

AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR LAS LEYENDAS SUBDIVISION

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS RESTRICTIONS FOR LAS LEYENDAS SUBDIVISION ("Declaration") is made this 5th day of January, 2011, by **LAS LEYENDAS, LLC, a New Mexico limited liability company ("Grantor")**, and hereby amends and restates and entirely replaces that certain **Declaration of Covenants, Conditions and Restrictions** recorded in the Bernalillo County, New Mexico real estate records on April 17, 2008, as Document No. 2008042678 (the "Previous Declaration").

WHEREAS, pursuant to Section 14.02 of the Previous Declaration, Grantor has the authority to unilaterally change, amend or modify the Previous Declaration until 90% of the Lots which have been subjected to the Previous Declaration have been sold so long as the changes, modifications or amendments do not materially change the character or qualify of the Lots, do not materially increase the number of Lots, do not violate any subdivision laws, and prior written consent of the Architectural Control Committee has been obtained. Grantor is the owner of 90% of the Lots within the Subdivision.

WHEREAS, pursuant to Section 14.01 of the Previous Declaration, Grantor desires to amend and restate the Previous Declaration to create thereon a residential community and to provide for the preservation of the values and amenities in the community by subjecting the property to the covenants, restrictions, and easements hereinafter set forth, each and all of which is and are for the benefit of the property and each owner thereof.

NOW, THEREFORE, the Grantor declares that the real property described in Article II is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions and restrictions hereinafter set forth.

ARTICLE I
DEFINITIONS

Unless the context otherwise specifies or requires, the terms defined in this Article I shall have the meanings as defined in this Article for the purposes of these Restrictions.

Section 1.01: Architectural Control Committee. The terms "Architectural Control Committee" or "Committee" shall mean the architectural control committee created pursuant to Article 7.

Section 1.02: Association. The term "Association" shall mean the Las Leyendas Homeowners' Association, Inc., a New Mexico non-profit corporation described in the Article entitled, "Organization, Powers and Duties of the Association," and any predecessor or successor unincorporated association.

Section 1.03: Board. The term "Board" shall mean the Board of Directors of the Association and the governing body of any predecessor or successor unincorporated association.

Section 1.04: Building Envelope. The term "Building Envelope" shall mean the area on a lot that encompasses all development including but not limited to excavation, fill, grading, storage, demolition, structures, building heights, decks, roof overhangs, porches, patios and terraces, pools,

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and any areas of disturbance, except for the driveway and utilities as permitted by the Design Guidelines.

Section 1.05: Common Area/Easement Area. The term "Common Area" or "Easement Area" shall mean portions of the Subdivision which may be conveyed to the Association for the benefit of the Owners or portions of the Subdivision which may be used for the benefit of all Owners pursuant to this Declaration to enhance the value and desirability of the Subdivision for watering, planting, cutting, removing and otherwise caring for the landscaping and for installing, maintaining and repairing the signs identifying the Subdivision and any utility lines necessary for the maintenance of any landscaping.

Section 1.06: Declaration. The term "Declaration" means this Declaration of Covenants, Conditions and Restrictions, and any amendment or modification thereto.

Section 1.07: Drainage Easements. The term "Drainage Easements" shall mean the "Drainage Easement" encumbering Lots 1, 2, 3, 47, 48, 53, 54, 55, 238, 239, 240 and 242 as shown and described on the Plat, the "15 Drainage Easements" encumbering Lots 49 through 55, 88 through 91 as shown on the Plat, and the "20' Drainage Easement" encumbering Lot 257 as shown and described on the Plat.

Section 1.08: Drainage Report. The term "Drainage Report" means the report prepared for the Property by Grantor and approved, and on file with the County of Bernalillo Public Works Department.

Section 1.09: Entranosa Water and Wastewater Association. The term "Entranosa" shall mean the Entranosa Water and Wastewater Association, the nonprofit mutual domestic corporation supplying community water services and wastewater services to the Lots within the Subdivision.

Section 1.10: Entry Feature. The term "Entry Feature" shall mean signage identifying the Subdivision and landscaping to be located within the common area and public right-of-way on Monte Cristo, and is to be maintained by the Association, and shall be in compliance with all regulations mandated by Entranosa.

Section 1.11: Fiscal Year. The term "Fiscal Year" shall be the calendar year; but, a different Fiscal Year may be adopted by the Association by By-Law or Board Resolution.

Section 1.12: Grading Plan. The term "Grading Plan" means the grading plan prepared for the Property by Grantor and approved with conditions, and on file with the County of Bernalillo Public Works Department (PWDN – 50058).

Section 1.13: Grantor. The term "Grantor" shall mean Las Leyendas, LLC, a New Mexico limited liability company, its successors and assigns, who are assigned, in writing, all or part of Grantor's powers and responsibilities for all or a specific area or portion of the Subdivision and who accept such powers and responsibilities in writing. All such assignments and agreements to accept the obligations of Grantor shall be recorded, filed with the Board and placed with the records of the Association. Each person or entity named as Grantor in an assignment may exercise the rights of Grantor provided by these Restrictions for the area assigned, but no general power, such as the power to annex, shall be partially assigned, except for an assignment of all rights under this Declaration.

Section 1.14: Living Unit. The term "Living Unit" or "Unit" means any building or a portion of a building situated on a building site designed and intended for use and occupancy as a single family residence. Living Unit includes the term Lot, unless otherwise indicated.

Section 1.15: Lot. The term "Lot" means the land identified as Lots 1, 2, 3, 36 - 55, 88 - 91, 233 - 257, Las Leyendas Subdivision, Unit 1.

Section 1.16: Mortgage. The term Mortgage shall mean a deed of trust, as well as a mortgage, and the term "Mortgagee" shall mean a beneficiary under or a holder of a deed of trust, as well as a Mortgagee.

Section 1.17: No Build Easements. The term "No Build Easements" shall mean the no build easements encumbering Lots 36 through 48, inclusive, 53, 54 and 55 as shown and described on the Plat.

Section 1.18: Owner. "Owner" means the record owner of the fee simple title of a Lot or Unit and shall include a contract purchaser of any Unit or Lot pursuant to an installment sales contract. Owner shall not include a contract seller of a Lot or Unit pursuant to an installment sales contract.

Section 1.19: Plat. The term "Plat" means the Plat of Lots 1, 2, 3, 36 - 55, 88 - 91, 233 - 257, Las Leyendas, Unit 1, recorded in the Bernalillo County, New Mexico real estate records on March 4, 2008, as 2008-C, Page 39.

Section 1.20: Public Trail Easement. The term "Public Trail Easement" shall mean the Public Trail Easement encumbering Lot 54 as shown and described on the Plat.

Section 1.21: Setback. The term "Setback" means the distance between the front, side, and rear property lines and the building envelope, as set out in Article III, Section 3.17, hereof.

