

**DECLARATION OF COVENANTS, CONDITIONS
& RESTRICTIONS FOR MIA ESTATES**

(Otero County, Town of Tularosa, New Mexico)

THIS DECLARATION is made this 1st day of March, 2011, by Paul C. Jones and Marin P. Jones, or its assigns, hereinafter called "Declarant".

RECITALS

The purpose of this Declaration is to establish a general plan for the development, sale, lease and use of the Project in order to protect and enhance the value and desirability of the Property. Also, to preserve the natural beauty, view and unspoiled state of the Property. The Declarant declares that all of the property within the Project shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any of the property subject to this Declaration, each person or entity, for him/herself or itself, his/her heirs, personal representatives, successors, transferees and assigns, binds him/herself, his/her heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the development, sale, lease and use of the Property and hereby evidences his/her interest that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the Declarant, Town of Tularosa and all Owners. Declarant, its successors, assigns and grantees, covenants and agrees that the Parcels created by this Declaration shall not be separated or separately conveyed.

The Declarant is the owner of certain real property located within the Town of Tularosa in Otero County, New Mexico, which is more fully described within the plats of the Mia Estates filed with the Clerk of Otero County, New Mexico on the 10 day of May, 2005 in Book 64, at Page 40-41, reception # 5114 and is also known as the Mia Estates. The Declarant desires and intends to subject the Property to the protective covenants, conditions, charges, liens, restrictions, easements and reservations hereafter set forth.

ARTICLE 1
DEFINITIONS

Terms used in this Declaration having initial capital letters but not otherwise defined in this Declaration shall have the meanings specified below:

- A. "Declarant"** means Paul C. Jones and Marin P. Jones, and the successors and assigns of its rights and powers hereunder.
- B. "Declaration"** means this entire document as amended from time to time.
- C. "Mortgage"** means any deed of trust or realty mortgage, or agreement for sale made in good faith and for value and properly executed and recorded so as to create a lien on any Parcel or Parcels that is prior to the lien of any other deed of trust or realty mortgage.

- D. "Owner"** means a record holder of beneficial or equitable title and legal title if legal title has merged with the beneficial or equitable title, whether one or more persons or entities, to the fee simple interest in any Parcel, including Declarant. Owner shall not include: (i) a Person having an interest in a Parcel merely as security for the performance of an obligation; or (ii) a tenant of a Parcel.
- E. "Parcel" or "Parcels"** means a portion of the Project intended for independent ownership and use and designated as a Parcel on the Recorded Survey Plat showing said Parcel(s), either individually or collectively as the case may be as such divisions may be allowed by law.
- F. "Person"** means a natural person or a corporation, a limited liability company, partnership, joint venture, trust or any other legal entity.
- G. "Property" or "Project"** means the real property described on Exhibit "A", attached to this Declaration, together with all improvements located thereon. The Property is comprised of the Mia Estates Development.
- H. "Recorded Survey Plat"** means the maps of the Mia Estates Development recorded in the office of the Otero County Clerk and Recorder in Otero County, New Mexico and all amendments, supplements and corrections thereto and any subdivision map recorded against any supplements and corrections thereto.
- I. "Restrictions"** means the covenants, conditions, charges, liens, restrictions, easements and reservations contained or referred to in the Declaration, as it shall be amended from time to time.

ARTICLE 2 RESTRICTIONS

A. Single Family Residential and Recreational Use Only: All Parcels shall be used for residential and recreational purposes only provided; however, livestock may be kept pursuant to conditions set forth herein. Notwithstanding anything contained in this paragraph this restriction shall not prohibit home offices in a residential property where business is conducted through telephone, computer, or other electronic means and where the business is not apparent from the exterior of the residence; does not create noise or congestion from traffic or parking; and preserves the residential nature of the Property. All uses shall be in compliance with New Mexico State Building Codes, Village of Tularosa Zoning Ordinances and if applicable, New Mexico State rules, regulations and permitted uses.

B. Dwelling Type: There shall be only one single-family dwelling allowed per Parcel. Said dwelling shall have a minimum square footage of fifteen hundred (1,500') square feet of living space. One guest cottage is permitted so long as it does not exceed twelve hundred (1,200') sq ft. of living space and is not used as a rental property.. All dwellings within or on a Parcel must share the same sewer, water, power and gas systems. The finished exterior shall be in harmony with its' natural surroundings. Building permits will be required by the State of New Mexico. Construction must be completed within nine (9) months from beginning. No building or structure will be more than thirty-five (35') feet in height at its highest point from grade. Two-family and/or multi-family dwellings are prohibited within the development. Single-wide Mobile Homes, manufactured, and/or modular homes are prohibited. Site built homes only are allowed within this development. All dwellings that are to be used as residences must be on permanent foundations. The outside finish of all buildings must be completed within nine (9) months after construction has started. No building paper, insulation board, sheathing or similar non-exterior materials shall be used for the exterior finish of any building. The exterior finish of all buildings shall be composed of earth tone colors harmonious with the existing environment. Dwellings shall have a minimum of a 4/12 pitch roof unless dwelling is of a southwest design with a flat roof and a parapet wall above the roof line.

