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Lynn J. Ellins, County Clerk, Dona Ana, NM

Deputy Gerardo Barrera

SUPPLEMENTAL DECLARATION  
TO FIRST AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
PICACHO MOUNTAIN  
PHASE IIIA  
(The Willows)

This Supplemental Declaration to First Amended and Restated Declaration of Covenants, Conditions and Restrictions for Picacho Mountain Phase IIIA ("Supplemental Declaration") is made effective this 28<sup>th</sup> day of October 2016, by Picacho Mountain, LP, a New Mexico Limited Partnership ("Declarant").

A. Declarant is the developer of the master planned community located in Las Cruces, New Mexico, commonly known as Picacho Mountain (the "Development"); and

B. Declarant executed the First Amended and Restated Declaration of Covenants, Conditions and Restrictions for Picacho Mountain and recorded said document in the official records of Las Cruces, New Mexico, on February 20, 2007, at Book 789, Pages 1435-1498 (the "Declaration"); and

C. Pursuant to Article X of the Declaration, the Declarant may annex additional property into the Association by recording a Supplemental Declaration.

D. Declarant wishes to cause the additional property described on Exhibit "A" attached hereto (the "Tract") to become subject to the Declaration and to be developed in accordance with certain supplemental covenants, conditions and restrictions as set forth herein.

NOW, THEREFORE, Declarant hereby declares that the Tract shall be held, sold and conveyed subject to the following restrictions, covenants, conditions, terms and provisions:

1. Annexation. Pursuant to Article X of the Declaration, Declarant hereby declares that the Tract is and shall be subject to the terms and provisions of the Declaration. All capitalized terms that are not defined herein shall have the definitions set forth in the Declaration.

2. Land Use Classification. The Land Use Classification (as such term is used in Section 5.1 of the Declaration) for the real property within the Tract shall be single-family residential, and construction on such real property shall be limited to single-family dwelling units and related common areas. Notwithstanding the foregoing, however, Declarant reserves to itself, and its successors and assigns (including, without limitation, any homebuilder approved by the Declarant) the right to construct and install within the Tract one or more temporary sales trailers, temporary construction trailers, model homes (and related parking areas) and other improvements used in connection with the construction and sale of single-family dwellings within the Tract; provided that all such improvements shall be removed from the Tract or (in the case of a model home) converted to a single family dwelling unit promptly after the completion of all applicable construction and sales activity.

3. Calculation of Memberships. Each Owner shall be entitled to one membership per Lot owned.

4. Neighborhood Assessments. Pursuant to Section 7.4 of the Declaration, the Tract is designated as a Neighborhood Area, and shall be subject to one or more Neighborhood Assessments levied by the Association (the amount of which and commencement of payment will be established by the Association in accordance with the terms of the Declaration) with respect to relevant Neighborhood Expenses, including, without limitation, expenses incurred by the Association pursuant to Paragraphs 6(b) and 6(c) below.

5. Commencement of Assessments. The Lots are subject to all assessments, fees and other charges duly imposed pursuant to the Declaration. The obligation to pay such assessments, fees and other charges under the Declaration and the commencement of payment of same shall be in accordance with the terms set forth in the Declaration.

6. Maintenance by the Association.

(a) Maintenance of Common Areas. Following the Association's acceptance for maintenance of Common Area within the Tract, the Association shall maintain, repair and replace the landscaping and other improvements located within such Common Areas. The cost of such maintenance and repair (with the exception of those areas and items designated as Limited Common Areas) shall be a Common Expense, paid for out of the Base Assessments. If any damage to any landscaping or other improvements that the Association is obligated to maintain pursuant to this Paragraph 6(a) results from the negligence or willful misconduct or omission of an Owner or any tenant, invitee, agent, contractor, guest or family member of such Owner, then such Owner shall be liable to the Association for the cost incurred by the Association to repair such damage and shall pay such cost to the Association upon demand, and the Association may collect such cost from such Lot owner through a Specific Assessment.

(b) Maintenance of Limited Common Areas. The Declarant may establish specific areas and items that benefit only the Neighborhood Area as Limited Common Areas. It is anticipated that such Limited Common Areas shall include the gates and related mechanisms and utilities, as well as any other items that specifically benefit the

Tract. However, the roads and drainage areas shall be considered Common Areas, paid for out of the Base Assessments. Any areas and items designated as Limited Common Areas for the benefit of the Neighborhood Area shall be assessed only against the Owners of Lots within the Neighborhood Area. The Association shall establish a separate budget for those items considered to be Limited Common Areas for the benefit of the Tract, and shall keep a separate accounting of the Neighborhood Assessments collected to pay for such costs.

