may, but is not required to impose, expressly or by reference, additional restrictions and obligations, on properties submitted by that subsequent Declaration to the provisions of this Declaration.

**ARTICLE II
PURPOSE AND INTENT**

Section 1. General Statement of Purpose and Intent of Repeal of Earlier Covenants.

These Covenants amend and restate the Amended Declaration of Covenants, Conditions and Restrictions of Kokopelli Mesa filed with the County Clerk of Lincoln County dated March 27, 2007, recorded in Book 2007, page 2733. Any and all restrictive covenants, of any nature, and any and all amendments, of any nature, pertaining to any and all of the applicable properties noted above, are hereby expressly repealed and are no longer of any effect.

AUTHORITY: These covenants have been approved by the requisite fifty percent (50%) of the owners of all of the applicable real property listed above as required by the restrictive covenants last in effect prior to the recordation of these covenants.

APPLICABILITY: These covenants are applicable to and shall burden all common areas, all residential lots, unit lots, and owners of such lots within the Kokopelli Mesa subdivision in Lincoln County, New Mexico.

Section 2. Governing Documents:

- 1) this Declaration and any supplements or amendments intended to be applicable to all of Kokopelli Mesa
- 2) Club's Unified Covenants

- 3) Association's Articles of Incorporation and Bylaws

- 4) Club's Articles of Incorporation and Bylaws

- 5) plat of Kokopelli Mesa and all filed amended plats which are intended to apply to the entire Subdivision

- 6) such resolutions or "Rules and Regulations" as the Association's Board of Director's shall adopt which are intended to apply to the whole of Kokopelli Mesa.

Section 3. Enforcement of Covenants:

These restrictive covenants are for the benefit of, and shall apply only to, any and all of the owners of the real property within the boundaries of the subdivision described above, and if any of the owners or any of their assigns or successors in interest violate or attempt to violate any of these covenants, it shall be lawful for any other owner within the subdivision or for the Board of Directors of Kokopelli Mesa Homeowners Association INC. ("HOA"), to enforce these covenants in any legal manner, including prosecuting any proceeding at law or in equity to recover damages or to enjoin such act and to have any and all further legal equitable relief. Any

violation of these covenants may result in a suspension of access to Common Areas, but not payment of dues or assessments, for a specific length of time, monetary fine or other appropriate remedy to be determined by the Board of Directors ("Directors") of the HOA or until said violation is corrected. The Board is authorized to issue such rules and regulations from time to time, as it deems appropriate for the orderly administration and management of the Association and to maintain the requirement for all property owners to be members of the Club.

Section 4. Flexibility

The standards for use, conduct, maintenance, architecture, landscaping and other aesthetic matters at Kokopelli Mesa are what give the community its identity. Each Owner, in upholding such standards can take pride in the results of the common effort. This Declaration is intended to reiterate as well as further define and establish procedures for adopting, modifying, applying and enforcing such standards while providing the flexibility for the natural development of a "community-wide" standard as Kokopelli Mesa grows and changes over time. The governing documents establish, as a part of the general plan of development for Kokopelli Mesa, a framework of affirmative and negative covenants, easements, restrictions and provisions that govern the subdivision. Within that framework, the Board and the Association must have the ability to respond to unforeseen problems and changes in circumstances, conditions, needs, desires, trends and technology.

Section 5. Notice to Current, Prospective and New Owners.

All Owners are hereby or were earlier put on notice that the use of their Lot or Unit Lot as well as their use of the Common Area is restricted by the governing documents, as they are from time to time amended, clarified, expanded or otherwise modified. Each Owner, by acceptance of a deed, acknowledges and agrees that the use, enjoyment and marketability of his or her Lot or Unit Lot, or of any interest therein, can be affected by this provision and that the governing documents may, from time to time, change. Copies of all current governing documents shall be provided to the Purchaser of a Lot or Unit Lot prior to the time of closing. Thereafter, current copies of the documents may be obtained, upon request, from the Association.

ARTICLE III

PROPERTY RIGHTS

SECTION 1. Owner's Rights of Ownership, Possession and Easements of Enjoyment

Every Owner shall be entitled to exclusive ownership and possession of the Owner's Lot or Unit Lot and shall be occupied for the purpose as a private residence for the Owner and the Owner's family and guests. Every Owner shall have a right and easement of enjoyment to the Common Area for the purpose for which it is intended. The rights of each Owner shall, however, be subject to the following provisions, and such rules and regulations, requirements, obligations and restrictions as may be adopted by the Board:

1. There shall be no obstruction of the Common Area. Nothing shall be stored in the Common Area without the prior written consent of the Board. Nothing shall be done or kept in the Common area that would increase the insurance or be in violation of any law. Nothing shall be altered or constructed in or removed from the Common Area, except by written consent of the Board.
2. No obnoxious or offensive activity, particularly such as would be in violation of any law, shall be carried on in any Lot, Unit Lot or in the Common Area, except upon the written consent of the Board.