Section 1.22: Subdivision. The term "Subdivision" shall mean the subdivision created by and subject to this Declaration, including all the Lots created by the Plat, and subsequently annexed properties.

Section 1.23: Subdivision Restrictions. The term "Subdivision Restrictions" shall mean, with respect to all property within the Subdivision, the limitations, easements, restrictions, covenants, and conditions set forth in this Declaration, as this Declaration may from time to time be amended. The term "This Declaration" and the title to this Declaration shall have the same meaning as "Subdivision Restrictions."

ARTICLE II Property Subject to Subdivision Restrictions

Section 2.01: Initial Development.

All of the property shown on the Plat.

Section 2.02: Subsequent Development.

Grantor may, pursuant to the following provisions of this section, from time to time and in its sole discretion and without necessity of any approvals, annex real property owned by Grantor or

other persons with the permission of such other persons. The annexation of any such property shall become effective when Grantor shall have recorded the following:

- a. A declaration, which may consist of more than one document and which shall, among other things, (i) describe the real property which is to be annexed, (ii) set forth or refer to such additional, different or other limitations, restrictions, covenants and conditions, applicable to such property, including those which may be more or less restrictive, (iii) describe any areas to be included within the Common Areas or Drainage Easement Areas, and (iv) declare that such property is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved, subject to The Restrictions of Las Leyendas Subdivision; and
- b. A subdivision plat with respect to the real property described in said declaration.

Upon annexation becoming effective, the property covered by annexation shall become and constitute part of the Association and the Association shall have and shall accept and exercise jurisdiction over such property as a part of the Las Leyendas Community.

The annexation declaration, with respect to all or any part of the property described by it, shall provide for any or all of the following which shall become part of these Restrictions as applicable to such property:

- (1) Such new land classifications not then provided restrictions, covenants and conditions with respect to the use as Grantor deems appropriate for the development of such property; and
- (2) With respect to the land classification provided for by these Restrictions, such additional or different limitations, restrictions, covenants and conditions with respect to use as Grantor deems appropriate for the development of such property; provided, however, that such additional or different limitations, restrictions, covenants and conditions applicable to Common Area lying within such annexed property shall not discriminate between Owners.

ARTICLE III **USE RESTRICTIONS**

Section 3.01. All Living Units and Lots within the Property are hereby restricted to residential dwellings for single family residential use with a minimum of 2000 square feet of enclosed heated living area, exclusive of carports, garages and open porches or patios. The maximum building height shall be twenty-six feet (26'), excluding chimneys, measured from the highest point of the natural ground adjacent to the Living Unit. All construction upon any Lot must be new construction and no existing building or structure may be moved from another site to a Lot. Each Living Unit shall have an appurtenant private garage for at least two cars. No mobile home or manufactured housing shall be permitted within the Subdivision. All construction must be approved by the Architectural Control Committee pursuant to the Design Guidelines.

Section 3.02. Notwithstanding any provision herein contained to the contrary, it shall be expressly permissible for the Grantor or home builders building homes within the Property to maintain during the period of construction and sale of the Living Units, such facilities as may be reasonably required, convenient or incidental to the construction and sale of the Living Units, including, without limitation, a business office, storage area, construction yards, signs, model units and sales office.

Section 3.03. No animals, livestock or poultry of any kind shall be raised or bred for any commercial purposes. All dogs, cats and horses shall be kept on the Lot Owner's property in suitable enclosures or pens, in a manner approved by the Animal Humane Association of New Mexico. Any corrals, horse pens or stables erected on any Lot shall be limited to 15,000 square feet in size, and shall be within the building envelope. The Grantor may grant a variance to this setback requirement. All Lot Owners shall restrain all pets and/or horses from trespassing onto other Lots within the Subdivision. No more than two (2) horses are allowed on any Lot at one time, and all horses shall be corralled within the 15,000 square foot enclosures at all times. Horses are not allowed to roam on any Lot, except within the corralled enclosures. Horses are not allowed to graze on any Drainage Easements within the Subdivision. Except as permitted in this Section 3, no livestock of any kind is allowed in the Subdivision.

Section 3.04. No advertising signs except customary "for sale" signs or signs for Grantor or Grantor's assigns to market the Lots and/or Living Units, billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on the Property, unless approved, in writing, by the Architectural Control Committee, as hereinafter defined in Article IV, below. The Property shall not be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any Living Unit or any resident thereof.

Section 3.05. No business activities of any kind whatsoever shall be conducted in any Living Unit or on any portion of the Property, except as permitted by the County as a "home occupation" and so long as there is no external evidence of the business activity. Provided, further, however, the foregoing covenants shall not apply to the business activities, or the construction and maintenance of buildings, if any, of the Grantor, its agents and assigns, during the construction and sale period. This provision does not prevent the conduct of arts and crafts studios, or professional offices, providing the activity does not result in frequent multiple vehicular traffic, noise or other annoyance.

Section 3.06. No fences, hedges or walls shall be erected or maintained upon the Property except such as are approved in this Declaration, and shall not be erected upon or infringe upon any easements including but not limited to those granted to Entranosa for its facilities constructed to supply water and wastewater services to any Lot.

Section 3.07. On street parking is not permitted. All Lot Owners shall provide for adequate parking for residents and guests within their Lot. No trailers, recreational vehicles or boats shall be permitted to remain within public view on any part of the Property longer than one (1) day. Nothing in this section shall be construed as limiting use of the Property during the construction and sale phase of the development.

Section 3.08. No oil drilling, oil development, oil refining, derrick or other structure designed for use in boring for oil or natural gas, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavation or shafts be permitted upon or in any Lot.

Section 3.09. No temporary house, trailer, tent, garage, or other outbuildings shall be used on any Lot at any time as a residence, either temporarily or permanently, and no residence placed or erected on any part of any Lot shall be occupied in any manner at any time prior to its being fully completed, provided, however, that during the actual construction or alteration of a building on any Lot, necessary temporary buildings for storage of material, etc., may be erected and maintained by the person doing such work.

Section 3.10. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done, placed, or stored thereon which may be or become an annoyance or nuisance to the neighborhood, or occasion any noise or odor which will or might disturb the peace, comfort, or serenity of the occupants of neighboring properties. Without limiting the generality of the foregoing, permitting disabled vehicles to remain on a Lot or doing mechanical or body work on any vehicle other than work which can be accomplished in a few hours, shall be deemed a noxious or offensive activity.

Section 3.11. Lots shall be cleared of all weeds, trash and all other detracting impediments and all rubbish, trash or garbage shall be regularly removed from each Unit.

Section 3.12. Except for access to the Lot, clearing of building sites or establishment of lawns, gardens and landscaped improvements within the immediate vicinity of the Living Units, all remaining natural vegetation will be left undisturbed. Please see Entranosa regulations for restrictions on landscaping.

