

**AMENDED AND RESTATED COVENANTS  
HARRIS FARM ESTATES SUBDIVISION  
COMPREHENSIVE DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS**

*Re-recording*

- 1) Subdivision Name listed incorrectly in 1.16  
of the Table of Contents
- 2) Plat description not recorded in records  
page 1 Plat No 4286 Receipt No 43591  
Plat Book 21 Pages 457-458



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# HARRIS FARM ESTATE SUBDIVISION

## COMPREHENSIVE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION is made on the date and year below written by Mary Joan Harris Family Development, Inc., A New Mexico Corporation hereinafter referred to as the "Declarant."

### RECITALS

1. Declarant is the owner of that certain real property described in Section 1.17 hereof (the "Property"). *Plot No. 4286 Recognition No. 43591 Plot Book #21*  
*Page 457-458*

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

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

### ARTICLE I

#### DEFINITIONS

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

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

Section 1.3. "Declarant" shall mean and refer to Mary Joan Harris Family Development, Inc, or its assignee of the rights and/or obligations under this Declaration.

Section 1.4. "Declaration" shall mean the covenants, conditions, and restrictions herein set forth in this entire document, as the same may be from time to time amended and supplemented.



Section 1.5. "Development Plan" shall mean the plan for development of a Lot which is required to be submitted to the ACC pursuant to Sections 5.1 and 7.10 hereof. The plan shall include a landscaping plan.

Section 1.6. "Drainage Easement" shall be any area designated on the Subdivision Plat as such.

Section 1.7. "Improvement(s)" shall mean the buildings, garages, antennas, driveways, parking areas, walls, fences, hedges, plantings, planting or removal of trees or shrubs or hedges or ground cover or any other landscaping, lighting and all other Structures or landscaping Improvements of every kind and type affecting the natural condition of the land or the drainage of surface waters on, across or from the land.

Section 1.8. "Lot" shall mean each parcel of land shown or to be shown as a lot on the Address Plat for Harris Farm Estates, and designated thereon by a separate Lot number or shown or to be shown on any subsequent subdivision of a lot or tract within said Harris Farm Estates.

Section 1.9. "Corner Lot" shall mean a lot which abuts more than one street and in the absence of any other designation shall be deemed to front the street on which it has the smaller dimensions; although Declarant reserves the right to designate the street on which any Corner Lot shall be deemed to front.

Section 1.10. "Modular Dwelling" shall mean a factory-fabricated transportable building designed to be used by itself or to be incorporated with similar units at a building site into a modular structure on a permanent foundation. The term applies to major assemblies designed to be permanently affixed to real property in conformance with the local building code, and does not include prefabricated sub-elements such as panels, trusses, or plumbing trees which are to be incorporated into a structure at a building site.

Section 1.11. "Owner(s)" shall mean and refer to the record Owner, whether one or more persons, associations or entities, of legal, equitable or beneficial title of or to any Lot, including Declarant. Owner shall include the purchaser of a Lot under a real estate contract for sale of real property. The foregoing does not include persons or entities who hold an interest in any Lot or in the Property merely as security for the performance of an obligation or who are the seller under a real estate contract. Any reference herein to Owners shall include Owners as defined herein.

Section 1.12. "Property" shall mean and refer to the real property located in Dona Ana County, New Mexico, and more specifically described in **Exhibit A** to this Declaration including the aerial and subsurface rights appurtenant thereto, and such additional real property, if any, as may be annexed and added to the Subdivision, when any map or plat thereof is filed of record and a supplement to this Declaration is recorded which identifies the platted lots therein.

Section 1.13. "Single-family Residential Use" shall mean the occupation or use of a Structure as a residence by a single person, a family or a family-sized unit in conformity with this Declaration and the requirements imposed by applicable zoning laws or any other state, county or municipal laws, rules, regulations, codes or ordinances. An Owner may rent or lease his residential Structure, but any such rental or lease must be by a written agreement which

requires the tenant to observe the covenants, conditions and restrictions of this Declaration and no residential Structure may be rented or leased for a period of less than thirty (30) days.

Section 1.14. "Single-family Residential Unit" shall mean any building situated upon a Lot or Tract designed and intended for use and occupancy as a residence by a Single Family.

Section 1.15. "Structure(s)" shall mean anything erected, constructed, placed, laid or installed in, on, or over real property, the use of which requires a location on or in the ground but not including vegetation, trees, shrubs or plantings.

Section 1.16. The "Subdivision" or "Harris Farm Estates" shall mean all of the Harris Farm Estates Subdivision , as set forth on the Subdivision Address Plat, as when any maps or plats thereof are filed of record and a supplement to this Declaration is recorded which identifies the platted lots therein.