3. There shall be no violation of rules and regulations for the use of the Common Area which shall be adopted by the Board and furnished in writing to the Owners.
4. No outside laundry, laundry poles or lines shall be permitted.
5. No propane tanks for the use of residential heating shall be allowed within the subdivision. No propane tanks which exceed 25 gallons shall be allowed within the subdivision unless completely enclosed inside an outdoor cooking structure or recreational structure, unless approved in writing by the Board.
6. There shall be no parking on a vacant lot or any of the private streets or other Common Areas without an easement, a license or specific (temporary) written permission to do so from the Board. There shall be no overnight parking on the streets of Kokopelli Mesa with the exception of overnight guests visiting short term.
7. Soccer, street hockey or basketball goals or goalposts shall only be allowed with written permission of the Club.
8. No commercial type vehicles shall be stored or parked on any Lot, nor parked on any street except while engaged in transport and/or delivery to or from a residence. No ATV, side by side or similar type vehicle, recreational vehicle, camper, trailer, mobile home, boat or similar item shall be kept on a Lot or Unit Lot except within an enclosed building. The recreational vehicle, camper, trailer, mobile home, boat or similar item must be fully enclosed and may not be in view from any other Lot, Unit Lot or street, and may not be used for temporary or permanent residence. No commercial vehicle will be parked overnight. Recreational vehicles may park overnight for the purpose of loading and unloading.
9. Exterior surfaces of any structure or dwelling shall not be allowed to become shabby or unkempt, and all Lots or Unit Lot Lots shall be properly landscaped and maintained with weeds trimmed as needed. The Board, in its sole discretion, shall notify the owner of exterior maintenance negligence and recommended time frame for which the remedy shall be completed. After this time has passed with no response from the owner and the exterior of the home or lot continues in the unkempt state, the Board will hire the work to be performed and will require the lot owner to pay the HOA for the work plus a violation fine. A lien may be placed against the lot owner if not paid.
10. No garage, shed, tent, trailer, mobile home or any other temporary structure of any kind which may be used as a temporary or permanent residence shall be erected, constructed, permitted or maintained on any Lot except that a construction trailer or shed and portable sanitary toilet may be used during construction if approved by the ACC.
11. No brush, trash or other materials shall be burned. No bonfires or incinerators are permitted.
12. Signs with the Owner's name for identification purposes shall be allowed, accepting the norm of 36 square inches, but the ACC may allow larger. All signs must be approved by the ACC prior to installation. Real Estate signs will be allowed but may not exceed 12 x 18 inches in size without ACC approval.

13. No animals or fowl of any description shall be raised, housed or kept on any lot except that two dogs, two cats or other household pets that are of such a nature as not to interfere with the safety and comfort of adjoining lot owners may be kept on a lot, provided that they are not bred or maintained thereon for any commercial purposes. All dogs must be accompanied and leashed when off owner's premises or Common Areas. Owners must clean up after pets.
14. Speed limits within the subdivision shall not exceed twenty-five **(25)** miles per hour unless otherwise posted.
15. The division of a Lot or Unit Lot into two or more Lots or Unit Lots, or the changing of the boundary lines of any Lot or Unit Lot after a subdivision plat including such Lot or Unit Lot has been approved and recorded, is prohibited, except with the approval of the ACC and the Board, and Club's ACC and Board of Directors.
16. Any business, trade, garage sale or similar activity is prohibited.
17. Any activities that materially disturb or destroy the vegetation, wildlife, wetlands or air quality within the subdivision or which use excessive amounts of water or result in unreasonable levels of sound or light pollution are prohibited.
18. Lawn statuary will be considered on a case-by-case basis, but must be approved in writing by the ACC.
19. Every Lot and any Common Area shall be burdened with easements for natural drainage of storm water runoff from other portions of the subdivision, provided no person shall alter the natural drainage on any Lot so as to materially increase the drainage onto any other Lot or Common Area or onto adjacent portions of the property without the written consent of the ACC, Board and the affected property Owner.
20. Mail boxes or newspaper boxes shall not be erected or maintained on any Lot.
21. There shall be no "time share" or similar type ownership of any Lots.
22. There shall be no leasing or renting of any home within the subdivision for less than Six (6) months. A copy of the lease shall be submitted to the Board.
23. Swimming, motorized or non-motorized boating or the use of personal flotation devices on lakes, ponds, streams, or other bodies of water within the subdivision is prohibited, except as expressly permitted by the Club or Board. No fishing is permitted in the lakes located within the subdivision.
24. The capturing, trapping or killing of wildlife within the subdivision is prohibited unless same are gophers, skunks or other pests.
25. The conversion of any garage to finished space, for whatever use, is prohibited, without the prior written approval of the ACC or Board.

- 26. Any television, radio antennas or satellite dishes (18 inches in diameter maximum) shall not be located higher than three (3) feet above the roof line and shall be placed in an inconspicuous location and shall not be visible from the street or the golf course unless approved in writing by the ACC.
- 27. Every Lot, Unit Lot, and/or any Common Area(s) of Kokopelli Mesa is burdened with an easement permitting golf balls unintentionally to come upon such areas and for golfers at reasonable times and in a reasonable manner, to come upon the Common Area(s) or the exterior portions of a Lot or Unit Lot to retrieve errant golf balls; provided, however, if any Lot or Unit Lot is fenced or walled, the golfer shall seek the Owner or occupant's permission before entry. The existence of this easement shall not relieve golfers of liability for errant golf balls. Under no circumstances shall the Club, Kokopelli Mesa Association, or any successors or assigns to the golf course tract or tracts, any builder or contractor (in their capacities as such), any officer, director, shareholder employee or partner of any of the foregoing, or any officer or director of any partner or stockholder be liable for any errant golf balls or the existence or exercise of this easement.
- 28. Landscape at street corners must be maintained at three (3) foot height in order for good sight for all traffic patterns.
- 29. All construction sites must be kept tidy and free of debris. Rock or gravel must be placed along the edge of the street and area where trucks enter and exit the construction site.