Section 3.13. Where externally visible air conditioners are erected or installed, they shall be so installed that they will minimize visibility from the front street. Roof mounted units shall be allowed on flat roofs; however, they shall be installed as to comply with this restriction as much as possible through the use of parapets. Ground mounted units shall be screened consistent in materials and color to the house or landscaping.

Section 3.14. No radio, television, citizens band, HAM, or other aerial antenna or tower, whether for transmitting or receiving, or any support thereof shall be erected, installed, placed or maintained, except those devices which may be erected, installed, placed or maintained and used entirely under the eaves or enclosed within a building or structure which do not extend above the highest point of the roof. However, after written approval of the Architectural Control Committee, a television antenna or satellite dish less than 36" in diameter may be mounted on the roof provided it is inconspicuously located so as not to be easily visible from the street.

Section 3.15. Above ground trash and garbage receptacles, ground mounted solar energy collectors and equipment, ground mounted air conditioning compressors and equipment shall be enclosed within a walled service area or areas so as to conceal them from the streets. Walls or screening should be harmonious with the overall design of the structures on the Lot and which shield these structures in such a way as not to be visible from streets.

Section 3.16. In the event that a structure is destroyed, wholly or partially by fire or other casualty, said structure shall be properly rebuilt, repaired or replaced to conform to this Declaration, or all remaining structures, including the debris and foundations shall be removed from the Lot.

Section 3.17. All buildings and outbuildings erected on any Lot shall be within the building envelope as defined herein and as further defined in the Architectural Design Guidelines Section B – Site Planning, Building Envelope (the "Design Guidelines"). A maximum of three separate outbuildings (shed, workshop, barn, etc.) are permitted on any lot, not including the main house, and

shall be approved by the ACC. Copies of the Design Guidelines are available at the office of Consensus Planning, Inc., 302 8th Street, NW, Albuquerque, New Mexico. The building envelope shall be set back a minimum of thirty feet (30') from the front, side, and rear property lines and fifteen feet (15') from the side property line for interior lots, and thirty feet (30') from the side property line where lots are adjoining the public right-of-way. Lots on the perimeter of the subdivision shall be set back a minimum of fifty feet (50') from the property line forming the perimeter of the subdivision. The Grantor may grant a variance to the setback requirements for those Lots in which the useable building envelope is limited.

Section 3.18. All Living Units erected on all Lots shall be of an architectural design typical of New Mexico and the southwest, including pueblo, territorial, ranch, adobe and Spanish styles. Exterior and roof colors shall be neutral and blend in with the natural surroundings. Subsequent home additions or any outbuilding construction or fences or walls shall require written approval of the Architectural Control Committee prior to the commencement of any construction pursuant to Article IV hereof. All Lot Owners are required to submit a Request for Design Review Approval and Application as set forth in Article IV, Section 3, below.

Section 3.20. Propane tanks shall be buried or screened from street view and from the view of adjacent Lot Owners, and shall conform to state regulations.

Section 3.21. Each Lot Owner shall provide a method of sewage disposal which meets the requirements of the Bernalillo County Environmental Health Department as outlined in the Disclosure Statement for the Subdivision filed in the Bernalillo County, New Mexico real estate records on April 17, 2008, as Document No. 2008043679. Lot Owners with septic tanks shall be required to have a non-cancelable scheduled septic maintenance contract. Garbage and solid waste shall be kept in covered, waterproof containers and shall be stored and disposed of in a manner approved by the Bernalillo County Environmental Health Department.

Section 3.22. All Living Units shall use water saving toilets, dishwashers, washing machines, and shall have installed water restricting showerheads and faucets.

Section 3.23. All Living Units shall be provided with a "defensible space" surrounding all structures in order to protect against wildfires. All landscape materials within 30 feet of all Living Units shall be maintained to reduce the amount of combustible and burnable vegetation. Felled trees, slash piles, fire wood, and any combustible materials shall not be stored within this 30 foot area. Trees in this 30 foot area should be pruned to a height of 6 to 10 feet and spaced so that the edges of crowns are 10 to 16 feet apart. No tree limbs shall be allowed to overhang roofs. Beyond the 30 foot fuel break area and up to 100 feet from all Living Units, trees shall be thinned to provide 10 feet of open space between the crowns of adjacent trees. Lower branches shall be pruned to 10 feet above the ground and small shrubs, scrub growth, ground litter, and dead trees shall be removed.

Section 3.24. All out buildings shall be constructed with finished building materials on all sides and the colors and style shall be compatible with the main house. All out buildings must be approved by the Architectural Control Committee pursuant to the Design Guidelines.

ARTICLE IV
Membership in the Association
Voting Rights

Section 4.01: Membership.

a. Each Owner, by virtue of being an Owner and during such time as such Owner remains an Owner, shall be a member of the Association, or, a member of the unincorporated association preceding the Association or succeeding to the Association.

b. The rights, duties, privileges, and obligations of an Owner as a member of the Association or its preceding or succeeding unincorporated association shall be those set forth in, and shall be exercised and imposed in accordance with the provisions of this Declaration and the Association's Articles of Incorporation and By-Laws.

Section 4.02: Classes of Membership.

The Association shall have two (2) classes of membership, Class I and Class II.

Class I. All members shall be Class I members, except the Grantor, and shall be entitled to one (1) vote for each Lot owned. When more than one person or entity is an Owner of any Lot, all such persons shall be members. The vote for such Lot shall be exercised as such Owners determine, and in no event shall such multiple Owners vote more votes than they are entitled by the Lots owned.

Class II. The Grantor shall be the only Class II member and shall be entitled to three (3) times the votes as set out under Class I, above, for each Lot owned by Grantor prior to the initial conveyance of such Lot by Grantor. The Class II membership of Grantor shall be converted to Class I member and Grantor's Class II membership shall forever terminate when the total votes in the Class I members, including votes for Lots which have been annexed into the Association, equal or exceed the total votes in Class II membership.

Section 4.03: Voting Rights.

Each Owner shall be entitled to vote as provided in this Article on all matters properly submitted for vote to the membership of the Association. Every Owner entitled to vote at any election of members of the Board may cumulate his votes and give any one or more candidates a number of votes equal to the number of votes to which the Owner is entitled, multiplied by the number of Directors to be elected. The right to vote may not be severed or separated from any Lot, and any sale, transfer or conveyance of the beneficial interest of the fee of any Lot to a new Owner shall operate to transfer the appurtenant voting rights without the requirement of any express reference thereto. Voting may be by written proxy.

Section 4.04: Voting Rules.