C. Temporary Structures: No structure of temporary character, recreational vehicle, camper unit, trailer, travel trailer, mobile home, basement, tent shack, garage, accessory building or other out-building shall be used on any Parcel as a residence.

D. Maintenance of Property: All property and all improvements on any parcel shall be kept by the Owner in a clean, safe, attractive and sightly condition and in good repair.

E. Landscaping: Upon completion of construction of the dwelling, Owner shall have 6 months within which to complete landscape around dwelling. Landscaping shall include at a minimum four (4) trees and six (6) shrubs. Low water use landscaping techniques applying the principles of xeriscaping shall be encouraged.

F. Sanitary Facilities: All dwellings and/or living quarters shall be connected to the Village of Tularosa sewer system. Septic systems are prohibited.

G. Additional Subdivision of Parcels: Further subdivision of parcels within the Mia Estates Development is prohibited.

H. Vehicles: Any motor vehicle under repair or inoperable may not be parked on any roadway, driveway, or other easement. When said vehicles are parked on a Parcel, such motor vehicles must be hidden by an enclosed structure so as the vehicle is not to be visible from roadways or other Parcels. All vehicles, engines, or motors must be operated with a muffler and/or spark arrestor. The use of motorized vehicles i.e. ATV or motorcycles that are street legal shall be allowed on the designated roadways within the development and on Owner's private Parcel(s) only.

I. Trash: No Parcel may be used for temporary or permanent storage of rubbish or trash (collectively, garbage). No garbage may be kept on any Parcel except in covered containers and screened from view from adjacent Parcels. Burying, burning or dumping of garbage, junk, trash, oil, petroleum or other liquid or solid waste or littering of any kind on any Parcel is strictly prohibited.

J. Junkyards, Auto Repair, Second-Hand Business, And Material Storage: No junkyards, auto repair, second-hand businesses or other commercial uses shall be conducted on any Parcel. No storage of trucks, cars, buses, recreational vehicles, machinery, equipment or building materials shall be stored on any Parcel unless enclosed in a proper structure (which consists of a roof and enclosed walls) to not be visible from an adjoining Parcel or passing on the roadway.

K. Nuisance Activities: The unusual, unnecessary, prolonged, or indiscriminate creation of noise, dust, fumes, odors or any other offensive activity is prohibited, including but not limited to road racing and loud music.

L. No Hazardous Activities: No activities shall be conducted and no improvements constructed on any parcel which might be unsafe or hazardous to any person or property. No firearms shall be discharged within the Mia Estates Development.

M. Signs: No signs will be permitted (including but not limited to For Sale or For Rent signs) on Parcels: EXCEPT for address signs that identify the address and/or the Owner of the Parcel, which signs will not exceed four (4) square feet. All signs are to be in strict conformance with the laws and ordinances set forth by the Village of Tularosa and Otero County. Permits may be required. Declarant reserves the right to remove any and all signs that are in violation of the provisions in this Declaration. None of the sign restrictions in this Declaration apply to the Declarant or its' assigns or successors, for the purpose of

selling Parcels, locational, directional or street signs. Nothing in this provision shall prohibit an Owner from attempting to sell their Parcel in accordance with the provisions stated herein.

N. Structure Setbacks: All structures shall be built at least one hundred (100') feet from the front, and thirty (30') feet from the sides and rear, of any Parcel boundary. If local governmental regulations provide for more restrictive setbacks, those regulations shall govern. In any event, any construction on a Parcel shall comply with the Village of Tularosa and the State of New Mexico building codes and regulations. Fences constructed for livestock may be constructed on the parcel boundary line along the sides and rear of parcel in accordance with Paragraph T "Fencing Requirements and Setbacks." under this Article.