Section 2. Penalty for Violations: As to the restrictions set forth, if an owner or their guests violate any restrictions they will be subject to the foregoing penalties, at the sole discretion of the Association:

- 1. For the first violation, a warning will be issued by the Association advising the Owner of the specific violation and the penalty if the violation is not cured within a reasonable time.
- 2. IF the violation remains uncured, a citation will be issued to the owner which will include a monetary fine to be paid into the Homeowner's Association maintenance fund. The amount of the fine will be at the sole discretion of the Association.
- 3. If after a warning and citation the violation continues to occur or occurs again the Association shall have the authority to impose a monetary fine until the violation is suspended.

**ARTICLE 4
CONSTRUCTION STANDARDS**

Section 1: General Construction and Architectural Rules. These rules shall apply only to all Lots and Unit Lots in Kokopelli Mesa:

Current construction standards and ACC building policies shall be available to all homeowners upon request to the ACC. Any and all permits issued by the governmental agencies must be posted in a prominent place and easily visible from the road, during all phases of construction or landscaping. Issuance of all permits is subject to submission of a detailed material list and specifications with samples as required by the ACC. Approval by the ACC of such plans, specifications and locations of buildings shall be endorsed on all sets of plans and specifications, and two sets thereof shall be returned to the person

submitting the same, with one set to be on site at all times. After such plans and specifications and other data submitted have been approved by the ACC, no building, garage, fence, wall, or other structure of any kind shall be erected, constructed, placed, painted, altered or maintained not in conformity with the plans and specifications, color scheme and plot plan theretofore approved by the ACC. If any building, garage, fence, wall, retaining wall or other structure of any kind shall be erected, constructed, placed, painted, altered or maintained on said property other than in accordance with the plans and specifications, color scheme and plot plan theretofore approved by the ACC, such actions shall be deemed to have been undertaken without the approval of the ACC.

- a) **Materials.** Exterior walls of all homes must be stucco masonry, of a light to medium earth- tone, and may include stone or wood trim. No exposed concrete block is allowed on any lot. Concrete block must be stuccoed and painted to blend or stuccoed and color-coated to blend with existing exterior. Decorative concrete block is allowed with ACC approval. Roofs materials may be EPDM, black or rubberized material for slope 1" to 12" or less. No wood shingles, asphalt shingles or gravel surface roofs will be allowed. All roofs, including metal roofs, shall have a matt finish with covered fasteners so as to prevent any shiny or reflective surfaces. All material selections must be approved in writing by the ACC.
- b) Buildings or structures shall not be constructed of a building material that will cause the sunlight to be reflected there from; nor shall any building or other structure be painted with any paint or other substance that will cause the sunlight to be reflected there from. The use of silver color, natural unanodized or natural anodized aluminum window and door frames shall not be permitted. Rain gutter, air vents, roof and chimney vents, exposed flashing and roof edging shall be primed and painted in a color approved in writing by the ACC.
- c) All building shall be built completely of new, first-class construction. In the case a home is stagnant in its progress, the HOA has the right, at the owner's expense, to beautify the exterior to match the current surroundings.
- d) **Garden Home Height Restrictions:** All Garden Homes built contiguous to the golf course shall be limited to one-story and shall not exceed 20 feet in height measured from the highest point of the underlying property to the highest point of construction, unless approved in writing by the Architectural Control Committee.
- e) No garage, carport, shed, tent, trailer, mobile home or temporary structure of any kind shall be erected, constructed, permitted or maintained on any lot prior to the commencement of the erection of a principal dwelling thereon. No garage, carport, shed tent, trailer, mobile home, basement or temporary building shall be used for temporary or permanent residence.
- f) No pre-built or major pre-built or modular portion, other than trusses or floor joists, shall be erected, placed, moved on or maintained on any lot.
- g) No buildings shall be erected on natural drainage channels, nor shall any obstruction of drainage channels be permitted. For driveways constructed over any drainage channel, the Owner shall be required to install an adequate culvert supported on both ends and as approved by the ACC, so as not to impede the natural flow of water through the drainage channel.