When any provision of the Subdivision Restrictions calls for the vote or the consent of the members in any stated percentage, the following rules apply, unless the specific language of the provision provides to the contrary:

a. Whenever a vote of the members is required, it is sufficient to obtain the written consent of the same percentage and class of members;

b. The percentage requirement shall be a percentage of the total voting power of the Association or of the total voting power of the required class or group and not a percentage of the number of members of the Association, class or group; and

c. In any election held pursuant to the requirements of this Declaration, ballots may be transmitted to Owners in the manner provided for the giving of notice.

ARTICLE V

Organization, Powers and Duties of the Association

Section 5.01: Organization.

a. The Association shall be organized as a non-profit corporation charged with the duties and empowered with the rights set forth herein. The Association's affairs shall be governed by this Declaration, the Articles of Incorporation and the By-Laws.

b. In the event that the Association, as a corporate entity, is not formed or after formation loses its corporate powers or is dissolved, a non-profit, unincorporated association shall forthwith and without further action or notice, be formed and shall succeed to all the rights and obligations of the Association hereunder until a qualified non-profit corporation is formed. Said unincorporated association's affairs shall be governed by the laws of the State of New Mexico, and to the extent not inconsistent therewith, by this Declaration, the Articles of Incorporation and the By-Laws, respectively, as if they were created for the purpose of governing the affairs of an unincorporated association.

c. The President and Secretary of the Association, or any three (3) members of the Board of Directors, may execute, seal, acknowledge and record a certificate of identity stating the names of all of the members of the then current Board and the then current Committee, if any. The most recently recorded affidavit shall be conclusive evidence of the identity of the persons then composing the Board and Committee in favor of any person relying thereon in good faith.

d. The Board shall be elected at an annual or special meeting not later than two (2) years after the closing of the sale of the first Lot.

e. The affairs of the Association shall be managed by the Board of Directors, which shall exercise all of the rights and powers and perform all of the duties and responsibilities set out in this Declaration for the Association.

Section 5.02: Powers and Authority of the Association.

The Association shall have all of the powers set forth in its Articles of Incorporation, together with its general powers as a non-profit corporation, subject only to the limitations upon the exercise of such powers as are expressly set forth in its Articles of Incorporation, its By-Laws and in this Declaration, to do any and all lawful things which may be authorized, required, or permitted to be done by the Association under and by virtue of the Subdivision Restrictions and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association or for the peace, health, comfort, safety, and general welfare of Owners.

a. Any of the following actions by the Board shall require a majority vote or written assent of the Owners:

1. Entering into a contract for the furnishings of goods or services for Common Area and/or Easement Area or the Association for a term longer than three (3) years with the exception of prepaid casualty or liability policies of not to exceed three (3) years duration provided that the policy permits short rate cancellation by the insured; and

2. Paying compensation to members of the Board or officers for services performed in the conduct of the Association's business provided that the Board may cause a member or officer to be reimbursed for expenses incurred in carrying on the business of the Association.

b. In fulfilling any of its obligations or duties under the Subdivision Restrictions, including, without limitation, its obligations or duties for the maintenance, repair, operation, or administration of the Common Areas and/or Easement Areas, the Association shall have the power and authority:

1. To contract and pay for, or otherwise provide for, the improvement, maintenance, restoration, and repair of the Common Area and/or Easement Area and all Improvements located thereon;

2. To obtain, maintain, and pay for such insurance policies or bonds, whether or not required by this Declaration, as the Association shall deem to be appropriate for the protection or benefit of the Subdivision, the Association, the members of the Board, and the Owners;

3. To incur indebtedness; but any indebtedness in excess of the Association's estimate of its estimated gross revenue for the year incurred or any indebtedness to be repaid over a period longer than one (1) year must be approved by a two-thirds (2/3) vote of the Owners;

4. To contract and pay for, or otherwise provide for, such utility services, including, but without limitation, water and electrical services, as may from time to time be required;

5. To contract and pay for, or otherwise provide for, the services of architects, engineers, attorneys, bookkeepers and certified public accountants, and such other professional and non-professional services as the Association deems necessary;

6. To contract and pay for, or otherwise provide for, such materials, supplies, furniture, equipment, and labor as and to the extent the Association deems necessary;

7. To pay and to discharge any and all liens from time to time placed or imposed upon any Common Area, or on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation, or administration;

8. To lease or contract for the use of land and Improvements for recreation or other purposes to the extent the Association deems necessary; and

9. To place and maintain upon Common Area such signs as the Association may deem necessary for the identification of the Subdivision and/or roads, the regulation of traffic, including parking, for the health, welfare and safety of owners and other persons.

c. In fulfilling any of its obligations or in exercising any of its rights with respect to the development, construction, installation or acquisition of a capital improvement, the Association shall have the power and authority:

1. To contract and pay for such Improvements upon such terms and conditions as the Association shall deem appropriate;

2. To obtain, maintain, and pay for such insurance policies or bonds as the Association may deem appropriate for the protection and benefit of the Association, the members of the Board, and Owners, including, but without limitation, builder's risk insurance, additional comprehensive liability insurance, workman's compensation insurance, and performance and fidelity bonds;

3. To incur indebtedness under terms and conditions as provided by this Article; and

4. To contract and pay for the services of architects, engineers, attorneys, and certified public accountants, and other professional and non-professional services.

d. With respect to the Common Area, the Association shall exercise control over the Common Area, but only for the purpose of carrying out the purposes of these Restrictions. The Association shall have no authority to mortgage, sell or convey Common Area or any part thereof, unless approved by the three-fourths (3/4) vote of the Class I Members except that the Association shall have the power and authority from time to time without a vote of the members to grant and convey easements or rights of way, in, on, over, or under any Common Area, for the purpose of constructing, erecting, operating and maintaining thereon, therein, and thereunder wires, conduits and other equipment for the transmission of electricity and signals for lighting, heating, power, communication, cable television and other purposes, and for the necessary attachments in connection therewith; and public and private sewers, storm water ponding areas, storm water drains, storm water ponding areas, land drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and any and all equipment in connection with the foregoing.

e. The Association may, from time to time and upon such terms and conditions as it may deem appropriate, agree with the governing body of any other subdivision to jointly manage the affairs of the Subdivision, to jointly hire a manager, or jointly to engage in other activities not inconsistent with the Subdivision Restrictions.

f. The Association shall have the right from time to time to pay, compromise, or contest any and all taxes and assessments levied against all or any part of the Common Area any income of or assessed to the Association, and upon any personal property belonging to or assessed to the Association.

g. The Association shall have the power and authority from time to time, in its own name, on its own behalf, and on behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Subdivision Restrictions and to enforce, by mandatory injunction or otherwise, all of the provisions of this Declaration.

h. The Association shall have the power, but not the duty, to enter upon and maintain, or provide for the maintenance of, any Lot or Improvements which is not maintained by the Owner thereof in accordance with the requirements of these Restrictions, at the expense of any such Owner.

Section 5.03: Liability of Members of Board.