Section 1.17. "Subdivision Map" or "Subdivision Plat" or "Plat Map" or "Plat" or "Final Plat" shall mean the recorded map or plats of the Harris Farm Estates Subdivision, as amended or replatted from time to time, covering any or all of the Property referred to in this Declaration.

Section 1.18. "Visible From the Street" shall mean that with respect to any given object, that such object is or would be visible to a person six (6) feet tall, standing on any part of the street in front of the subject house.

## ARTICLE II

### PROPERTY SUBJECT TO RESTRICTION

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

Section 2.2. Description of Property. The property subject to this Declaration is all Property described in Section 1.12 hereof.

## ARTICLE III

### LAND USE

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

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

Section 3.3. Combining of Lots. An Owner of two (2) or more contiguous Lots may, with prior written approval of the ACC, combine said Lots into one Lot. Such combination shall be at the sole expense of said Owner. After combination, the resulting Lot shall be treated as one (1) Lot for all purposes of this Declaration.

Section 3.4. Restrictions On Business and Commercial Activity and Rental or Leasing of Property. No business or commercial activity frequented by and open to the general public (and in any event no business or commercial activity which takes place outdoors or which creates noise audible from neighboring property) shall be conducted within the Subdivision. Home occupations of the Owner are permissible if conducted in the home and in compliance with the applicable municipal ordinances and regulations from the governing body and any rules and regulations governing home occupations hereafter adopted by the ACC. Nothing contained herein shall be deemed to prevent the rental or leasing of a Single-family Residential Unit by the Owner thereof, subject to all the provisions of this Declaration.

## ARTICLE IV

### EASEMENTS

Section 4.1. Existing Easements. The Subdivision Plat(s) has or shall dedicate for use as such, subject to the limitations set forth therein, certain roadways, streets, rights-of-way and easements, including but not limited to Drainage Easements, shown thereon and such Subdivision Plat(s) has or will establish dedications, limitations, reservations and restrictions applicable to the Property. Further, Declarant may, prior to the Property becoming subject to this Declaration, grant, create and dedicate by recorded instrument(s) certain other easements, restrictions, rights-of-way and related rights affecting the Property. All dedications, limitations, restrictions and reservations shown on the Subdivision Plat and all grants and dedications of easements, restrictions, rights-of-way and related rights made by Declarant prior to the Property becoming subject to this Declaration, are incorporated herein by reference and made a part of this Declaration for all purposes as if fully set forth herein and shall be construed as being

adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the Property.

Section 4.2. Changes and Additions. Declarant reserves the right to make changes in and additions to the above easements and rights-of-way for the purpose of most efficiently and economically installing Improvements. Further, Declarant reserves the right, without the necessity of the joiners of any Owner or other person or entity, to grant, dedicate, reserve or otherwise create, at any time or from time to time, rights-of-way and easements for public utility purposes (including, without limitation, gas, water, electricity, telephone and drainage), in favor of any person or entity.

Section 4.3. Utility Installation and Maintenance. There is hereby created an easement upon, across, over and under all of the Property for ingress and egress in connection with installing, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, gas, telephone and other communication services, electricity, cable television and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies, and other entities supplying service to install and maintain pipes, wires, conduits, service lines or other utility facilities or appurtenances thereto on, above, across and under the Property, within the public utility easements from time to time existing and from service lines situated within such easements to the point of service on or in any Structure. Notwithstanding anything contained in this Section, no electrical lines, water lines or other utilities or appurtenances thereto may be relocated on the Property until approved by Declarant or the ACC. The utility companies furnishing service shall have the right as necessary to remove trees situated within the utility easements shown on the Subdivision Plats and to trim overhanging trees and shrubs located on portions of the Property abutting such easements.

Section 4.4. Maintenance of Perimeter Wall. Each Owner of a Lot bordering the Subdivision perimeter wall covenants and agrees to maintain and repair the perimeter wall bordering his Lot. Each such Owner further covenants not to add to, remove, color or otherwise modify or change the perimeter wall.

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

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

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

## ARTICLE V

### IMPROVEMENTS AND STRUCTURES

Section 5.1. Development Plan. Each Owner shall be required to submit a detailed Development Plan, pursuant to the Rules of the ACC, and such plan must be approved in writing prior to the commencement of construction of any Improvement. No construction whatsoever, including, without limitation, site preparation, clearing of trees or excavation, shall commence without the prior written approval of the ACC. All construction and development shall comply strictly with the approved Development Plan. Any person purchasing any portion of the Property subject to this Declaration acknowledges that the breach or violation of this Section 5.1 is likely to result in irreparable harm to the rights and interests of other Owners in the Subdivision and that the ACC, on behalf of such Owners, shall be entitled to injunctive relief, temporary or permanent, in order to prohibit such violation; provided, however, that this provision shall be in addition to any other remedies available hereunder, including fines, or at law or equity.