O. Easements: **a)** Declarant hereby grants, conveys, assigns and dedicates easements along roadways and Parcel boundaries as shown on the recorded survey plat(s) of the Mia Estates to the Village of Tularosa and other designated entities as stated on the recorded survey plat(s) for the purposes of ingress/egress, utility line construction and use, repairs and maintenance, recreational use by its members, and for use by Declarant or its assigns **b)** All roadways are shown on the Recorded Survey Plat(s). **c)** The rights to existing water and water facilities including pipelines located within the Development are hereby reserved by the Village of Tularosa **d)** Declarant hereby reserves the right to use all roadways and easements for the purposes of ingress/egress, marketing, maintenance, utility line construction and further expansion for their use as such. **e)** Declarant also reserves the right to assign use of said easements and roadways to additional persons or entities in the future, at its sole discretion **f)** No structure including fencing, shall be constructed on any easements as shown on the Recorded Survey Plat or described herein. **g)** There shall be no further granting of easements by Owners or the Village of Tularosa except for easements for the installation, repair and maintenance of utilities.

P. Declarant's Exemption: Nothing herein shall be construed as prohibiting Declarant from maintaining a sales or development office on any Parcel or engaging in activities which Declarant deems appropriate to its development or sales program.

Q. Mineral Rights: In no event shall any Owner or lessee use or cause to be used any portion of the Property, including his or her own Parcel, for the purposes of drilling, exploring, mining, or otherwise developing any deposits of oil, minerals, or other natural resources lying above, on, or under said Property, with the exception of such drilling and exploration by the Declarant or the Owner as may be necessary to produce an adequate water supply for the development of the Parcel involved.

R. Livestock: Owner's of a parcel may keep up to 5 horses on their property provided the Parcel has been fenced in accordance with the fencing guidelines and setbacks set forth in this Article under Paragraph T, "Fencing Requirements and Setbacks." The commercial raising, breeding or keeping of swine is prohibited. Under no circumstances shall a commercial stockyard, dairy, riding stable, poultry farm or any other commercial activity involving animals be permitted. Owner is required to construct a shelter for horses. Shelter shall be a covered lean-to design not to exceed two hundred (200') sq ft. with white metal. A fully enclosed barn must meet setback requirements as set forth in this Article under Paragraph "N", "Structure Setbacks". All barns, shops and storage buildings shall be constructed to be compatible with exterior of home. Any metal building shall be factory painted. Quonset buildings are prohibited.

S. Driveway installation and Parking: Each parcel may have no more than two entrances. A culvert shall be installed in the entrance driveway of a diameter of 15" minimum where needed and engineered, length of 30' with a minimum slope of 0.05 ft/ft. The ends of the culvert shall be protected with 2" gravel and fitted with a metal end section that minimizes erosion. The driveway over the culvert will be constructed with a minimum of 12" of cover over the top of the culvert. All parking shall be off street.

T. Fencing Requirements and Setbacks: Subject to the easements for utility installation and all other easements defined on the Recorded Survey Plat or described in this Declaration, Owner may fence off all or any part of Owner's Parcel in order to restrict livestock from crossing or grazing on other Owner's parcels or crossing or grazing on streets or common areas within the Development. Construction of all fences must be adequate to help keep livestock on Owner's property. Owner's of a parcel must fence a minimum of 2 acres for livestock. Horse shelters must be constructed with a minimum of a 30'ft setback on sides and back . All fencing may be set on property boundary lines. Fencing shall not encroach upon any easement referred to on the Recorded Survey Plat and/or in this Declaration. Any fences moved and/or installed by Owner, shall be at Owner's sole expense. All fencing shall be constructed with the following minimal requirements, to insure such fence is adequate, in accordance with normal standards to contain livestock which specifically excludes barbwire. Wood, Vinyl, pipes, horse wire, or chain link are acceptable. Fencing constructed entirely of wood or vinyl must conform to the Zoning Ordinance of the Village of Tularosa.

U. Utility Installation: Any utility construction on a Parcel shall be the Owner's responsibility at Owner's sole expense. Developer is providing utility service along roadways and some boundary lines to all parcels via underground. Any utilities, including electricity and telephone must be installed via underground service from the parcel boundary line or from where the electrical service is installed along the parcel boundary lines to Buyer's building site at the Buyer's expense.

V. Historical Preservation: In the event an item of potential archaeological and/or Native American historical significance such as Native American artifacts are found on a Parcel within the Property, the Developer suggests that the find be reported to a non-profit organization that is dedicated to archeological preservation, research and education. The find is the property of the Parcel Owner and it is left to the discretion of the Parcel owner to report such find to a non-profit organization that is dedicated to archeological preservation, research and education. It is suggested that items of significance should not be disturbed or removed from the site except by a qualified archeologist and only for necessary historical preservation and educational purposes. Where human burials are found on private property it is unlawful to disturb them and they are provided the protection of law and shall receive respectful treatment and disposition. Section 18-6-11.2 NMSA states in part that "A person who knowingly, willfully and intentionally excavates, removes, disturbs or destroys any human remains buried, entombed or sepulchered in any unmarked burial ground in the state, except by authority of a permit issued by the state medical investigatoris guilty of a fourth degree felony and shall be punished by a fine not to exceed five thousand dollars (\$5,000) or by imprisonment for a definite term of eighteen months, or both."