No member of the Board shall be personally liable to any Owner, or to any other person, including Grantor, for any error or omission of the Association, its representatives and employees, or the manager; provided, however, that such member has, with the actual knowledge possessed by him, acted in good faith.

Section 5.04: Duties and Obligations of the Association.

a. The Association shall have the obligation and duty, subject to the Subdivision Restrictions, to do and perform each and everything set out in this Section, for the benefit of the Owners and for the maintenance and improvement of the Subdivision.

b. The Association shall accept all Owners as members of the Association.

c. The Association shall accept from Grantor the Common Areas, if any and maintenance responsibilities in all Easement Areas, if any, Drainage Easements and Public Trail Easements which shall be deemed transferred to it upon Recording of these Restrictions, subject to the reservations of all easements, licenses and rights to use and the rights of Grantor.

d. The Association shall maintain, or provide for the maintenance of, the Common Areas, if any, the Easement Areas, if any, the Drainage Easements and Public Trail Easements and all Improvements thereon.

e. The Association shall maintain or provide for the maintenance of all landscaping and vegetation (including without limitation, grass, mass plantings, shrubs and trees) on Common Areas, if any, and shall keep such vegetation properly trimmed, mowed, cut, watered, fertilized, planted and replaced so that it provides an attractive appearance.

f. The Association may employ the services of a corporate or individual manager to manage the affairs of the Association and, upon such conditions as are otherwise advisable by the Association, the Association may delegate to the manager any of its powers under the Subdivision Restrictions. No management agreement entered into between the Association and any professional management company (whether or not such professional management company is owned or controlled by the Grantor) shall provide for a term in excess of two (2) years and all such agreements shall permit the Association to terminate for cause upon not more than thirty (30) days' prior written notice and all such agreements shall provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.

g. The Association shall obtain and maintain in force the following policies of insurance to the extent policies with the required provisions are economically available:

1. Fidelity Bond: The Association shall procure and maintain a fidelity bond naming the Association as obligee in an amount equal to the estimated maximum amount of funds to be in the custody or control of the Association or its professional management company, including reserves for replacement and working capital, at any given time during the term of such bond, but in any

event in an amount at least equal to three (3) months' aggregate monthly assessments on all Lots plus the sum of all reserve funds. Such fidelity bond shall cover all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of or administered by the Association, including the officers, directors, employees and agents of the professional management company employed by the Association pursuant to these Restrictions. Provided, however, that the fidelity bond to be procured by the Association need not cover the professional management company and its officers, directors, employees and agents, if such professional management company provides a sufficient fidelity bond naming the Association as an additional obligee or loss payee. Such bond shall contain a waiver of any defense or exclusion based upon the exclusion of persons serving without compensation from the definition of "employees" or other similar terms or expressions. Such bond shall require at least ten (10) days' prior written notice to the Association of cancellation or substantial modification (including cancellation for non-payment of premiums). The cost of such fidelity bond (except for premiums on any fidelity bond provided by the professional management company which the Board determines to be satisfactory and in compliance with the provisions of this Section) shall constitute a common expense of the Subdivision.

2. Liability Insurance: The Association shall procure and maintain comprehensive public liability insurance in the amount of at least one million dollars (\$1,000,000) per single occurrence for bodily injury, death and property damage suffered by the public or any Owner and his family, guests, agents, employees or invitees occurring in, on or about the Common Areas. Such policy shall insure the Owners and the Association and its officers, directors, employees and agents, including expressly the professional management company and its officers, directors, employees and agents and shall further expressly cover legal liability arising from lawsuits related to employment contracts of every nature to which the Association is a party. Such policy shall be issued by insurers of recognized responsibility authorized to do business within the State of New Mexico and shall require at least ten (10) days' prior written notice of cancellation or substantial modification (including cancellation for nonpayment of premiums) to the Association. The cost of such policy shall constitute a common expense of the Subdivision. Such insurance must not provide for contribution with regard to any policies of liability insurance carried individually by any Owner.

3. Additional Insurance: The Board shall have the authority to obtain such other insurance, including the authority to increase the scope or amount of any insurance required by this Article 5, as the Board shall determine to be necessary or advisable. The cost of any such additional insurance shall constitute a common expense of the Subdivision.

h. The Association shall prepare an annual operating statement reflecting the money received by the Association and the expenditures of the Association for each fiscal year and distribute such statement to each member.

i. The Association shall take such action, whether or not expressly authorized by the Subdivision Restrictions, as may reasonably be necessary to enforce or carry out the purposes of the Subdivision Restrictions and the Subdivision Rules.

ARTICLE VI
Funds, Assessments and Delinquency

Section 6.01: Creation of Lien and Personal Obligation for Assessments.

Grantor for each Lot owned by it hereby agrees to pay, and each Owner of any Lot by the acceptance of a deed or contract of sale therefor, whether or not so expressed in any such deed or contract or other conveyance, is deemed to agree to pay to the Association:

- a. Maintenance assessments;
- b. Delinquency assessments;
- c. Assessments for capital improvements; and
- d. All other fees or other moneys due to the Association from such Owner.

The maintenance assessment, delinquency assessment and assessment for capital improvements, plus interest, late charges, costs and attorney's fees, shall be a charge against the Lot and shall be a continuing lien upon the Lot against which each such assessment is made, and shall also be the personal obligation of the Owner or Owners of such property on the assessment date. The personal obligation to pay assessments shall not pass to successors in title unless expressly assumed by them.

Section 6.02: Operating Fund.

There shall be an operating fund, into which the Association shall deposit all monies paid to it and from which the Association shall make disbursements in performing the functions for which the foregoing assessments are levied.

Section 6.03: Maintenance Assessment.

a. Within thirty (30) days prior to the commencement of each fiscal year the Association shall estimate the costs and expenses to be incurred by the Association during such year, including a reasonable provision for contingencies, and reserves for major repair and replacement, and shall subtract from such estimate an amount equal to the anticipated balance, exclusive of any reserves for contingencies and reserves for major repair and replacement, in the operating fund at the start of such year. The sum or net estimate so determined shall be assessed to all Owners in shares: one (1) share for each Lot owned.

b. If, at any time and from time to time, during any fiscal year, the maintenance assessment proves or appears likely to prove inadequate for any reason, including non-payment of any Owner's share thereof, the Association may levy a further maintenance assessment in the amount of such actual or estimated inadequacy, which shall be assessed to all Owners apportioned as provided in subsection a, if approved by a two-thirds (2/3) vote of the Class I and Class II members.

c. Maintenance assessments shall be due and payable to the Association when levied or in such installments during the year, and on such due dates as the Board shall designate.

d. The Board shall not levy assessments to defray the costs of any action or undertaking on behalf of the Association which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year and which are not part of such budgeted gross expenses without the vote or written consent of the Members.

e. From and after the December 31st immediately following the conveyance of the first Lot by Grantor, the maximum maintenance assessment may be increased each year not more than ten percent (10%) without a vote of two-thirds (2/3) of the Class I Members and approval of the Class II Member. The percent of increase shall be cumulative from year to year so that an increase not used in one year may be used in a subsequent year without a vote of the members.