(c) Maintenance of Front Yard Landscaping. The Association shall maintain, the landscaping located in the Front Yard on the Lot. Such maintenance shall include repair and replacement, as the Board determines is desirable or necessary. The "Front Yard" shall be defined as all landscaped areas on the Lot located between the street and (1) the surface of the house facing the street and (2) any wall and/or gate running between the front and rear or side yard of the house, but excluding such portions of the above-defined area on the Lot that are enclosed by a fence or wall, arched opening, or other structure dividing the Lot. However, such maintenance shall not include maintenance, repair, or replacement of the irrigation system for such maintenance (including, but not limited to repair and replacement of irrigation lines and timers). Owners shall not interfere with the Association's maintenance of the Front Yard landscaping. Furthermore, Owners shall not install any landscaping within the Front Yard. The Declarant, or the LEC, as established pursuant to Section 4.2(b) of the Declaration, may establish Design Guidelines as to what items Owners may place within the Front Yard, if any, subject to prior approval by the Reviewer.

7. Maintenance by the Owners.

Each Owner shall be responsible for all maintenance, repair and replacement on the Lot that is not performed by the Association. In addition to all other maintenance of the Lot, each Owner shall be responsible for maintaining, repairing and replacing the entire irrigation system and related timers. As set forth in Section 6.1(c) of the Declaration, if an Owner fails to perform properly his maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred in accordance with Section 9.5 of the Declaration. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation. Any such entry by the Association or any of its agent shall not be deemed a trespass, and the Association shall not be liable for any damage created thereby.

8. Requirements for Irrigation System on each Lot. To ensure that the Association can properly perform its Front Yard landscaping responsibilities, the irrigation system for each Lot shall be established as follows:

(a) All irrigation lines on the Lot shall be connected to the Owner's water meter for the Lot.

(b) Each Owner shall have two landscaping timers: one for the Front Yard, and one for the remainder of the Lot.

(c) The irrigation timer for the Front Yard landscaping shall be located in a place that is accessible and always available to the Association and its agents.

(d) The Association and its agents shall program the irrigation timer for the Front Yard landscaping.

(e) Once programmed by the Association or its agents, Owners shall not change the programming for such timers.

(f) The irrigation system for the Front Yard shall be established with a shut-off valve, including a back-flow preventer, so that the irrigation system for the Front Yard can be separated from the remainder of the water system for the Lot.

(g) If the Association or its agents winterizes the irrigation system for the Front Yard, the Owner of the Lot shall not tamper or use the irrigation system so that it would no longer be winterized.

(h) An Owner shall not change the location of any irrigation timer without first obtaining the prior written approval of the Association.

(i) An Owner shall not replace any irrigation timer without first obtaining the prior written approval of the Association as to the type of timer to be used, so that the Association can maintain consistency among the timers used for Front Yard landscaping.

(j) If an Owner fails to make water available for the Front Yard landscaping, for any reason, the Association can take whatever steps it deems necessary or appropriate to be able to keep the Front Yard landscaping alive and thriving, and charge the Owner for the cost of taking such steps as a Specific Assessment, pursuant to Section 9.5 of the Declaration. Furthermore, if any of the Front Yard landscaping dies due to the lack of water, the Association may replace any of the landscaping material that has died and charge the Owner for the cost thereof as a Specific Assessment.

9. Requirements for Exterior Lighting on each Lot. To ensure that proper lighting exists for the front of each Dwelling Unit, the following requirements shall exist for lighting on each Lot:

(a) Each Lot shall contain the following lights, at a minimum:

(i) Exterior light fixture adjacent to the main entry of the Dwelling Unit.

(ii) Exterior light fixtures on either side of the garage door.

(iii) No less than three landscape lights in the Front Yard.

(b) Landscape light fixtures and garage light fixtures shall be wired to a photocell by a licensed contractor at the time of home construction. Owners shall maintain the photocell so that it is properly functioning at all times.

(c) Owners shall be responsible for promptly replacing any light bulbs that are no longer functioning. Bulb specifications shall be approved by the Reviewer at the time of initial construction. Replacement bulbs shall be the same lumens as the initial light bulbs.

(d) All exterior light fixtures shall be approved by the Reviewer and installed by a licensed contractor at the time of construction of the Dwelling Unit on the Lot.

(e) Any exterior light fixtures installed after initial construction of the Dwelling Unit must be approved by the Reviewer prior to installation.