Section 5.2. Time for Construction. The provisions of this Section 5.2., shall not be applicable to Declarant, its affiliates or subsidiaries.

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

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

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

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

Section 5.3. Residential Structures. All residential Structures shall be subject to the following requirements, and each enumerated item must be included in the Development Plan submitted and approved in writing by the ACC prior to the commencement of construction; provided, however, that the following requirements shall not be the sole basis for consideration by the ACC (see Section 7.13 of this Declaration). Once approved, no Structure or Improvement may vary from the Development Plan without further approval of the ACC.

(a) Set Backs: No residential Structure shall be erected on any Lot closer than twenty-five (25) feet from the front property line, or closer than twenty-five (25) feet from the rear property line, or closer than ten (10) feet from the side lot line. With reference to Corner Lots, no Structure or portion thereof may be erected closer than twenty-five (25) feet from the

side property line. Ordinary projections of sills, belt courses, cornices and ornamental features may project as much as twenty-four (24) inches into the side set back lines. For the purpose of this paragraph, eaves, steps, and equipment pads shall not be considered as part of a Structure. Where more than one Lot is acquired as a single building site, the side lot lines shall refer only to the lot lines bordering the adjoining property owners. Notwithstanding anything to the contrary herein, the ACC shall have the right to permit reasonable modifications of the set back requirements where in the discretion of the ACC, strict enforcement of the set back provisions would work an extreme hardship or otherwise not be appropriate under the circumstances. However, in no event shall set back requirements be less than required by applicable Zoning Codes.

(b) Minimum Floor Areas: All single-family residential Structures shall have a fully enclosed heated living area of not less than eighteen hundred (1800) square feet, exclusive of portals, porches (open and closed), patios, garages, balconies or decks. Carports are not permitted.

(c) Height Limitations: No Structure shall be erected, altered or permitted to remain on any Lot that will exceed a vertical distance above ground level of fourteen feet (14) at any point (excluding roof mounted mechanical equipment or any associated screening, chimneys, flues, and vent pipes or stacks), with the exception of Lots 1 through 11 which may be erected, altered or permitted to have a vertical distance above ground level of twenty six feet (26) at any point (excluding roof mounted mechanical equipment or any associated screening, chimneys, flue, and vent pipes or stack). Ground level shall be defined as the highest pad elevation on any single Lot, as shown on the grading plans and/or as directed or approved by the ACC.

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

(e) Roofing Materials: Roofs shall be made of architectural composition shingles, 20 year three tab fiberglass shingles, or concrete or clay tile, in either barrel or flat style, and shall be in harmonious color tones approved by the ACC. The ACC shall have the right to impose additional limitations on roofing materials to be used in any Structure.

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

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

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

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

(j) Garages: No garage shall be erected, altered, placed or permitted to remain on any lot other than a private garage for not more than three (3) cars, or less than two (2) cars. The interior of any garage may be converted to any use which is otherwise permissible hereunder, however, the exterior facade of any converted garage, including but not limited to exterior doors, shall not be modified in any way. No interior of any garage may be converted for use as living or office space or to conduct any business or commercial venture if such conversion would result in there being less than 2 parking spaces in the garage.

Section 5.4. Trees, Shrubs and Landscaping. Front and side yard landscaping is a mandatory element of each Development Plan. The ACC shall have the right to approve the removal and/or addition of trees, shrubs, hedges, ground cover and all other landscaping.

Section 5.5. Windmills, Towers and Antennas. No windmills or towers will be allowed in the Subdivision. No antenna or satellite dishes or other service for the transmission or reception of television signals, radio signals or other form of electromagnetic radiation, visible from the street the home faces, shall be erected, used or maintained on any Lot, whether attached to a building or Structure or otherwise, without prior approval of the ACC. Notwithstanding the foregoing, the ACC shall approve a location visible from the street if such location is the only location where an adequate signal can be received. No radio signals, television signals, or any other form of electromagnetic radiation shall originate from any Lot which may unreasonably interfere with the reception of any television or radio signal on any other Lot.

Section 5.6. Underground Utility Lines. No utility lines, including, but not limited to, wires or other devices for the communication or transmission of telephone or electric current or power, cable television or any other type of line or wire shall be erected, placed or maintained anywhere in or upon any Property within the Subdivision unless the same shall be contained in conduit or cables installed and maintained underground or concealed in, under or on buildings or other Structures.