W. Water Restrictions: Water will be provided to the development by means of municipal water system provided by the Village of Tularosa. Any utility construction, including water, on a Parcel shall be the Owner's responsibility at Owner's sole expense. Each parcel within the Mia Estates Development must comply with any/all rules, regulations and/or ordinances that govern water usage as set forth by the Village of Tularosa.

X. Waiver: The Declarant and its' successor or the Village of Tularosa shall have the right to allow variances where strict enforcement of these restrictions would cause undue hardship, in accordance with a procedure to be adopted by the Village of Tularosa.

ARTICLE 3 GENERAL PROVISIONS

A. Enforcement: The covenants, conditions, and restrictions contained in this Declaration shall run with the land and shall be binding upon all persons owning, leasing, subleasing or occupying any Parcel after the date on which this instrument shall have been recorded in the Office of the Clerk and Recorder

of Otero County, New Mexico. This Declaration may be enforced by the Declarant, by any Owner, the Lessee or a lessee of any Parcel, by the holder of a Mortgage on any Parcel, by the Village of Tularosa, or by any one or more of said persons acting jointly; PROVIDED, HOWEVER, that any breach by reason thereof shall not defeat or adversely affect the lien of a Mortgage upon any Parcel, but each and all said covenants, conditions, and restrictions shall be binding upon and effective against any Owner, lessee or occupant of said Parcel whose title thereto is acquired by foreclosure, or otherwise, and FURTHER PROVIDED that the breach of any said covenants, conditions, and restrictions may be enjoined, abated or remedied by appropriate proceedings, notwithstanding the lien or existence of any such Mortgage. All instruments of conveyance or assignment of any interest in all or any party of the Property may refer to this Declaration and shall be subject thereto as fully as though this Declaration were therein set forth in full. These covenants, restrictions and easements shall inure to the benefit of the Owners herein, their heirs, legal representatives, successors and assignees.

B. Invalidity: These covenants, restrictions and easements may be enforced by the Owners of any Parcel in said Property including Declarant against any person or persons violating or attempting to violate any provision hereof, either to restrain or to recover damages caused thereby. The failure to enforce any of these covenants, restrictions or easements shall in no event be deemed a waiver of the right to do so thereafter. Invalidation of any of the covenants, conditions, and restrictions, contained herein by a court of competent jurisdiction, shall in no way affect the validity of any other provision of this Declaration, all of which shall remain in full force and effect.

C. Legal Fees and Costs: The Village of Tularosa may cause a lawsuit to be commenced and maintained in the name of the Village of Tularosa against an Owner to enforce the payment of any delinquent assessment or to enforce any other pertinent provision of this Declaration. Any judgment rendered in any such action shall include the amount of the judgment, interest at the rate of twelve percent (12%) per annum from the date of delinquency, the amount of damages proven, court fees, and reasonable attorney's fees which are incurred by the Village of Tularosa as fixed by the court. Any Owner who violates these covenants, restrictions and easements shall be liable for the reasonable attorneys' fees and legal expenses of any other Owner who is successful in a legal action to enforce such covenant, restriction or easement.

D. Term: This Declaration shall be effective upon its recordation in the office of the County Clerk of Otero County, New Mexico and as amended from time to time, shall continue in full force for thirty (30) years and effect until the commencement of the calendar year 2042. Upon commencement of the calendar year 2042, this Declaration shall be automatically renewed and extended for successive periods of ten (10) years each, unless terminated by not less than seventy-five percent (75%) of the votes cast by the members (Owners) entitled to vote and the Village of Tularosa. Such termination shall be recorded in the Office of the Otero County Clerk and Recorder.

E. Titles: The titles to these articles, sections and paragraphs of this declaration are for convenience only and shall not be deemed to control or assist interpretation of enforcement of this declaration.

F. Liabilities: Notwithstanding anything to the contrary herein, it is expressly agreed that neither the Declarant (including without limitation any successor or assign of the interest of the Declarant hereunder) nor any manager, member, employee, agent or affiliate of the Declarant shall have any personal liability to the Village of Tularosa, or to any Owner or other Person arising under in connection with or resulting from (including without limitation resulting from action or failure to act with respect to) this Declaration and in the event of a judgment against the Declarant or any of such other Persons just specified, no execution or other action shall be sought or brought thereon against any other assets, nor be a lien upon such other assets of the judgment debtor.