Section 6.04: Delinquency Assessment.

The Association shall levy a delinquency assessment against any Owner or Owners as a result of whose acts, or failure or refusal to act, or otherwise comply with the Subdivision Restrictions, monies were expended from the operating fund by the Association. Such assessment shall be in the amount so expended, and shall be due and payable to the Association when levied, or in such installments as the Association shall designate. Prior to the levy of a delinquency assessment the Board shall hold a hearing to determine the validity and amount of the assessment upon at least thirty (30) days notice to the Owner to be assessed at which hearing such Owner shall be given an opportunity to be heard.

Section 6.05: Assessments for Capital Improvements and Indebtedness.

The Association may also levy in any year an assessment for paying or returning, in whole or in part, the cost or proposed cost of acquisition and construction of a described capital improvement (whether the improvements constitute real or personal property) in an amount greater than can be included in the maintenance assessment, provided it has been approved by a two-thirds (2/3) vote of the voting powers of each class of members, which assessment shall be assessed to Owners as provided for in Section 6.03.

Section 6.06: Reserves as Trust Funds.

Reserves for major repairs and replacements and for capital improvements to be built or acquired shall be kept segregated from the other monies held by the Association as trust funds in an account or accounts labeled "Reserve Trust Fund" and shall be withdrawn and used only for the purposes of major repairs and replacements or for capital improvements respectively, unless a different or other use is authorized by the vote of the members.

Section 6.07: Delinquency.

Each assessment under this Article shall be the separate, distinct and personal debt and obligation of the Owner against whom it is assessed. Any assessment provided for in this Article, which is not paid when due, shall be delinquent. With respect to each assessment not paid within ten (10) days after its due date, the Association may, at its election, require the Owner to pay a sum (late charge) to be determined by the Association, to pay the costs of handling the delinquent sum. Such a charge shall be considered an additional assessment and collectible with the assessment for which it was charged. If any such assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at a rate set from time to time by the Association, however not greater than twenty percent (20%), and the Association may, at its option, bring an action at law against the Owner or Owners personally obligated to pay

the same, and upon compliance with the provisions of this Article to foreclose the lien against the Lot, and there shall be added to the amount of such assessment the late charge, the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest at the rate provided herein and a reasonable attorney's fee, together with the costs of action. Each Owner vests in the Association, or its assigns, the right and power to bring all actions at law or lien foreclosure against such Owner or other Owners for the collection of such delinquent assessments.

Section 6.08: Notice of Lien.

No action shall be brought to foreclose an assessment lien less than thirty (30) days after the date a notice of claim of lien is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of said Lot, and a copy thereof is recorded by the Association in the office of the Bernalillo County Clerk; said notice of claim must recite a good and sufficient legal description of any such Lot, the record owner or reputed owner thereof, the amount claimed (which shall include the interest charges, costs and attorney's fees recoverable by an action at law) and the name and address of the Association.

Section 6.09: Foreclosure Sale.

Any such sale provided for above is to be conducted in accordance with the customary practice of the court of the State of New Mexico, applicable to the foreclosure of Mortgages, or in any other manner permitted or provided by law. The Association, through its duly authorized agents, shall have the power to bid on the Lot at a foreclosure sale, and to acquire and hold, lease, mortgage and convey the same.

Section 6.10: Curing a Default.

Upon the timely curing of any default for which a notice of claim of lien was filed by the Association, the officers of the Association are hereby authorized to file or record, as the case may be, an appropriate release of such notice, upon payment by the defaulting owner of a fee, to be determined by the Association, to cover the costs of preparing and filing or recording such release, together with the payment of such other costs, interest or fees as shall have been incurred.

Section 6.11: Cumulative Remedies.

The assessment lien and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

Section 6.12: Certificate of Payment.

The Association shall, upon demand, furnish to any Owner liable for assessments, a certificate in writing signed by an officer of the Association, setting forth whether the assessments on a specified Lot have been paid, and the amount of the delinquency, if any. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 6.13: Commencement of Annual Assessments.

The maintenance assessments provided for in this Article shall commence upon the sale of each Lot. The first annual assessment shall be prorated for each Lot for the period from the commencement as provided in this section to the start of the next fiscal year following such commencement. Until such time as there are an adequate number of Owners of Lots paying maintenance assessments to carry out the Association's obligations, the Grantor shall contribute cash and/or in kind services necessary to meet the Association's obligations, however the Grantor shall never be obligated to contribute more to the Association than the amount of maintenance assessments against the Grantor's Lots if maintenance assessments had commenced on its Lots.

ARTICLE VII
ARCHITECTURAL CONTROL COMMITTEE

Section 7.01. An Architectural Control Committee, hereinafter referred to as the "Committee", is hereby established and shall be comprised of four (4) persons to serve until ninety percent (90%) of the Lots within the Subdivision are sold, and until their successors shall be appointed and qualified. The Committee is initially composed of **Ben Spencer, Steven P. Jackson, Kurt Browning and Matthew Proehl**. In the event of death or resignation of any member of the Committee, the Grantor shall have full authority to designate a successor. After 90% of the Lots have been sold, the Committee shall be elected by a majority of the Lot Owners who are present at a special meeting. Each Lot Owner shall be entitled to one vote per lot owned.

Section 7.02. No member of the Committee shall be entitled to any compensation, other than a design review fee of \$300.00 for services performed on behalf of said Committee. A majority of the Committee may designate a representative to act for it.

Section 7.03. Before the commencement of the construction, remodeling, addition to, alteration of, or removal of any building, swimming pool, wall, fence, out building or any other structure whatsoever, on any Lot, and further to include landscaping and landscaping construction including ponds, water walls, statues, retaining walls or other structural component, which is visible from any street, the Lot Owner shall apply to the Committee for approval. There shall be submitted to the Committee: (a) a Request for Design Approval and Application, copies of which are available at the offices of Grantor, (b) a complete set of plans, including but not limited to, foundations, floor plans, elevations, details, specifications which identify construction material, exterior color scheme, and a site plan showing the location of the structure on the Lot identifying all construction including but not limited to roof overhang lines, all setbacks at point of minimum distance to each property boundary, dimension of Lots, all walks, drives, patios, decks, and walls and/or fences and their construction materials, which set of plans and specifications upon approval will be retained by the Committee to remain on file; and (c) if deemed necessary by the Committee, the following may be required: (1) colors and samples of exterior materials, (2) wall sections, (3) roof plan, (4) details of exterior furnishings, (5) the Owner's proposed construction schedule, and (6) an architect's rendering showing the perspective view of the proposed construction. These renderings may be in pencil or ink line drawings. At the time of submittal of the Request for Design Approval and Application, the Architectural Control Committee shall assess a design review fee of \$300.00 for the review of the primary Living Unit.