- h) The owner of lots in the subdivision shall be required to be connected to the Kokopelli Mesa sewage treatment plant. Lift Stations may be necessary to connect to the sewer at the expense of the respective lot owner. Each lot owner shall be required to connect to any utilities underground, and at his own expense, including trenching and backfill. Overhead connections will not be allowed.
- i) Every Residence must include two (2) standard size (not compact size) automobile parking spaces on each Lot unless written approval is granted by the ACC to provide otherwise. Parking spaces must be used instead of on-street parking. In addition, every residence must have a two (2) or more car garage which is fully enclosed.
- j) All driveways shall be limited to concrete, pressed concrete, pavers, or a similar hard surface. Asphalt, chip seal, gravel, sand and dirt driveways are specifically prohibited without the written approval of the ACC.
- k) Fencing for single homes must be stuccoed or metal. Stucco fences color-coated to blend with existing exterior of the residence; metal dark bronze color. All fencing should be approved by the ACC. Fence height from street to the residential setback shall not exceed 4 feet in height and beginning at the residential setback may then be graduated to a 4 foot maximum height. Gated patio, yard and driveway entries may have elevated portions at the gate, which must be approved by the ACC. Exceptions to this fencing requirement for construction and height may be made by the ACC in writing prior to construction.
- l) Any solar system or water collection device installed at a residence must be approved by the ACC.
- m) Unattached buildings must conform to the same requirements as exterior of the residence and be approved in writing by the ACC.
- n) All plans and specifications for a residence shall be prepared by a draftsman, licensed architect or registered engineer and submitted and approved by the ACC and all other requisite regulatory authorities. The ACC may require plans to be stamped by a licensed architect for new construction or substantial renovation.
- o) All new residences shall be equipped with a fire detection alarm system which must be kept in working order at all times.
- p) When the construction of a dwelling is commenced upon any lot, the owner or owners thereof shall proceed with all reasonable diligence to the completion thereof and shall complete the construction according to the schedule and standards set by the ACC.
- q) The ACC shall act with all due promptness in accordance with its regularly scheduled meetings. The review and approval or rejection of any plans pursuant to these covenants may be made solely on the basis of aesthetic considerations and the ACC shall not bear any responsibility for such review and approval or for insuring the structural integrity or soundness of any approved or unapproved

- r) construction or modification, for insuring compliance with building codes or other governmental requirements, for insuring that all dwellings are of comparable or desirable quality, value or size, or of similar design or that the same are aesthetically pleasing or otherwise acceptable to neighboring or other property Owners within the subdivision.
- s) **SETBACKS:** Unless approved by the ACC, no structure shall be erected, constructed, placed or maintained on any Lot or Unit Lot nearer than the designated setbacks (measured from that portion of the structure closest to the property line) set forth below. The ACC may, at its sole discretion, approve deviations from these stated setbacks upon written application by the owner. All Garden Home Units/ Lot s: Front twenty (20) feet, rear zero (0) feet, side ten (10) feet total (unless common walls) Five (5) feet on each side. All other residential lots: Front twenty (20) feet, rear fifteen (15) feet, side ten (10) feet total, Five (5) feet on each side. Unit Lots which abut a golf cart path will have a setback of 6 feet from the golf cart path.

ARTICLE V ARCHITECTURAL CONTROL COMMITTEE

Section 1. Authority, Powers and Responsibilities: Authority to act as and in the capacity of the "Architectural Control Committee" including the authority to grant or withhold architectural control approval. The powers, responsibilities, duties and purposes of the Architectural Control Committee are all aspects of construction within Kokopelli Mesa. The Committee shall act with all due promptness. In the event the Committee has not acted within sixty days from submission, then it shall be deemed to have been approved unless such delay shall have been deemed reasonable under "all aspects of construction". All site plans must be submitted to include, but not limited to, landscaping, lighting, exterior material and color selection, as well as modifications to the interior of screened porches, patios or similar portions of a residence visible from outside the subject structure.

The real property subject to these covenants shall be subject to the architectural review process of the ACC. If any independent architect or land planner is consulted by the ACC, the ACC shall be entitled to charge the then owner a reasonable fee for services performed relating to the review and approval of plans submitted in accordance with these covenants. The underlying principle of the ACC is to maintain the integrity and uniqueness of the subdivision. The ACC may grant variances, but such variances shall only become effective after ratification by the Board. The ACC may recommend to the Board:

- (1) suspension of membership (with or without suspension of dues),
- (2) imposition of monetary fines,
- (3) filing of suit for injunctive relief or
- (4) such other action as is appropriate.

For purposes of clarity, the authority of the ACC is derived from and subordinate to that of the Board. In the event of any conflict between the ACC and Homeowner, the Board will have final authority. In the event of any conflict between the ACC and the Board, the decision of the Board shall control.

ARTICLE VI
KOKOPELLI MESA HOMEOWNERS ASSOCIATION

Section 1. Membership: The Kokopelli Mesa Homeowners' Association, Inc. a non-profit corporation has been organized and shall be governed by the Articles of Incorporation, this Amended Declaration and the By-Laws of said Association, and Club's Bylaws.

1. Every person or entity who is a record owner of any Lot or Unit Lot shall be a Member of the Association, and a regular member of Club. No Owner shall have more than one membership for each Lot or Unit Lot owned by such Member. Memberships shall be appurtenant to and may not be separated from the ownership of the Lot or Unit Lot, regardless of the number of persons who may own a Lot or Unit Lot such as husband and wife, joint tenants, etc. There shall be one Membership for each Lot or Unit Lot, and there shall be a maximum of 125 memberships issued. No lot of any kind shall be sold without a Club membership attached. Each lot subject to these covenants comes with a mandatory full membership in the Club. A Regular membership shall be issued to the Buyer/Owner upon payment of the required transfer fee, dues obligation to the Club, and execution of the Club membership agreement.

2. A Regular Resident Club membership shall be issued to only one individual Owner or entity (e.g. corporation, partnership, Limited Liability Company, trust, estate or other joint owner ownership form). If the Owner is an entity, one membership shall be issued to one individual designee of said entity designated in writing to the Club. Each Member and the Member's authorized users and guests shall have such privileges and obligations as provided in the HOA's bylaws and reasonable rules and regulations as well as Club bylaws and covenants.