Section 5.7. Temporary Structures. No temporary structures of any kind, including but not limited to a trailer, mobile home, basement of any incomplete building, tent, shack, garage, barn or any other temporary building of any kind shall be utilized at any time for a residence on the Property within the Subdivision either on a temporary or permanent basis. Temporary structures may be used by homebuilders in connection with home construction and marketing activities.

Section 5.8. Out-buildings. Acceptable out buildings include a storage shed, a work shop, a swimming pool, a gazebo and other accessory buildings and improvements strictly incidental and appropriate to single family use. However, all proposed out-buildings must either

conform to a guideline promulgated by the ACC, or be included in a Development Plan approved in writing by the ACC.

Section 5.9. Signs. No sign, billboard, or advertising structure, except “For Sale” and “For Rent” signs on Lots listed with a real estate or management company, shall be erected or maintained on any Lot or parcel of property within the Subdivision, unless approved in writing by the ACC or otherwise consistent with any signage rules that may be issued by the ACC. The forgoing provision shall not apply to the Declarant, or to any homebuilder, who may erect signs as they deem necessary in connection with construction and marketing activities.

Section 5.10. Alterations. No alterations, repairs, excavations or other work which in any way results in the permanent alteration of the exterior appearance of any Structure within the Subdivision, or the appearance of any other Improvements located thereon, from its natural or improved state existing on the date the Lot on which such Structure is built was first conveyed in fee to a homebuyer, shall be made or done without the prior written approval of the ACC.

Section 5.11. Solar Equipment. Request for approval of installation of any type of solar equipment shall be included in the Development Plan and approved in writing by the ACC.

Section 5.12. Chemical Fertilizers, Pesticides or Herbicides. No commercial chemical fertilizers, pesticides or herbicides other than those products which are readily available for consumer use and approved by an agency, such as the Food and Drug Administration, for the purpose intended shall be used on any of the Property, unless the same are being used and applied by duly licensed applicators.

Section 5.13. Water Conservation/Fire Protection. Instruments to facilitate water conservation and fire protection are strongly encouraged. The ACC reserves the right to require the installation of residential sprinklers, low flow toilets and similar devices in all new construction.

## ARTICLE VI

### RESTRICTIONS

Section 6.1. Animals-Household Pets. No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained or cared for on the Property. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed on the Property other than the Lot of its Owner unless confined to a leash or under voice control. No animal may be stabled, maintained, kept, cared for or boarded for hire or remuneration on the Property and no kennels or breeding operation will be allowed. No animal shall be allowed to run at large and all animals shall be kept within an enclosed area which must be clean, sanitary and reasonably free of refuse, insects and waste at all times.



Section 6.2. Maintenance of Lawns and Plantings. Each Owner shall keep all shrubs, trees, grass and planting of every kind which are on his Lot and are Visible from the Street, properly cultivated, pruned and free of trash and other unsightly material. Declarant, and the ACC, shall have the right, but not the obligation, at any reasonable time to enter upon any Lot to replace, maintain and cultivate shrubs, trees, grass or other plantings located thereon, at cost to Owner, if the Owner fails and refuses to do so after notice and an opportunity to do so.

Section 6.3. Clothes Drying Facilities. Outside clothes lines or other facilities for drying clothes or airing clothes shall not be erected, placed or maintained on any Lot.

Section 6.4. Hunting/Trapping/Firearms and Explosives. Hunting, trapping and discharge of firearms or other explosives are expressly prohibited within the Subdivision.

Section 6.5. Dumping. Dumping of ashes, trash, rubbish, sawdust, garbage, land fill, solid waste and any type of refuse and other unsightly or offensive material is expressly prohibited within the Subdivision.

Section 6.6. Waste. The commission of waste is expressly prohibited within the Subdivision.

Section 6.7. Mineral Exploration. No mining, quarrying, tunneling, excavation or drilling for exploration or removal of any minerals including oil, gas, gravel, rocks, earth or earth substances of any kind shall be permitted within the Subdivision. The provisions of this section do not apply to the normal earthmoving activities associated with construction of improvements in accordance with this Declaration and all applicable laws, regulations and requirements of governmental authorities with jurisdiction over the Property.

Section 6.8. Business Activities. No business or commercial activity frequented by and open to the general public (and in any event no business or commercial activity which takes place out of doors or creates noise audible from neighboring Property) shall be conducted within the Subdivision. Home occupations of the Owner are permissible if conducted in the home and in compliance city ordinances and regulations and with any rules and regulations governing home occupations hereafter adopted by the ACC. Nothing contained herein shall be deemed to prevent the rental or leasing of a Single-family Residential Unit by the Owner thereof, subject to all of the provisions of this Declaration.