10. Landscaping Requirements.

(a) All Front Yard landscaping and related irrigation must be installed by the Builder as part of the initial construction of a Dwelling Unit on a Lot, and must be approved by the Reviewer prior to installation.

(b) Landscaping of the remainder of the Lot must be completed within 60 days of receipt of the certificate of occupancy for the Lot, and must be approved by the Reviewer prior to installation.

(c) No tree or shrub may be planted within six feet of the rear property line of the Lot that, upon reaching maturity, is likely to obstruct the views on any other Lot. If a tree or shrub planted within six feet of the rear property line of the Lot obstructs the views on any other Lot in the future, the Association may require the Owner of the Lot to trim or remove the tree or shrub to not obstruct the views on other Lots.

11. Gates and Restriction on Liability of the Association and Declarant. Declarant intends to construct gated entrances leading into the Tract to limit access and to provide some privacy for Owners and occupants; however, there are no guarantees that gated entrances will provide security or safety to Owners, occupants, or tenants, or their respective guests and invitees. Additionally, it is not intended that the gates will be closed at all times. Rather, at least until construction is complete within the Tract, the intent is that the gates remain open during the day and are closed at night. However, Declarant may choose to vary the hours that the gates are open and closed during construction and, thereafter, the Association may choose to vary the hours that the gates are open and closed. The Association may also establish rules governing access. Furthermore, the gated entrances may restrict or delay entry into the Tract by the police, fire department, ambulances and other emergency vehicles or personnel.

By acquiring a Lot in the Tract, each Owner acknowledges the limitations relating to the gates, as set forth above, and that the gates may restrict or delay entry to an Owner's Lot. Neither Declarant, the Association, nor any director, officer, agent or employee of the Association shall be liable to any Owner, occupant, or tenant, or their respective guests and invitees, for any claims or damages resulting, directly or indirectly, from the construction, existence of maintenance of the gated entrances. If an Owner leases his

Lot, the Owner shall include the language of this provision in the lease, and the tenant shall agree to such language as a condition of the lease.

11. Interpretation. This Supplemental Declaration shall run with the land within the Tract, shall be binding on all parties having or acquiring any right, title, or interest in the Tract or any part thereof, and their respective heirs, successors and assigns, and shall be enforceable in accordance with and as a part of the Declaration. Furthermore, except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Supplemental Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive, and binding as to all Persons and Properties benefited or bound by this Supplemental Declaration.

12. Incorporation of Declaration. The Declaration is expressly incorporated herein and made a part hereof by this reference. Unless otherwise defined herein, every capitalized term and expression used herein shall have the same meaning as set forth for such terms and expressions in the Declaration. In the event of any conflict between the terms of the Declaration and the terms of this Supplemental Declaration, the terms of the Declaration shall control.

13. Amendment. This Supplemental Declaration may be unilaterally amended by the Declarant as set forth in the Declaration. Furthermore, this Supplemental Declaration may be amended by the affirmative vote, or written consent, or any combination thereof, of Members representing 67% of the Class "A" votes subject to this Supplemental Declaration, and the consent of the Board of Directors of the Association. Furthermore, such amendment shall also require the consent of Declarant, during the Class "B" Control Period.

IN WITNESS WHEREOF, Declarant has executed the foregoing instrument as of the date first set forth above.

Picacho Mountain, L.P.,  
A New Mexico Limited Partnership,

By: Picacho Mountain Partners, L.L.C.  
General Partner, Picacho Mountain, L.P.

By:   
Karen Pofahl, Manager  
Picacho Mountain Partners, LLC

STATE OF NEW MEXICO

COUNTY OF DOÑA ANA

This instrument was acknowledged before me on October 28<sup>th</sup>, 2016, by Karen Pofahl as Manager of Picacho Mountain Partners, LLC, a New Mexico limited liability company, as General Partner of Picacho Mountain Limited Partnership a/k/a Picacho Mountain, L.P., a New Mexico limited partnership.

NZ

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Notary Public

My Commission My Expires: July 11, 2018



**OFFICIAL SEAL**  
**NATALIE ZAWADA**  
NOTARY PUBLIC State of New Mexico  
My Commission Expires 07/11/2018

**Exhibit "A"**

PICACHO MOUNTAIN PHASE IIIA, legally described as THE WILLOWS AT PICACHO MOUNTAIN, according to the Plat filed on August 26, 2016 in Plat Record 24, Pages 138-141, in the records of Dona Ana County, New Mexico.