ARTICLE 4

ANNEXATION OF ADDITIONAL PROPERTY.

A. Declarant, its successors and designees reserve all present and future rights to utilize all private roads and easements within the Project to comparably develop lands within or adjacent to the Project. Any such expansion to be included within this Declaration shall be subject to the terms and conditions of this Declaration, but may include reasonable variances.

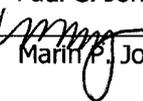
B. At any time the Declarant shall have the right to annex and subject to this Declaration all or any portion of the additional property without the consent of any other Owner or person. An Owner's obligation to pay assessments shall commence as provided in this Declaration. If Declaration of Annexation annexing a portion of additional property divides the annexed portion into phases, the Declarant shall have the right to amend any such Declaration of Annexation to change the description of the phases within the annexed project, except the declarant may not change any parcel 1 through 11 in which a parcel has conveyed to any owner.

ARTICLE 5

EXECUTED this ___ day of March, 2011

DECLARANT: Paul C. Jones and Marin P Jones

By: 
Paul C. Jones

By: 
Marin P. Jones

State of New Mexico)
)
County of Otero)

This instrument was acknowledged before me this _____ day of _____, 2011 by Paul C. Jones and Marin P. Jones.

My Commission Expires: _____

Notary of Public

PLEASE SEE ATTACHED CERTIFICATE.

Yc. 3-14-2011

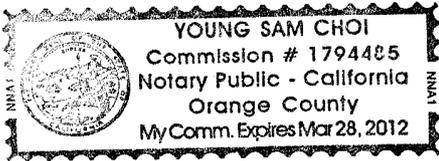
ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of ORANGE } SS.

On March 14, 2011, before me, YOUNG SAM CHOI, Notary Public,
DATE
personally appeared Paul C. Jones and Marin P. Jones, who proved to me on the

basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.



WITNESS my hand and official seal.

[Signature]
NOTARY'S SIGNATURE

PLACE NOTARY SEAL IN ABOVE SPACE

OPTIONAL INFORMATION

The information below is optional. However, it may prove valuable and could prevent fraudulent attachment of this form to an unauthorized document.

CAPACITY CLAIMED BY SIGNER (PRINCIPAL)

- INDIVIDUAL
- CORPORATE OFFICER _____ TITLE(S)
- PARTNER(S)
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: _____

DESCRIPTION OF ATTACHED DOCUMENT

Annexation of Additional Property
TITLE OR TYPE OF DOCUMENT

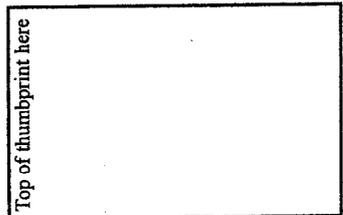
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NUMBER OF PAGES

3-14-2011
DATE OF DOCUMENT

SIGNER (PRINCIPAL) IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY (IES)

RIGHT
THUMBPRINT
OF
SIGNER

OTHER



BY SIGNING THIS RECEIPT YOU ACKNOWLEDGE THAT YOU HAVE RECEIVED A COPY OF THESE COVENANTS, CONDITIONS & RESTRICTIONS FOR MIA ESTATES DEVELOPMENT.

BUYER:
Signature: _____

Name: _____

Address: _____

Telephone: _____

Facsimile: _____

Date: _____ Time: _____

BUYER:
Signature: _____

Name: _____

Address: _____

Telephone: _____

Facsimile: _____

Date: _____ Time: _____

MIA ESTATES

EXHIBIT "A"

A tract of land in the East Half of the Southwest Quarter of Section 30, Township 14 South, Range 10 East, NMPM. Otero County, New Mexico, described by metes and bounds as follows:

Beginning at the Southwest corner of said Section 30 and going North 00 degrees 10' 16" West along the West line of said Section 30 a distance of 1977.85 feet; Thence North 89 degrees 54' 18" East a distance of 1324.31 feet; Thence S00 degrees 04' 16" East a distance of 394.17 feet; Thence North 89 degrees 11' 06" East a distance of 39.04 feet; Thence South 00 degrees 36' 41" West a distance of 265.79 feet; Thence S02 degrees 01' 34" West a distance of 980.24 feet; Thence South 00 degrees 04' 16" East a distance of 341.46 feet; Thence North 89 degrees 55' 57" West a distance of 1320.87 feet to the said place of beginning and containing 60.741 acres, more or less.

REC DATE: 3/17/11 REC TIME: 4:52:49 PM INSTR#: 201102212 CLK *Cn*
OTERO COUNTY, ROBYN HOLMES COUNTY CLERK PAGE 10 OF 10