Section 6.9. Obnoxious Activities. No nuisance, obnoxious or offensive activities shall be permitted on any Lot, nor shall any rubbish or debris of any kind be placed or permitted to accumulate on or adjacent to any of the Property within the Subdivision, and no odors shall be permitted to arise there from, so as to render any such Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provision, no speakers, horns, whistles, bells or any other devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such Property which are audible from neighboring Property. No Lot or portion thereof shall be used in whole or in part for the storage of inoperable vehicles or commercial equipment. No operable vehicles may be parked or stored other than in a garage, on a driveway or on the street during the day time.

Section 6.10. Garbage. No garbage or trash shall be placed or kept on any Lot except in covered containers located in accordance with any rules and regulations promulgated by the ACC in accordance with Section 5.3(g). All rubbish, trash, and garbage shall be removed from Lots and shall not be allowed to accumulate thereon. No incinerator shall be kept or maintained on any Lot. No garbage, trash, or debris shall be permitted to be buried on any Lot at any time nor shall the burning thereof be permitted.

Section 6.11. Vehicles and Equipment. No bus, truck larger than a one-ton pickup, semi-trailer, tractor, machinery, or commercial equipment shall be kept, placed (except during the course of making deliveries for the purpose of loading or unloading), maintained, constructed, reconstructed, or repaired on the Property. No motor vehicle or trailer of any type shall be built, rebuilt or repaired on the Property other than in a garage. Motor homes, recreational house trailers, horse trailers, truck campers, boats, boat trailers and recreational vehicles of any sort or type which are intended to be kept on the Property by the Owner must, to the extent possible, be garaged; and if kept outside must be parked on a concrete driveway behind the privacy wall on the subject Lot, screened or partially screened from view from the street, in a location and in a manner approved by the ACC. No motorized vehicle of any kind may be operated in any manner which is dangerous, noisy or which creates a nuisance.

Section 6.12. No Overnight Parking. No vehicle of any kind shall be allowed to park overnight on any street within the Subdivision, without the prior written approval of the ACC.

Section 6.12. Emergency or Temporary Maintenance Vehicles. The provisions of this Declaration shall not prevent any emergency vehicle repairs or operation of an emergency vehicle, ambulance, etc., within the Subdivision. The provisions of this Declaration shall also not prevent the operation or temporary use of construction vans, trucks, and machinery/equipment maintained during and used exclusively in connection with the construction of any Improvement approved in writing by the ACC.

Section 6.13. Motorcycles / All Terrain Vehicles. The use of motorcycles or All Terrain Vehicles shall be limited to those which have been approved and are legal for street use. Such use shall be limited to the public streets.

Section 6.14. Continuing Adequacy of Repair or Maintenance. No Improvement upon the Property within the Subdivision shall be permitted to fall into disrepair, and each Improvement shall at all times be kept in good condition and repair and, if applicable, adequately painted or otherwise finished. Such duty to repair shall include the maintenance of any Structure exterior and finish which was included in the Development Plan approved by the ACC.

Section 6.15. Wood Piles and Storage Piles. No wood pile or storage pile shall be located on any part of a Lot other than behind the rear yard privacy fence and may not be against any common fence or wall or be higher than the height of any authorized fence or wall. Any Structure of a permanent nature to be built with regard to these items and must be included in the Development Plan and approved in writing by the ACC.

Section 6.16. Gates, Walls, and Fences. All gates, walls, and fences must be described in the Development Plan and approved by the ACC. Retaining walls shall be party walls if placed on the common property line between two (2) Lots and shall not be removed by either

Owner. Liability as between the Owners with the respect to the maintenance and/or alteration of any party wall shall be as provided by the laws of the State of New Mexico. Except for necessary retaining walls, which shall be of minimum height, the following requirements shall apply to all walls and fences:

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

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

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

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

(e) No walls or fences shall be erected or placed on any Lot or Lots neither lower than neither four (4) feet nor higher than six (6) feet above ground level except as directed or approved by the ACC. Walls previously approved by the ACC at a height less than six (6) feet may be raised to not more than six (6) feet without further approval by the ACC, provided that the rock, masonry, or block, and the mortar match the existing wall. "Ground Level", in this instance, is defined as the highest natural ground elevation on either side of the wall.

Section 6.17. Mobile Homes, Modular Dwellings, Manufactured Homes and Odd Shaped Structures. Mobile homes, modular dwellings, manufactured homes and "A" frame, cubicle and dome structures are not allowed.