3. The Owner of each HOA membership shall pay to the HOA any applicable dues, fees, assessments, fines and all other charges assessed in accordance with the Bylaws of the HOA or these covenants (including assessments for the Maintenance Fund and dues as noted in these covenants); and the HOA shall have a lien on the owner's lot for such dues, fees, assessments, fines and other charges from the time they become due. If such dues, fees, assessments, fines and other charges are not paid when due, in accordance with the HOA's delinquency policy, such lien may be foreclosed in the manner provided by New Mexico law for the foreclosure of a lien. The prevailing party in any action to enforce the lien or otherwise collect the dues, fees, fines or other charges shall be entitled to recover reasonable attorney's fees and costs associated. A fine will also be assessed of 25% of attorney fees to cover time spent by the Board to be paid to the Homeowner Association.

4. The Regular Resident Membership in the Club held by any owner of a lot, subject to these covenants as well as the covenants and bylaws of the Club, shall not be transferred, pledged, hypothecated or alienated in any way except upon the sale or transfer of such lot or dwelling unit and then only to the new purchaser or transferee of such lot or dwelling unit. Any attempt to make a prohibited transfer shall be void and shall not entitle the transferee to any privileges of membership. In the event the owner of any lot or dwelling unit shall fail or refuse to transfer to the purchaser or transferee of such lot or dwelling unit the Regular Resident Membership the owner

5. holds with respect to such lot or dwelling unit, the Club shall issue a new certificate of Regular Resident Membership to the purchaser or transferee, and thereupon the old membership outstanding in the name of the owner shall be null and void as though the same had been surrendered.

Section 2. Sewage Treatment Plant: The Sewage Treatment Plant shall be owned and operated by the Association, or by such other organization as may be approved by the Association.

ARTICLE VII

DUTIES AND POWERS OF THE HOMEOWNERS' ASSOCIATION

Section 1. General Duties and Powers of the Association. The Association has been formed to further the common interests of its Members of the Kokopelli Mesa Homeowners Association, Inc. The Association, acting through its Board of Directors or through persons to whom the Board of Directors has delegated such powers according to the current Bylaws, shall have the authority to act as the agent to enter into any and all contracts on behalf of the Members in order to carry out the duties, powers and obligations of the Association as set forth in this Declaration.

Section 2. Duty to Manage and Care for Common Area. The Association shall manage, operate, care for, maintain and repair the Common Area and keep the same in a safe, attractive and desirable condition for the use and enjoyment of the Members. The duty to operate, manage and maintain the Common Area shall include, but not be limited to, the following:

- a) Maintenance of streets, roads and other public ways, perimeter fences, gates, of entry into the subdivision and the sewer plant.
- b) Lighting of roadways, landscaping and entrances
- c) Grant easements for encroachments to property owners when approved

Section 3. Insurance and Bonds. The Association shall obtain adequate insurance as may be required by law, including workmen's compensation insurance, and shall have the power to obtain such other insurance and such fidelity, indemnity or other bonds as the Association shall deem necessary or desirable.

Section 4. Duty to Prepare and Provide an Annual Budget and Review. The Association shall prepare budgets for the Association which shall include a reserve fund for the maintenance of all portions of the Common Area. The Association shall provide for an annual unaudited independent review of the accounts of the Association. Copies of the review shall be made available to any Member who requests a copy of the same upon payment by such Member of the reasonable cost of copying the same. The Financial committee shall report the review at the annual Homeowner meeting.

Section 5. Duty to Levy and Collect Maintenance Charges. The Association shall levy, collect and enforce a maintenance charge, a private street fund, a sewer fund and any other charges and assessments as elsewhere provided in this Declaration and shall have the authority to establish and maintain Board approved working capital, reserve and/or contingency funds in reasonable amounts.

The Association shall levy and collect an annual maintenance dues charge applicable dues, fees, assessments and fines against each Lot and Unit Lot within Kokopelli Mesa, to include any Developer Lots and Unit Lots and any Owner Lots or Unit Lots. The owner of each Lot and Unit Lot shall pay to the

Association any applicable dues, fees, assessments fines and all other charges assessed in accordance with the Bylaws of the Association (including assessments for the Maintenance Fund as noted in these covenants).

Section 6. Special Assessments: The Association may fix, levy and collect special assessments or charges to supplement the annual charge for the Maintenance Fund in order to pay for additional sums necessary for maintenance or repair of the sewer plant, Common Area, payment of taxes, insurance, equipment, materials, management or any other matter deemed necessary.

Section 7. Power to Enforce Restrictions, Rules and Regulations. The Association shall have the power to enforce whatever restrictions and provisions of this Declaration as well as any Rules and Regulations promulgated by the Board or the Association. The Association shall have the authority and responsibility to lien on the Owner's Lot or Unit Lot for such dues, fees, assessments, fines and other charges from the time they become due if such dues, fees, assessments, fines and other charges are not paid when due, in accordance with the Association's delinquency policy as stated in Kokopelli Mesa By-Laws. Such lien may be foreclosed in the manner provided by New Mexico law for the foreclosure of a lien. The prevailing party in any action to enforce the lien or otherwise to collect the dues, fees, assessments, fines or other charges shall be entitled to recover reasonable attorney's fees and costs associated. A fine will also be assessed of 25% of attorney fees to cover time spent by the Board to be paid to the Homeowner Association. In additional recourse, the Association may take the action below:

- a) By entry upon any property within the Subdivision after notice and hearing, without liability by the Association to the Owner therefore, for the purpose of enforcement of this Declaration or the Rules and Regulations.
- b) By commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of the provisions of this Declaration or the Rules and Regulations.
- c) By exclusion after notice and hearing, of any Member from use of any recreational facilities with the Common Area, for sixty (60) days following any breach of this Declaration or the Rules and Regulations by such Member, unless the breach is a continuing breach in which case exclusion shall continue for so long as the breach continues.
- d) By suspension, after notice and hearing, of the voting rights of a Member for sixty (60) days following any breach by such Member of a provision of this Declaration or the Rules and Regulations, unless the breach is a continuing breach in which case such suspension shall continue with such breach.
- e) By levy and collecting after notice and hearing, an assessment against any Member for breach of this Declaration or the Rules and Regulations by such Member which assessment reimbursed the association for the costs incurred by the Association in connection with such breach.
- f) By levying and collecting, after notice and hearing, reasonable and uniformly applied fines and penalties, established in advance in the Rules and Regulations of the Association, from any Member for breach of this Declaration or such Rules and Regulations. By taking action to cure and abate such violation and to charge the expense thereof, if any, to such violating Members plus attorney's fees incurred by the Association with respect to exercising such remedy. A breach of this Declaration or the Rules and Regulations by family members, guests or tenants of any Owner shall be deemed to be breach by the Owner.

Before the Association may invoke the remedies provided above, it shall give registered notice of such alleged violation to the Owner and shall afford the Owner a hearing. If, after the hearing, a violation is found to exist, the Association's right to proceed with the listed remedies shall become absolute. Each day a violation continues shall be deemed a separate violation. Failure of the Board to take enforcement action of any of

the foregoing violations shall not be deemed a waiver of the right to take enforcement action thereafter or upon a subsequent breach or default.

Section 8. Power to Acquire Property and Construct Improvements. The Association may acquire water rights, property or an interest in property (including leases) for the common benefit of the Owners, including improvements and personal property. The Association may construct improvements on the property and may demolish existing improvements. These covenants authorize the Association to merge, transfer or sell Kokopelli Mesa Golf Club to Alto Lakes Country Club or another club or association, if approved by the Homeowners as set forth herein.

Section 9. Power to Grant Easements. The Association shall have the power to grant access, utility, drainage, water facility and other such easements in, on, over or under the Common Area.

ARTICLE VIII MAINTENANCE FUND

Section 1. Maintenance Fund Obligation. The Maintenance Fund is also known as the Street Fund and shall be considered one and the same. Each Owner of a Lot or Unit Lot, by acceptance of a deed therefore, whether or not it shall be expressed in any such deed or other conveyance, is deemed to covenant and agrees to pay to the Association an annual maintenance charge (the "Maintenance Charge"), and any other assessments or charges hereby levied pursuant to or consistent with this Declaration. The Maintenance Charge and any other assessments or charges hereby levied, together with such interest thereon and costs of collection thereof, as hereinafter provided shall be a charge on the Lot or Unit Lot and shall be a continuing lien upon the property against which each such Maintenance Charge and other charges and assessments are made.

Section 2. Basis of the Maintenance Charge.

- a) The Maintenance Charge referred to shall be used to create a fund to be known as the "Maintenance Fund", which shall be used as provided in Article VII, Section 2. Each Maintenance Charge shall be paid by the Owner of each Lot or Unit Lot to the Association. The Maintenance Charge for the year of purchase shall be pro-rated at closing and shall be paid annually, in advance, on or before the first day of the first month of each calendar year.
- b) Any Maintenance Charge not paid with Sixty (60) days after the due date shall be considered delinquent and charged at an interest from the due date at the lesser of
 1. The rate of eighteen percent (18%) per annum; or
 2. The maximum rate permitted by law.

The Association may bring an action at law against the Owner personally obligated to pay the Maintenance Charge or foreclose the hereinafter described lien against the Owner's Lot or Unit Lot. No Owner may waive or otherwise escape liability for the Maintenance Charge by non-use of any Common Area available for use by Owners of the Subdivision, or by the abandonment of the Lot or Unit Lot.

- c) The amount of the Maintenance Charge applicable to each Lot and Unit Lot will be determined annually. All other matters relating to the Maintenance Charge (to include any changes in the amount charged annually) and collection, expenditures and administration of the Maintenance fund shall be determined by the Board of Directors of the Association, subject to the provisions hereof.

- d) The Association shall have the further right at any time to adjust or alter the Maintenance Charge from year to year as it deems proper to meet the reasonable operating expenses and reserve requirements of the Association in order for the Association to carry out its duties hereunder.

Section 3. Creation of Lien and Personal Obligation: In order to secure the payment of the Maintenance Charge, and other charges and assessments hereby levied, each Owner of a Lot or Unit Lot in the Subdivision, by such party's acceptance of a deed thereto, hereby grants to the Association a contractual lien on such Lot or Unit Lot which may be foreclosed pursuant to law and in the manner in which the laws of the State of New Mexico provide for the foreclosure of mortgages. In addition to the amount of the lien foreclosed, the Association shall be entitled to reasonable attorney's fees and costs of foreclosure.