Section 7.04. Prior to commencement of construction of the Living Unit on any Lot, the Lot Owner must have installed any required driveway culverts per the Grading and Drainage Plan that

meet current Bernalillo County specifications and a minimum of twenty-five (25) feet of graveled driveway.

Section 7.05. No building, structure, or improvements of any kind, including walls and landscaping, shall be erected, altered, placed or maintained upon any Lot unless, and until the complete set of final plans and specifications have been approved in writing by the Committee as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation. Any resurfacing or painting of the exterior wall areas shall be completed in a color texture as close to the original as possible, unless the consent of the Committee is obtained in writing as to a different color and/or texture and except as hereafter provided.

Section 7.06. The Committee shall have the right to disapprove any plans, specifications or details submitted to it as aforesaid, in the event such plans and specifications are not in accord with all the provisions of these restrictions, or if a design or color scheme in the proposed structure is not in harmony with the general surroundings or in harmony with the Lot or adjacent structure, or if the Committee deems the plans and specifications to be contrary to the spirit and intent of this Declaration, or contrary to the interest and the welfare and rights of all or any part of the Property.

Section 7.07. In the event the Committee shall fail to approve or disapprove the plans, specifications and other such information as may be required within thirty (30) days after submission, then such approval shall not be required, provided that no building or structures shall be erected which violate any of the terms of this Declaration.

Section 7.08. Neither the Committee, its members, nor the Grantor, shall be responsible in any manner whatsoever for any defect in any plans or specifications submitted or as revised by said Committee or the Grantor, or for work done pursuant to the requested changes by said plans and specifications.

Section 7.09. A majority of the Committee may, from time to time, grant exceptions or variances not in substantial conflict with this Declaration, without the consent of the Owners.

Section 7.10. The work of constructing any building on any part of the Property as to the exterior shall be completed within twelve (12) months from the commencement thereof.

ARTICLE VIII **WALLS AND FENCES**

Section 8.01. All fencing or walls constructed on any Lot shall be within the building envelope as described in the Design Guidelines. No walls or fences may be erected without first obtaining written approval from the Architectural Control Committee.

Section 8.02. No barbed wire fencing is allowed within the Subdivision. Chain link fencing shall not be permitted in general, but may be used for animal enclosures or for sports and recreational enclosures, which enclosures must be within the building envelope and must be approved by the Architectural Control Committee pursuant to the Design Guidelines.

Section 8.03. Owners shall promptly remove graffiti from all walls and fences on their Lots.

ARTICLE IX **DRAINAGE AND EROSION CONTROL**

Section 9.01. The Grading Plan (#PWDN – 50058) has been approved with conditions for this site. Grading and drainage must conform to the approved grading and drainage plan. An approved revised grading and drainage plan is required for deviations from the currently approved grading and drainage plan. The Drainage Easements have been dedicated to the County of Bernalillo by the Plat. However, the Association shall maintain the portion of the Lot encumbered with the Drainage Easement at the grade established by the Grading Plan to permit the passage of storm drainage waters in accordance with the Drainage Report. The Association shall also be responsible for keeping the Drainage Easements free of weed and litter. Agreements and Covenants outlining maintenance responsibilities shall be filed prior to final acceptance of the public infrastructure improvements.

The individual Lot Owners of Lots 36, 37, 38, 39, 45, 46, 248, 249, and 250 shall be responsible for maintaining desiltation ponds located on their respective lots, as shown on the Grading Plan. An agreement and covenant shall be filed at the time of closing of each lot. The Drainage Easements are restricted to drainage, flood control, conveyance of storm waters, and the construction, operation and maintenance of and access to such facilities. The land located within the Drainage Easements shall not be disturbed and no dwelling or outbuildings shall be placed within the Drainage Easements. Except by written approval of the County Engineer, no fence, wall, building or other obstruction may be placed or maintained in said Drainage Easements, and there shall be no alteration of the grades or contours. The granting of the Drainage Easements to the County of Bernalillo does not obligate the County of Bernalillo to maintain natural arroyos, drainage channels, or facilities unless otherwise agreed upon in writing. The granting of this easement shall not require the protection of property lying outside of the easements granted. Safe locations for structures built on lands adjacent to the easement dedicated herein may be substantially outside the area described by the easements. Subject to the rules, regulations, and ordinances of Bernalillo County, any portion of any lands, right-of-way, or easements dedicated or granted herein may be vacated to the extent said portion is declared unnecessary for flood control and drainage by the County Engineer of Bernalillo County.

Section 9.02. Each Owner shall be responsible for the construction and maintenance of and the handling and disposal of all surface water drainage and storm runoff from their Lot in accordance with the Drainage Plan. Cross lot drainage, as established by the final plat, shall be allowed in accordance with natural drainage patterns.

Section 9.03. Each Lot Owner is responsible for complying with the Drainage Report and Grading Plan and for release or retentions of surface water drainage in accordance with said plans and each Owner shall hold harmless the County of Bernalillo and Grantor from any expense, maintenance and liability connected to the aforementioned.

Section 9.04. Due to the fragile vegetation and erodibility of soil, any structures, corrals or stables shall be constructed and maintained to prevent any soils erosion and shall be in compliance with the Grading Plan and Drainage Report.

Section 9.05. All Lot Owners shall become members of Entranosa and conform to its by-laws, rules and regulations. Lot Owners shall be required to sign a scheduled septic maintenance contract with Entranosa.

ARTICLE X EASEMENTS

Section 10.01. 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 improvements for so long as the encroachment exists.

Section 10.02. No Owner shall be entitled to construct any improvements within the "No Build Easements", or to disturb the natural terrain within the No Build Easements. All of the Owners' Lots shall be the beneficiaries of the No Build Easements and any Owner shall have the right to enforce the limitations of use of the No Build Easements.

Section 10.3. The Public Trail Easement shall be used for the benefit of all of the Owners, as well as the general public. All of the Owners shall be beneficiaries of the Public Trail Easement. By the vote of the owners of seventy-five percent (75%) of the Lots within the Subdivision, reasonable regulations can be adopted regarding the use of the Public Trail Easement by the Owners and the public, including limitations on hours of use of the Public Trail Easement.

ARTICLE XI Protection of Security Interests

Section 11.01: Application of Assessments to Mortgagees.

The liens created under the Subdivision Restrictions upon any Lot shall be subject and subordinate to, and shall not affect the rights of a mortgagee under any recorded first mortgage upon a Lot made in good faith and for value, provided that after the foreclosure of any such mortgage the amount of all maintenance and special assessments, and all delinquent assessments to the extent such delinquent assessments relate to expenses incurred after such foreclosure, assessed hereunder to the purchaser at foreclosure sale, shall become a lien upon such lot upon recordation of a notice thereof with the County Recorder.