## ARTICLE VII

### ARCHITECTURAL CONTROL COMMITTEE

Section 7.1. Establishment and Composition. There is hereby established an Architectural Control Committee ("ACC"), which shall consist of three (3) regular members and two (2) alternate members. The following persons are hereby designated as the initial members:

<u>Position</u>	<u>Name</u>	<u>Type</u>	<u>Address</u>
Office No. 1	Richard L. Dimsha	Regular	1705 N. Valley Dr., Suite 3 Las Cruces, NM 88007
Office No. 2	Carole Harris Brown	Regular	7671 N. Valley Drive Las Cruces, NM 88007
Office No. 3	Larry John Harris	Regular	2813 Spitz Avenue

Office No. 4	Robert Wayne Harris	Alternate	Las Cruces, NM 88005 4722 Forest Park Dr. Las Cruces, NM 88007
Office No. 5	India Denise Dimsha	Alternate	1705 N. Valley Dr., Suite 3 Las Cruces, NM 88007

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

Section 7.2. Voting and Status of Alternate Members. Except as otherwise provided herein, a vote or written consent of a majority of the regular members of the ACC at a meeting or otherwise shall constitute the act of the Committee. Except as hereinafter provided, alternate members shall not be entitled to vote. In the event of absence or disability of one (1) or more regular members, the remaining member or members, even though less than a quorum, may designate an alternate member to act or substitute for the absent or disabled regular member for the duration of such absence or disability. The alternate member so designated shall be entitled to vote in place of the regular member for whom the alternate member so substitutes. Notwithstanding the foregoing provisions, the ACC is not authorized to act unless at least one (1) regular member is present or, in the event action is taken without a meeting, unless at least one (1) regular member consents in writing thereto.

Section 7.3. Terms of Office. Unless the initial members of the ACC have resigned or been removed, their terms of office shall be for the periods of time beginning as of the date of recordation of this Declaration and ending on the dates indicated below, and until appointment of their respective successors:

Office Nos. 1, 2, and 3	January 1, 2010
Office Nos. 4 and 5	January 1, 2008

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

Section 7.4. Appointment and Removal. Except as provided below, the right to appoint and remove all regular members and alternate members of the ACC at any time, with or without cause, shall be, and hereby is, vested solely by the Declarant. At such time as the Declarant owns less than twenty-five percent (25%) of the Lots (in number) or at such time that Declarant has recorded a waiver of the right herein retained, whichever event occurs first, the right to appoint and remove all regular and alternate members of the ACC shall automatically be transferred to the Lot Owners who shall thereafter vote on such decisions. Once the right to appoint and remove ACC members has been transferred to the Lot Owners they may remove any ACC member at any time, with or without cause, by majority vote at a meeting called by the ACC, or at a meeting requested by the Lot Owners as evidenced by a petition for the same submitted to the ACC by at least 10% of the Lot Owners. Appointments to the ACC by Lot Owners shall be pursuant to Section 7.6 below.

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Section 7.5. Resignations. Any regular member or alternate member of the ACC may resign at any time from the Committee by giving written notice thereof to the Declarant, or the ACC as the situation requires.

Section 7.6. Vacancy. Vacancies on the ACC, however caused, shall be, except as provided in Section 7.4 of this Article, filled by a person elected by a majority of the Lot Owners present at a meeting called by the ACC for said purpose. A vacancy shall be deemed to exist in case of death, resignation or removal of any regular or alternate member.

Section 7.7. Duties.

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

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

Section 7.8. Meetings. The ACC shall meet from time to time as necessary to perform its duties hereunder. Subject to provisions of Section 7.2 above, and except as otherwise provided herein, the vote or written consent of a majority of the regular members at a meeting or otherwise shall constitute the act of the Committee. The Committee shall keep and maintain written records of all actions taken by it at such meetings or otherwise.

Section 7.9. Action Without Formal Meeting. The ACC, in accordance with Sections 7.2 and 7.10 hereof, may take action without formal meeting by unanimously consenting in writing on any matter which they might consider at a formal meeting. Such unanimous written consent shall constitute the act of the Committee. For the purposes hereof, unanimous written consent shall mean a writing by the three (3) regular members of the ACC except as the provisions of Section 7.2 may apply.

Section 7.10. Procedure for Submission and Approval of Development Plan.

(a) Submission of a Development Plan shall be in accordance with the Rules promulgated by the ACC, as authorized by Section 7.14 hereof.

(b) If the ACC fails to approve or disapprove any material or Development Plan submitted to it hereunder within thirty (30) days after the date shown on the submittal receipt or fails to give notice of its actions as above required, it shall be conclusively presumed that the Committee has approved such materials as submitted; provided no Structure shall be erected which violates any of the Covenants contained herein. If the Committee requests additional or amended materials or an amended Development Plan during the initial thirty (30) day period, or approves on condition that certain additional or amended materials be submitted, such period shall automatically be extended to fifteen (15) days following the date upon which

such additional or amended materials are required to be delivered to and received by and receipted for by the Committee. Additional fifteen (15) day extensions shall occur if further additional or amended materials are requested or required during any subsequent extension period. If the additional or amended materials are not received on or before the required date, then the Development Plan shall be automatically disapproved.

Section 7.11. Waiver and Estoppel. The approval by the ACC of any Development Plan, specifications or drawings or any materials accompanying it for matters requiring approval of the ACC shall not be deemed to constitute a waiver of or create any right of estoppels against the Committee's right to withhold approval of any similar Development Plan, drawing, specification or matter subsequently submitted for approval.

Section 7.12. ACC Rules.

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

Section 7.13. Basis for ACC Approval or Disapproval. The Subdivision is intended by Declarant to be a cohesive development composed of homes of the highest quality and elegant appearance. Toward this end, it is intended that the ACC have the greatest degree of discretion possible in reviewing, approving or disapproving Development Plans. Declarant intends that the ACC shall have the right to consider as the basis for any approval or disapproval of a Development Plan: (a) compliance or noncompliance with certain objective standards set out in this Declaration or in any rules or guidelines subsequently published or adopted by the ACC, (b) the nature and quality of the building materials and methods of construction to be used, (c) the location of the proposed Improvements on the Lot, (d) the visual impact of the proposed Improvements from the standpoint of style and consistency with other Improvements constructed or approved by the ACC for construction in the Subdivision, (e) the experience and expertise of the general contractor, such other subjective factors as the ACC shall, in its discretion, deem relevant or appropriate. ANY PERSON PROPOSING TO PURCHASE ANY LOT IN THE SUBDIVISION IS CAUTIONED TO CONSULT WITH THE ACC CONCERNING INTENDED IMPROVEMENTS PRIOR TO BECOMING UNCONDITIONALLY OBLIGATED TO PURCHASE SUCH LOT.

Section 7.14. Deviation from Approved Plan. All Development Plans approved in writing by the ACC must be complied with strictly and any deviation, change or alteration not in compliance with said Plan must be further approved in writing by the ACC. Violation hereof shall be subject to enforcement in accordance with the provisions of this Declaration.

Section 7.15. Decisions Conclusive. All decisions of the ACC shall be final and conclusive, and no Owner or any other person, association or entity shall have any recourse

against the ACC, or any member thereof, for its or such member's approval or refusal to approve all or any portion of a Development Plan or of any materials submitted therewith, or for any other decision rendered under the authority of this Declaration.

Section 7.16. Liability of the Declarant and ACC.

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

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

Section 7.17. Modifications and Waivers. The ACC, upon such terms and conditions, upon the payment of such fees or expenses, and for such procedures as it may prescribe, may, but is not required to, adopt, review and approve or disapprove, in whole or in part, with or without conditions, applications for the modification or waiver of any requirement of Subsections 5.3(a), (b), (d), (h), (i), and 5.5 through 5.11 of this Declaration or any requirement of the ACC rules applicable to any Improvement or use of, in, on or abutting any Lot. Such applications shall contain such information as the Committee may prescribe and shall affirmatively show that the application of such requirements, under the circumstances, creates unnecessary and undue hardship, and that a modification or waiver will not be detrimental (aesthetically, economically, or otherwise) to the Owner of any other Lot. The Committee may decide the matter upon the application and any materials or written statements accompanying it or may allow oral presentations in support of or in opposition to the application prior to the decision, at its

discretion. The Committee shall render a decision in writing, which decision need not contain any reasons, findings, or conclusions for the decision and shall forward one (1) copy to the applicant, and retain one (1) copy in its records. Without limiting the general applications of this Section 8.19, the provisions of Section 7.13 and Section 7.15 of this Article shall apply to the actions and the decisions of the Committee and its members under this Section.

Section 7.18. Governmental Agency Approval. Nothing in this Declaration shall relieve or be interpreted as purporting to relieve any Owner from also securing such approval(s), certificate(s) or permit(s) of any governmental agency or entity with jurisdiction as may be required by law as a condition to the commencement, construction, maintenance, addition, change or alteration to or of any Improvement, and the Committee may require that a copy of such approval(s), certificate(s) or permit(s) be provided to the Committee as a final condition to approval of a Development Plan, or as additional assurance to the Committee that the Improvements and uses of an approved Development Plan meet governmental requirements, or for both such purposes.

## ARTICLE VIII

### GENERAL PROVISIONS

Section 8.1. Cost of Performance. Cost and expense in performing any obligation or responsibility in this Declaration shall be borne by the person or entity charged with such performance or responsibility.

Section 8.2. Breach not Ground for Rescission. No breach or continuing breach of the restrictions, covenants, conditions, duties or obligations imposed, allowed or granted by this Declaration shall be grounds for cancellation, termination or rescission of this Declaration or of any provision thereof.

Section 8.3. Enforcement. Declarant, the ACC, and any Owner shall have the right to enforce by proceeding, at law or in equity, for damages or for injunction or both, all restrictions, covenants, conditions, rights and duties imposed, allowed or granted by the provisions of this Declaration. In any such proceedings, the prevailing party or parties shall be entitled to recover its costs and expenses, including reasonable attorney's fees. Failure by Declarant, ACC, or Owner to enforce any restriction, covenant, condition, duty or right herein contained shall in no event be deemed a waiver of their respective right to do so at a later time.

Section 8.4. Attachment of Covenant on Resale or Remodel. This Declaration shall attach following the lease or resale of the Property, or any Lot, and any remodeling or other alteration of any Improvement must be approved by the ACC through the Development Plan process.

Section 8.5. Covenants to Run with the Land. The restrictions, easements, covenants, conditions, rights and duties of this Declaration shall run with and bind the land within the Property, as defined herein, and shall inure to the benefit of the Owner of any Lot therein, their respective legal representatives, heirs, successors and assigns for a term of twenty (20) years from the date this Declaration is recorded in the real property records of Dona Ana County, New Mexico, after which time such restrictions, easements, covenants, conditions, rights and duties



shall automatically be extended for successive periods of ten (10) years, unless amended, modified or repealed as hereinafter provided.

Section 8.6. Modification, Amendment or Repeal. Any of the provisions of this Declaration may be modified, amended or repealed by a recorded written instrument, executed and acknowledged by the Owners of not less than two-thirds (2/3) of the Lots.

Section 8.7. Severability. Invalidation of any of the provisions hereof by a final judgment or decree of any court shall in no way affect or impair the validity of any other provision hereof.

Section 8.8. Joint and Several Obligations. The terms of this Declaration in effect on the date of any lease or recording of a sheriff's deed, trustee's deed, deed in lieu of foreclosure, other deed, other order or decree declaring, settling or confirming title, pursuant to which one or more persons, associations or entities becomes a Lessee or an Owner as hereinbefore defined, shall be binding upon such Lessee or new Owner and such Lessee or new Owner shall be jointly and severally liable with his Lessor or the immediate prior Owner for any continuing performance, failure of performance or defective performance of any act or obligation restricted or imposed hereunder.

Section 8.9. Successors. Deeds of conveyance of any Lot may contain the provisions, restrictions, covenants and conditions contained herein by reference to this Declaration; however, whether or not such reference is made in any or all said deeds, by becoming an Owner as herein defined of any of the Property, each such Owner, for himself or herself or itself, his or hers or its heirs, personal representatives, successors, transferees and assigns, binds himself or herself or itself and such heirs, personal representatives, successors, transferees and assigns to all the provisions, restrictions, covenants and conditions now or hereafter imposed by or under the authority of this Declaration and any amendments thereof.

Section 8.10. Assignment of Rights and Obligations of Declarant. The rights of Declarant hereunder are fully assignable to any person, association or entity and any and all obligations and duties of Declarant are fully delegable and assignable to any person, association or entity.

Section 8.11. Word Meanings. The words such as "herein," "hereafter," "hereof," "hereunder" and "hereinabove" refer to this Declaration as a whole and not merely to a section or paragraph or article in which such words appear unless the context otherwise requires. Singular shall include the plural and the masculine gender shall include the feminine and neuter and vice versa unless the context otherwise requires.

Section 8.12. Captions and Section Headings. The captions and headings of various articles, sections, paragraphs or subparagraphs of this Declaration are for convenience only and are not to be considered as defining or limiting in any way the intent of the provisions hereof or thereof.



**EXHIBIT A**

Harris Farm Estates. A Replat of U.S.R.S. Tract 7-15 Replat No. 1, Situate in Sections 1 and 2. Township 23 South, Range 1 East, N.M.P.M. of the U.S.R.S. Surveys North of Las Cruces, Dona Ana County, New Mexico



State of New Mexico  
County of Dona Ana, ss 43639  
RECEPTION NO. 43639  
I hereby certify that this instrument was filed for recording and duly recorded on 12-16-2005 at 1:51 o'clock P of the Records of said County. Book 470 Page 539-55  
Rita Torres, County Clerk  
BY: [Signature] DEPUTY

State of New Mexico  
County of Dona Ana, ss 39631  
RECEPTION NO. 39631  
I hereby certify that this instrument was filed for recording and duly recorded on NOV 15 at 12:55 o'clock P of the Records of said County. Book 661 Page 546-572  
Rita Torres, County Clerk  
BY: [Signature] DEPUTY

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