ARTICLE IX

SPECIAL ASSESSMENTS

Section 1. Authority to Make Special Assessments. This Declaration of Covenants, by virtue of the authority delegated to it and subject to the provisions of this Declaration the Board of Directors of the Association may fix, levy, and collect special assessments or charges.

Section 2. Purpose of Assessments. Any special assessment levied by the Association shall be for the purpose of supplementing the annual charge for the Maintenance Fund or for the Common Area or any other matter deemed necessary by the Board of Directors of the Association. The Board of Directors of the Association is vested with the authority, in its sole discretion, to make any special assessment limited to benefit of the HOA members and Kokopelli Mesa community as a whole.

Section 3. Lots Affected by Assessments. All Lots and Unit Lots are affected by all special assessments including unimproved and improved, sold and unsold.

Section 4. Duties of the Board of Directors with regard to any Special Assessment.

- a) The Board of Directors shall fix the due date and the amount of the special assessment against each Lot or Unit Lot.
- b) Written notice of the assessment shall be sent to every member. The payment of the special assessment is due with thirty (30) days of the date of the mailing of the notice of the special assessment.

Section 5. Effect of Non-Payment of Special Assessments. If the special assessment is not paid on the date when due, then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, and all other charges, fines or monies owed to the Association by said Owners thereupon become a continuing lien upon the Lot or Unit Lots and be enforceable in accordance with the provisions of this Declaration.

ARTICLE X

RESERVATIONS, EXCEPTIONS AND DEDICATIONS

Section 1. Recorded Subdivision Map of the Property. The plat ("Plat") of Kokopelli Mesa dedicates for use as such, subject to the limitations as set forth therein the easement shown thereon. The Plat further establishes certain restrictions applicable to Kokopelli Mesa. All dedications, restrictions and reservations created herein or in amendment hereto or shown on the Plat, any replats or amendments of the original or any amended plat of Kokopelli Mesa recorded or hereafter recorded, shall be construed as being included in each contract, deed, or conveyance executed or to be executed by or on behalf of the Association, whether specifically referred to therein or not.

Section 2. Golf Course Tracts. Owner of the Golf Course Tracts shall be subject to all applicable commercial and reasonable fees for the purpose of connection to and use of the sewage treatment plant.

Section 3. Easements. Association reserves for public use the utility easements shown on the Plat or that have been or hereafter may be created by separate instrument recorded in the Records of Lincoln County, New Mexico, for the purpose of constructing, maintaining and repairing a system or systems of electric, lighting, electric power, telegraph and telephone line or lines, storm surface drainage, cable televisions, gas, sewer, cart paths or any other utility the Association sees fit to install in, across and/or under the Subdivision. All utility easements in the Subdivision may be used for the construction of drainage swails in order to provide for improved surface drainage of the easements, Subdivision, Common Area and/or Lots and Unit Lot Lots. Should any utility company furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Association shall have the right to grant such easement without conflicting with the terms hereof. Any utility company serving the Subdivision shall have the right to enter upon any utility easements herein referred to shall be liable for any damages done by them or their assigns, agent's employees or servants, to fences, shrubbery, trees and lawns or any other property of the Owner in the property covered by said easements.

Section 4. Title Subject to Easements. It is expressly agreed and understood that the title conveyed by the Association to any of the Lots or Unit Lots by contract deed or other conveyance, shall be subject to any easement affecting same for roadways or drainage, electric lighting, electric power, telegraph cable or telephone purposes, gas, sewer or cart paths and other easements hereafter granted affecting the Lots and Unit Lots. The Owner of the respective Lot or Unit Lot shall not be deemed to own pipes, wires conduits or other service lines running through his Lot or Unit Lot which are utilities for or service other Lots or Unit Lots, but each Owner shall have an easement in and to the aforesaid facilities as shall be necessary for the use, maintenance and enjoyment of his Lot or Unit Lot. The Association may convey title to said easements to the public, a public utility company or the Association.

Section 5. Utility Easements. Utility ground easements have been dedicated in accordance with the Plat and by separate recorded easement documents. No building shall be located over, under, upon or across any portion of any utility easement. Unless otherwise stated in the recorded easement documents, the Owner of each Lot or Unit Lot shall have the right to construct, keep and maintain concrete drives, fence, and similar improvements across any utility easement, and shall be entitled to cross such easements at all times for purposed of gaining access to and from such Lot or Unit Lot, provided, however, any concrete drive, fence or similar improvement placed upon such utility easement by the Owner shall be constructed,

maintained and used at Owner's risk and, as such, the Owner of each Lot or Unit Lot subject to said utility easements shall be responsible for any and all repairs to the concrete drives, fences and similar improvements which cross or are located upon such utility easements; unless caused by utility company in which said company would be responsible.

**ARTICLE XI
PROVISIONS**

Section 1. Term. The provision hereof shall run with all property now or hereafter part of Kokopelli Mesa and shall be binding upon all Owners and all persons claiming under them for a period of twenty (20) years from the date this Declaration is recorded, after which time said declaration shall be automatically extended for successive periods of ten (10) years each, unless this Declaration is properly amended to provide otherwise.

Section 2. This Declaration shall be an addendum to the Club Unified Covenants and must be amended to conform to the Unified Covenants of Club now and whenever they may be amended from time to time.