Section 11.02: Limitation of Enforcement Against Mortgagee.

No violation by an Owner of the Subdivision Restrictions or enforcement of the Subdivision Restriction against an Owner shall defeat or render invalid the lien of any mortgagee made in good faith and for value against the property of such Owner, but, the Subdivision Restrictions shall be effective against any Owner whose title is acquired by foreclosure, trustee's sale, voluntary conveyance, or otherwise.

Section 11.03: Rights of Mortgagee to Information.

A mortgagee shall, upon written request, be entitled to inspect the Declaration, By-Laws, Subdivision Rules, books and records of the Association on the same basis as a Member. If a mortgagee furnishes the Association, in writing, with its address, it shall be entitled to receive within a reasonable time financial statement for the immediately preceding fiscal year, free of charge and shall receive notice of meetings on the same basis as members.

Section 11.04: Application of Subdivision Restrictions.

Except as provided in this Article or specifically provided elsewhere in the Subdivision Restrictions, all mortgages and mortgagees are bound by the provisions of the Subdivision Restrictions.

Section 11.05: Collection of Assessments.

The Mortgagees shall be under no obligation to collect assessments.

ARTICLE XII
MISCELLANEOUS

Section 12.01. The Grantor may include restrictions, other than these set out herein, in any contract or deed to any Lots without otherwise modifying the general plan as now set forth, and such other restrictions shall inure to the benefit of and bind the respective parties in the same manner as though they had been expressed herein.

Section 12.02. The restrictions herein set out shall be referred to, adopted and made a part of each and every contract and deed executed by and on behalf of the grantors of said Property, and any part thereof, to all such intents and purposes as though incorporated in full thereof; and each such contract and/or deed shall be conclusively held to have been so executed, delivered and accepted upon the express conditions herein stated.

Section 12.03. None of the Lots within the Subdivision shall be further subdivided to create two (2) or more building sites; however, two (2) or more Lots may be combined into one (1) building site.

Section 12.04. Solar energy collectors shall be allowed only if constructed in such a manner that they are built into the basic lines of the parent structure to create an aesthetically pleasing appearance from adjoining properties and streets and provided further, if they are visible from any street within the subdivision, they must be shielded from view. The screening or covering used must match and blend with the improvement or structure to which it is attached, and must be shown in detail on the plans submitted to the Committee.

Section 12.05. In the event of any conflict between these Restrictions and the Bernalillo County Zoning Ordinance, the more restrictive regulations shall control.

ARTICLE XIII
ENFORCEMENT

Section 13.01. All provisions of this Declaration shall be binding on all Lots and the Owners, regardless of the source of title of such Owners, and any breach thereof, if continued for a period of thirty (30) days from and after the date that the Committee or Owner of other property shall have notified in writing the Owner of the Lot upon which such breach has been committed to refrain from a continuance of such action and to correct such breach, shall warrant the Grantor or other Lot owner to apply to any court of law or equity having jurisdiction thereof for an injunction or other proper relief. However, this Declaration shall not be binding on any Owner, except in respect to breaches committed during the time such Owner owns or has an interest in said Lot. If such relief is

granted, the court may award to the plaintiff in such action his reasonable expenses in prosecuting such suit, including attorneys' fees.

Section 13.02. No delay or omission on the part of the Owner or Owners of Lot or Lots in exercising any right, power, or remedy herein provided for in the event of any breach of any of this Declaration shall be construed as a waiver thereof or acquiescence therein.

Section 13.03. No right of action shall accrue, nor shall any action be brought or maintained by anyone whomsoever against the Grantor for or on account of the failure or neglect of the Grantor to exercise any right, power, or remedy herein provided for in the event of any breach of this Declaration.

Section 13.04. In the event that any one or more of the provisions of this Declaration herein set forth shall be held by any court of competent jurisdiction to be null and void, all remaining provisions of this Declaration shall continue unimpaired and in full force and effect.

ARTICLE XIV **AMENDMENTS**

Section 14.01. This Declaration may be amended from time to time by written amendment executed by Owners owning sixty-five percent (65%) of the Lots, which Amendment shall become effective upon recording with the Bernalillo County real estate records.

Section 14.02. Notwithstanding Section 1 of this Article, Grantor shall have the authority to unilaterally change, amend or modify this Declaration until 90% of the Lots within the Subdivision are sold, including all Lots that are subsequently annexed into the Subdivision, provided, that such changes, modifications or amendments do not materially change the character and quality of the Lots subject to this Declaration and do not materially increase the number of Lots within the Property and; provided further, that the prior written consent of the Architectural Control Committee has been obtained and does not violate any subdivision laws.

ARTICLE XV **DURATION**

This Declaration as amended from time to time shall continue to be binding upon the Grantor, their successors and assigns, the Owners, and their heirs, assigns, personal representatives and all parties claiming by, through or under them, for a period of twenty-five (25) years from the date this instrument is filed for record in the office of the County Clerk of Bernalillo County, New Mexico, and shall automatically be extended for successive period of fifteen (15) years each; provided, however, that at any time within one (1) year prior to the expiration of the first twenty-five (25) year period, or within one (1) year of the expiration of any fifteen (15) year period thereafter, the Owners of the majority of the Lots may provide for the release of any and all of the Lots hereby restricted, from any part of this Declaration, or modifying this Declaration in whole or in part, at the end of the first twenty-five (25) year period or at the end of any successive fifteen (15) year period, by executing and acknowledging a proper agreement or agreements in writing for such purpose and filing the same for record in the manner then required for the recording of land instruments, which election shall require the same procedures as amendment of this Declaration.

IN WITNESS WHEREOF, Las Leyendas, LLC, has caused this instrument to be executed this 5th day of January, 2011.

Las Leyendas, LLC, a New Mexico limited liability company

By: 
Ben Spencer, Member
6300 Riverside Plaza, Lane, NW
Suite 200
Albuquerque, New Mexico 87120

STATE OF NEW MEXICO)
) ss
COUNTY OF BERNALILLO)


This instrument was duly acknowledged before me on January 5, 2010, by Ben Spencer, as Member of Las Leyendas, LLC, a New Mexico limited liability company.


Notary Public

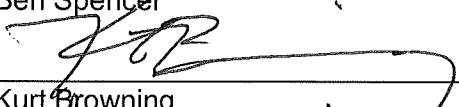
My Commission Expires:
11-18-2013

CONSENT


_____ The undersigned being all of the members of the Architectural Control Committee, hereby consent to this Restated and Amended Declaration of Covenants, Conditions, and Restrictions for Las Leyendas Subdivision this 5th day of January, 2011..



Ben Spencer



Kurt Browning



Steven P. Jackson



Matthew Proehl

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