Sections 3. Amendments by the Association. This Declaration may be amended or changed, in whole or in part, by an affirmative vote of at least Fifty Percent (50%) of the owners of all lots. There shall be one (1) vote per lot. Any owner of more than one (1) lot shall be entitled to one (1) vote per lot owned. Those owners may vote by mail, vote by a ballot signed by an owner, in person, by mail or by proxy at a meeting duly called and noticed by the Board of Directors. The affirmative vote of at least Fifty Percent (50%) of the eligible lot owners shall constitute a majority, for purposes of approving the proposed Amendment. A lot owner who is more than sixty (60) days delinquent in any fee due the Association shall not be eligible to vote. Any alteration, amendment, repeal, or addition to this declaration of covenants, conditions, and restrictions shall be null and void if not ratified in writing by the Alto Lakes Board of Directors. Any amendment so authorized shall be accomplished through the recordation of an instrument signed by the President and attested by the Secretary of the Board of Directors, with the County Clerk of Lincoln County. Such instrument shall certify that the vote required by this section has occurred. A copy of any signed ballots and proxies and/or copies of the Minutes of the meeting of the Board of Directors will be kept for inspection by Members for a period of twelve (12) months following the filing of the instrument, certifying the approval of the Amendment. For the purposes of this Section a quorum for a meeting shall be achieved by in-person attendance, proxy attendance, telephone attendance and/or virtual attendance of Twenty (20%) of the eligible votes. Any Meeting of the Board of Directors held for the purpose of adopting an Amendment shall be noticed to eligible voters by giving thirty (30) day notice by mail or email.

Section 4. Should the Board of Directors vote by a majority to merge, transfer or sell Kokopelli Mesa Golf Club with another local country club, such action would be subject to the same voting requirements and notice requirements as set forth in Section XI 2 above.

Section 5. Severability. Each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial unenforceability of any provision or portion hereof shall not affect the validity of enforceability of any other provision.

Section 6. No Duty. The standards and procedures established by this Amended Declaration and the Declaration it amends are intended as a mechanism for maintaining and enhancing the overall aesthetics of Kokopelli Mesa. They do not create a duty to any person, group or entity.

Section 7. Liberal Interpretation. The provisions of this Declaration shall be liberally construed as a whole to effectuate the purpose of this Declaration.

Section 8. Successor and Assigns. The provisions hereof shall be binding upon and inure to the benefit of the Owners and the Association and their respective heirs, legal representatives, executors, administrators, successors and assigns.

Section 9. Effect of Violations on Mortgages. No violations of the provisions herein contained, or any portion thereof, shall affect the lien of any mortgage or deed presently or hereafter placed of record, or otherwise affect the rights of the mortgagee under any such mortgage, the holder of any such lien or beneficiary of any such deed; and any such mortgage, lien or deed may, nevertheless, be enforced in accordance with its deems, subject, to the provisions herein contained.

Section 10. Liens Subordinate to Mortgages. All liens described in this Declarations shall be deemed to be subordinate to a first or other lien, payable to a third-party lender which may have or may hereafter lend money in good faith for the purchase or improvement of any Lot or unit and any renewal, extension, pre-arrangement or financing thereof.

Section 11. Terminology. All personal pronouns used in this Declaration and attached hereto, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Title of Articles and Sections are for convenience only and neither limits nor amplifies the provisions of this Declaration. The terms "herein", "hereof", and similar terms, as used in this instrument refer to the entire agreement and are not limited to referring only to the specific paragraph, Section or Article.

IN WITNESS WHEREOF, the undersigned, being the Kokopelli Mesa Homeowner Association Inc., a non-profit corporation herein, has set its hand this 1 day of Nov., 2023.

KOKOPELLI MESA HOMEOWNER ASSOCIATION INC., A NON-PROFIT CORPORATION

BY: *Harriet Lane*
Harriet Lane, President of Kokopelli Mesa Homeowner Association

STATE OF NEW MEXICO:

Ss.

COUNTY OF LINCOLN

This instrument was acknowledged before me on Nov. 1 2023, by *Harriet Lane*, as President of Kokopelli Mesa Homeowner Association, a non-profit corporation.

H. John Underwood
Notary Public

My commission expires:

STATE OF NEW MEXICO
NOTARY PUBLIC
H. JOHN UNDERWOOD
COMMISSION # 1028398
EXPIRES JUNE 10, 2024

BY: James Ward
James Ward, Secretary of Kokopelli Mesa Homeowner Association

STATE OF NEW MEXICO

: Ss.

COUNTY OF LINCOLN

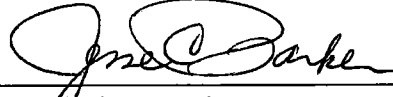
This instrument was acknowledged before me on Nov. 8, 2023, by

James Ward as Secretary of Kokopelli Mesa Homeowner Association,
a non-profit corporation.

H. John Underwood
Notary Public

My commission expires:

STATE OF NEW MEXICO
NOTARY PUBLIC
H. JOHN UNDERWOOD
COMMISSION # 1028396
EXPIRES JUNE 10, 2024



Jesse Parker, Member

STATE OF NEW MEXICO)
) §§
COUNTY OF LINCOLN)

Acknowledged before me on this 8 day of Nov., 2023, by Jesse
Parker, Member of Kokopelli Mesa Homeowners Association, Inc.



Notary Public

My Commission Expires:

