

**DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS FOR
WILSHIRE ESTATES**

THIS DECLARATION, is made on this 17 day of MAY, 2005, by Fuller Homes of New Mexico (hereinafter for convenience referred to as the "Declarant").

WITNESSETH THAT:

WHEREAS, the Declarant is the owner of the real property described as Wilshire Estates, as shown on the subdivision plat of survey recorded on 2/17/05 in Plat Book ~~2005~~ Page 70, records of Bernalillo County, New Mexico (hereinafter referred to as the "Subdivision").

WHEREAS, the Declarant desires to adopt certain measures to enhance the aesthetic appearance in the Subdivision, to enhance, preserve and maintain the rural environmental quality of the Far Northeast Heights, to preserve and maintain a single-family residential character, to promote harmonious residential design, and to protect and enhance property values within the Subdivision; and

WHEREAS, the Declarant desires and intends that the owners, tenants, mortgagees, occupants and other persons hereinafter acquiring any interest in the Subdivision shall at all times enjoy the benefits of, and shall hold their interests, subject to the rights and restrictions hereinafter set forth, all of which are declared to be in furtherance of a plan for the proper and beneficial use of the property within the Subdivision.

NOW THEREFORE, the Declarant declares, covenants, and agrees as follows:

**ARTICLE I
DECLARATION OF COVENANTS**

The Subdivision, and each Lot therein, shall be held, transferred, sold, occupied, and used solely in accordance with these covenants, which shall run with the land and bind and inure to the benefit of all parties having or acquiring any right, title, or interest in the Subdivision, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivision as a whole and enhancing the noncommercial, residential quality of life within the Subdivision.

**ARTICLE II
DEFINITIONS**

Unless the context otherwise specifies or requires, the following words and phrases when used herein shall have the meanings hereinafter assigned:

1. "Detached Dwelling" shall mean a building and related structures customarily appurtenant thereto, erected and maintained in conformance with the requirements of this Declaration for single family residential purposes. It shall not mean or include any multi-family dwelling, lodging or rooming house, or hotel, none of which shall be permitted on any portion of the Subdivision.



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2. "Lot" shall mean each individually platted lot with the Subdivision, conveyed, sold or otherwise transferred to a Property Owner, but shall exclude any portion of the subdivision designated on the Plat as common area or open space.

3. "Lot Owner" shall mean and refer to the record owner, whether it be one or more persons or entities, of any Dwelling Unit or Lot. The foregoing does not include the Declarant or persons or entities who hold an interest in any of the Subdivision, or any dwelling unit or Lot merely as security for the performance of an obligation, or a lessee or tenant.

4. "Common Areas" shall mean and refer to that portion of the Subdivision designated for the use and benefit of the Lot Owners, and shall include any private commons open space, perimeter walls, gates, sign, monument, landscaping and similar improvements.

5. "Association" shall mean the Wilshire Estates Homeowners Association, to be established pursuant to the provisions of this Declaration.

ARTICLE III PERMITTED USES; RESTRICTIONS

The Subdivision shall be held, used and enjoyed, and subject to the covenants, restrictions and conditions set forth in this Article III.

3.1 General Subdivision Restrictions.

1. All utilities installed within the Subdivision shall be located underground.

2. No unsightly refuse, materials or abandoned, non-running, or unregistered vehicles shall be permitted on any Lot or within the Subdivision. Materials and vehicles stored or garaged in permanent structures are to be excluded from this restriction.

3. The area outside of building sites and roads, trails and utility easements shall be maintained in its natural state to the extent practicable or may be landscaped with native grasses, trees and plants pursuant to the landscaping plan approved by Fuller Homes of New Mexico in conjunction with the development of this property.

4. No activities creating excessive noise, visual disturbance or excessive traffic within the Subdivision shall be permitted. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

5. No off-road vehicles or unmuffled vehicles shall be allowed to operate within the Subdivision.



6. No trash, garbage, refuse, debris, clippings for trees, laws or shrubs may be dumped, thrown or allowed to accumulate on any land within the Subdivision, other than compost material that is enclosed and not offensive to others. Trash, garbage or other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. No cans, bags, containers or receptacles for the storing or disposal of trash, garbage, refuse, rubble, or debris shall be stored, kept, placed or maintained on any Lot where visible from any street except solely on a day designated for removal of garbage and rubbish and on which days only such cans, bags, containers, and receptacles may be placed in front of a residence and beside a street for removal but shall be removed from view before the following day.

7. There shall be no burning of any materials out of doors, except for the burning of natural materials for land clearance or fire control.

3.2 Lot Restrictions.

1. There may be only erected on each Lot a residence consisting of one Detached Dwelling, together with such structures and outbuildings as are customarily appurtenant thereto and approved by the City of Albuquerque including, but not limited to, a private garage, studio, home workshop, or detached solar collectors. A Detached Dwelling may be used only for single family residential purposes.

2. No Lot shall be created, divided, subdivided or partitioned.

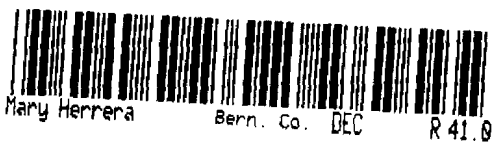
3. All exterior appliances and equipment including, but not limited to, propane tanks, satellite dishes, freestanding solar collectors, and other such appliances or appurtenances to utilities or communications equipment shall be hidden from the view of any other Detached Dwelling.

4. The exterior of any Detached Dwelling or other structure located on a Lot shall be completed within one year from its initial construction. This requirement shall not be construed to discourage phased construction or additions as long as each project is completed within a one year period.

5. The front part of each Lot, along the street, shall be landscaped with native plants, shrubs and trees. Decorative gravel in the front, side or rear yard of a Lot is permissible so long as there is a living plant every fifty (50) square feet. All landscaping located on any Lot shall be properly maintained at all times by the Lot Owner. Each Lot Owner shall keep all shrubs, trees, grass, and plantings of every kind on his or her Lot cultivated, pruned, free of trash, and other unsightly material. All landscaping upon any Lot shall at all times be kept in good condition. The Association, after fourteen (14) days prior written notice, shall have the right at any reasonable time to enter upon any Lot to replace, maintain, and cultivate shrubs, trees, grass, or other plantings as deemed necessary; and to charge the cost thereof to the Lot Owner. If, within such fourteen-(14-) day period the Lot Owner commences such replacement and repair, and thereafter diligently pursues such maintenance and repair, the association shall not have the right to enter upon said Lot and make such replacement or repair.



6. There shall be no business or commercial activity permitted on any Lot, with the exception of home occupations which shall be permitted on the condition that business equipment, materials and inventory be kept under cover of a garage or workshop so that there shall be no external appearance of commercial activities.
7. A Lot Owner shall be prohibited from renting his Detached Dwelling, as regulated by the current City of Albuquerque zoning regulations.
8. Except as specifically permitted by the City of Albuquerque Zoning Code and regulations for R-1 uses, no farm animals, including but not limited to horses, poultry, cows, goats and pigs, are permitted. House pets shall not be allowed to create excessive noise or odor and shall be trained or restrained from interfering with other Lot Owners' quiet and peaceable enjoyment of their respective Lots. Provided however, than no more than four (4) adult animals may be kept on a single Lot, if allowed by current City Zoning. No dangerous dogs such as pit bulls may be raised, bred or kept on any Lot. All such animals shall be kept in strict accordance with all local laws and ordinances (including leash laws). No animal shall be allowed to run at large, and all animals shall be kept within enclosed areas which must be clean, sanitary, and reasonably free of refuse, insects and waste at all times.
9. No temporary or portable structures may be placed on any Lot, except for such structures used in connection with the construction of a dwelling. No such structures may be occupied as a dwelling. All temporary structures utilized during construction must be removed from the Lot within five days after completion of construction.
10. No unshielded outdoor lighting, either attached to any structure or freestanding, shall be permitted on any property, except for yard flood lighting from bulbs having wattage not exceeding 250 watts.
11. No mobile homes, modular homes, homes with shingle or aluminum siding, or pre-manufactured homes shall be permitted on any Lot. Notwithstanding the foregoing, conventional housing, all or a part of which may be constructed off-site, to be assembled on a Lot, which on completion of construction and assembly satisfies the criteria for a Detached Dwelling as defined herein shall be permitted.
12. Each Lot Owner shall be responsible for the maintenance and repair of his or her dwelling, his or her Lot and landscaping. The owner is also responsible for any damage to any private street or other land adjacent to his or her Lot done by the owner or any contractor or subcontractor during the course of construction of a dwelling or improvements on his or her Lot. Each Lot Owner shall maintain the native vegetation and landscaping on his or her Lot in a natural, neat and orderly manner.



**ARTICLE IV
LOT SITE DEVELOPMENT; DESIGN GUIDELINES**

4.1 Area. The square footage area of Detached Dwellings erected on the Lots, exclusive of open porches and/or garages, shall be at least 2,000 square feet.

4.2 Architectural Styles. All structures permitted on the Lots within the Subdivision shall conform to southwestern architectural styles in keeping with architectural styles historically prevalent in the Northern New Mexico region (Spanish, Pueblo, Territorial, Mediterranean or Ranch Architecture). While these characteristics are typical, it is not the intent of this Declaration to prohibit a certain amount of individual expression and creativity as long as the overall look of the structure contains the characteristics of one of the styles. Exterior materials will be materials which harmonize with the natural landscape and will withstand local dramatic changes, and may include stucco, stabilized adobe, stone or wood. Design guidelines, massing, and proportions as well as details of roof pitch, porches, entryways, fenestration, gables, roof end details, etc., shall be derived from traditional Territorial or Pueblo Style and New Mexican dwellings.

The parapets and roofs and exteriors of all structures, including canales, metal vents, gutters, stove pipes, mechanical equipment, solar collectors, and the like, shall be painted with a non-reflective application and shall be earth colored, provided that "white" or other colors may be used under a portal. Generally dark colors should be used near ridges and more exposed sites.

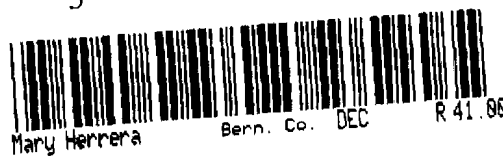
4.2 Rooftop Devices. Unless otherwise required by applicable building codes, no structure or device may be placed upon a rooftop unless the same is essentially concealed from view by a roofline or parapet.

4.3 Height Restrictions. For the purpose of this Section, height of structures means the vertical distance from any point on the upper surface of a building or structure to the natural grade or finished cut grade, whichever is lower, directly below that point.

(1) The maximum height of any building or structure shall not exceed twenty six feet (26') to the tops of the surrounding parapets or roof peak, or shall not exceed the current zoning regulations (whichever is more restrictive).

(2) The vertical depth of fill materials from the grade of the building pad, with or without retaining walls, shall be considered as a component of the building or structure; this depth shall be included in the determination of building height. Chimneys may extend two feet (2') beyond the height limitation.

4.4 Setbacks. All buildings or other structures (except fences), permanent or temporary, habitable or uninhabitable, must be constructed, placed and maintained in conformity with setback lines imposed herein. In no event shall any such building or other structure be constructed, placed or



maintained within twenty feet (20') of the front property line. Each lot shall have a minimum required year yard of fifteen feet (15') and a side yard of five feet (5').

4.5 Mailboxes. Mailboxes shall be erected and maintained upon areas determined by the U.S. Postal Service in accordance with the current postal authority standards.

4.6 Maintenance. No building, object or structure on a Lot shall be permitted to fall into disrepair. Each such building, object or structure shall at all times be kept and maintained by the Lot owner in good condition and repair and adequately painted or otherwise finished. In the event any building, object or structure is damaged or destroyed, then, such building, object or structures where located shall be cleared and restored to a presentable and safe condition.

4.7 Architectural Review. The Board of Directors of the Association shall establish a committee to be known as the Architectural Control Committee (the "ACC"), which shall be established consisting of three (3) members. If the Board of Directors establishes an ACC, the following provisions shall apply:

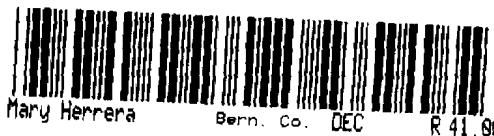
(a) **Members.** The members of the ACC shall be appointed, terminated and/or replaced by Declarant during the period of Declarant Control. Thereafter the members of the ACC shall be appointed, terminated and/or replaced by the Board of Directors.

(b) **Purpose.** The purpose of the ACC is to enforce the architectural standards of the Wilshire Estates Lindo community and to approve or disapprove plans for improvements proposed for the Lots.

(c) **Act by Majority.** The ACC shall act by simple majority vote, and shall have the authority to delegate its duties or to retain the services of a professional engineer, architect, designer, inspector or other person to assist in the performance of its duties.

(d) **No Construction Without Consent.** No building, fence, wall, outbuilding, landscaping, pool, athletic facility or other structure or improvement shall be constructed, placed, erected, altered, added onto or repaired upon any portion of the Property without the prior written consent of the ACC.

(e) **Submission of Plans.** Prior to the initiation of construction upon any Lot, the Owner thereof shall first submit to the ACC a complete set of plans and specifications for the proposed improvements, including site plans, grading plans, landscape plans, floor plans depicting room sizes and layouts, exterior elevations, specifications of materials and exterior colors, and any other information deemed necessary by the ACC for the performance of its function. In addition, the Owner shall submit the identity of the individual or company intended to perform the work and projected commencement and completion dates.



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(f) **Plan Review.** Upon receipt by the ACC of all of the information required by this Article IV, it shall have thirty (30) days in which to review said plans. The proposed improvements will be approved if, in the sole opinion of the ACC: (i) the improvements will be of an architectural style and material that are compatible with the other structures in the Property; (ii) the improvements will not violate any restrictive covenant or encroach upon any easement or cross platted building set back lines; (iii) the improvements will not result in the reduction in property value, use or enjoyment of any of the Property; (iv) the individual or company intended to perform the work is acceptable to the ACC; (v) the improvements will be substantially completed, including all cleanup, within three (3) months of the date of commencement [six (6) months for the construction of a complete house] ; and (vi) all structures or improvements shall be consistent with governmental restrictions and requirements. If the ACC fails to issue its written approval within thirty (30) days of its receipt of the last of the materials or documents required to complete the Owner's submission, such failure by the ACC to issue its written approval shall be deemed approved.

(g) **Non-conforming Structures.** If there shall be a material deviation from the approved plans in the completed improvements, such improvements shall be in violation of this Article IV to the same extent as if erected without prior approval of the ACC. The ACC, the Association or any Owner may maintain an action at law or in equity for the removal or correction of the non-conforming structure and, if successful, shall recover from the Owner in violation all costs, expenses and fees incurred in the prosecution thereof.

(h) **Immunity of ACC Members.** No individual member of the ACC shall have any personal liability to any Owner or any other person for the acts or omissions of the ACC if such acts or omissions were committed in good faith and without malice. The Association shall defend any action brought against the ACC or any member thereof arising from acts or omissions of the ACC committed in good faith and without malice.

(i) **Address for Notice.** If the Board of directors establishes an ACC, it shall cause a notice thereof to be filed in the office of the County Clerk of Bernalillo county, New Mexico, setting forth the names of the members of the ACC and the address for the ACC. Requests for ACC approval or correspondence with the ACC shall be addressed to Equestrian Trails Architectural Control Committee and mailed or delivered in care of the address shown on such notice, or such other address as may be designated from time to time by the ACC. No correspondence or request for approval shall be deemed to have been received until actually received by the ACC in form satisfactory to the ACC.



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**ARTICLE V
PROPERTY RIGHTS**

5.1. Owners' Easements of Enjoyment. Every Lot Owner shall have a right and easement in and to the Common Areas and a right and easement of ingress and egress to, from and through said Common Areas, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) **Rules and Regulations.** The right of the Association to establish and publish rules and regulations governing the use of the Common Areas affecting the welfare of Association members.

(b) **Affect of Delinquency.** The right of the Association to suspend the right of use of the Common Areas and the voting rights of an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

5.2. Effect of Declaration. Reference in any deed, mortgage, trust deed or any other recorded documents to the easements, restrictions and covenants herein described or to this Declaration shall be sufficient to create and reserve such easements and covenants to the respective grantees, mortgagees, or trustees of said parcels as fully and completely as if those easements, restrictions and covenants were fully related and set forth in their entirety in said documents.

5.3. Lot Consolidation. Any Owner owning two or more adjoining Lots may consolidate such Lots or portions thereof into a single building site for the purpose of constructing one Detached Dwelling and such other improvements as are permitted herein. The Lot resulting from such a consolidation shall bear, and the Owner thereof shall be responsible for, all assessments theretofore applicable to the Lots which are consolidated and each such building site shall meet all lawful requirements of any applicable statute, ordinance or regulation.

5.4. Drainage Alteration Prohibited. The surface water drainage contours of each Lot shall conform to the approved grading plan established by Declarant. No Lot Owner shall fill or alter any drainage swale established by Declarant, nor shall any Owner install landscaping or other improvements that divert surface water runoff from the drainage patterns, swales and easements established by Declarant.

**ARTICLE VI
EASEMENTS**

6.1. Utility Easements. During the period of Declarant Control, Declarant hereby reserves the right to grant perpetual, nonexclusive easements for the benefit of Declarant or its designees, upon, across, over, through and under any portion of the Common Area for ingress, egress, installation, replacement, repair, maintenance, use and operation of all utility and service lines and service systems,



public and private, including, without limitation, cable television, telephone, gas and electric systems. Declarant, for itself and its designees, reserves the right to retain title to any and all pipes, lines, cables or other improvements installed on or in such easements.

6.2. Declarant's Easement to Correct Drainage. During the period of Declarant Control, Declarant hereby reserves for the benefit of Declarant or its designees a blanket easement on, over and under the ground within the Subdivision to maintain and correct drainage of surface waters and other erosion controls in order to maintain reasonable standards of health, safety and appearance and shall be entitled to remove trees or vegetation, without liability for replacement or damages, as may be necessary to provide adequate drainage facilities. Notwithstanding the foregoing, nothing herein shall be interpreted to impose any duty upon Declarant to correct or maintain any drainage facilities within the Subdivision.

6.3. Entry Easement. If any Lot Owner fails to maintain his or her Lot as required herein, or in the event of emergency, the Association shall have the right to enter upon the Lot to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the Subdivision. Entry upon the Lot as provided herein shall not be deemed a trespass, and the Association shall not be liable for any damage so created unless such damage is caused by the Association's willful misconduct or gross negligence.

6.4. Drainage Easements. Easements for installation and maintenance of utilities, stormwater retention/detention ponds, and/or a conservation area are reserved as may be shown on the recorded Plat. Within these easement areas, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may hinder or change the direction of flow of drainage channels or slopes in the easements. The easement area of each Lot and all improvements contained therein shall be maintained continuously by the Lot Owner, except for those improvements for which a public authority, utility company or the Association is responsible.

6.5. Temporary Construction Easement. All Lots shall be subject to an easement of ingress and egress for the benefit of Declarant, any builder, or their employees, subcontractors, successors and assigns, over and upon the front, side and rear yards of the Lots as may be expedient or necessary for the construction, servicing and completion of dwellings and landscaping upon Lots adjacent to the Property, provided that such easement shall terminate twelve (12) months after the date that the Lot or Lots adjacent to a Lot are improved with a dwelling.

6.6. Legal Effect. All easements herein described are easements appurtenant to and running with the land; they shall at all times inure to the benefit of and be binding upon the undersigned, all of their grantees, and their respective heirs, successors, personal representatives and assigns, perpetually and in full force.

ARTICLE VII
MEMBERSHIP IN HOMEOWNERS ASSOCIATION

7.1. Membership.

(1) Every owner of any Lot within the Subdivision shall be a Member of the Wilshrie Estates Homeowners Association (the "Association"), a New Mexico non-profit corporation. Membership shall be appurtenant to and may not be separated from ownership of any Lot or tract within the Subdivision.

(2) The rights, duties, obligations and privileges of an owner of a Lot within the Subdivision, as a member in the Association, shall be those set forth in, and shall be exercised and imposed, in accordance with the provisions of this Declaration, and the Articles of Incorporation and By-Laws of the Association.

7.2. Voting Rights. Every member shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

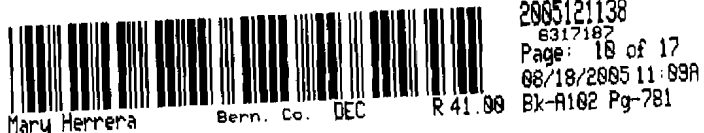
7.3. Declarant Control. Notwithstanding anything to the contrary in this Declaration or the Articles of Incorporation or By-Laws of the Association, Declarant may, in its sole discretion designate, remove and replace the members of the Board of Directors of the Association, and alone take any action required to be taken by the Lot Owners until the first day of the first month after Declarant conveys the last Lot, or thirty (30) days after written notice by Declarant of its voluntary relinquishment of Declarant's rights established by this Section 7.3 ("Declarant Control"). Declarant may assign Declarant's Control rights established hereunder to any person who acquires any Lot, upon such terms as Declarant may determine. From and after any such assignment, and during the terms thereof, such assignee may exercise Declarant's control rights in the same manner as Declarant, subject only to any limitation thereon set forth in the assignment.

ARTICLE VIII

ORGANIZATION, POWERS AND DUTIES OF HOMEOWNER'S ASSOCIATION

8.1. Organization. The Association shall be organized as a non-profit corporation, charged with the duties and empowered with the rights set forth herein.

8.2. Governance. The Association's affairs shall be governed by this Declaration, and the Articles of Incorporation and By-Laws of the Association.



8.3. 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 and shall have the power and authority to do any and all things which are authorized, required or permitted under and by virtue of this Declaration and to do and perform any and all acts with may be necessary or proper for or incidental to the exercise of any powers of the Association for the peace, health, comfort, safety and general welfare of the owners of Lots and tracts within the Subdivision. Specifically, the Association shall have the authority to adopt and amend reasonable restrictions relating to the use of the Open Space by Lot Owners, neighbors in the area and the general public. The Association shall act through its officers, directors and agents.

8.4. Maintenance Duties.

The Association is specifically charged with the duty of maintaining all common areas, private common open space tracts, trails, private and common drainage improvements, including individual ponds and check dams within the Subdivision. The landscaping within the common areas shall be maintained to the same high standards required of the individual lot owners. The Association shall assess Lot Owners for the cost of maintaining improvements as set forth in this document.

**ARTICLE IX
FUNDS, ASSESSMENTS AND COLLECTIONS**

9.1. Creation of the Lien and Personal Obligation of Assessments.

The Declarant for the property within the Subdivision, hereby covenant; and each Owner of any Lot within the Subdivision, by acceptance of a deed, and each real estate contract purchaser by execution of such real estate contract, is deemed to covenant and agree to pay to the Association:

- (1) Annual maintenance assessments or charges, delinquency assessments;
- (2) Special assessments for capital improvements and legal fees, such assessments to be established and collected as hereinafter provided;
- (3) Special Assessments for any necessary maintenance and repairs to the Stable Facility; and
- (4) All other fees or other monies due to the Association from an owner.

The annual, special and delinquency assessments, together with interest, costs and reasonable attorneys fees shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person or entitle who was the owner of such property at the time when the assessment



fell due. The personal obligation for delinquent assessments shall not pass to successors or assigns in title unless expressly assumed by them.

Except as expressly provided for herein, neither Declarant nor its lessee or licensee shall be liable for any assessments with respect to the Open Space tracts.

9.2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the privacy, safety, and welfare of the residents of the Subdivision and the owners of Lots and tracts within the Subdivision and to maintain private common open space tracts, roadways, easements, trails, private and common drainage improvements within the Subdivision.

9.3. Maximum Annual Assessment. The annual assessment shall be determined by the Board of Directors of the Association. The Board of Directors may elect to have the annual assessment paid in annual, semi-annual, quarterly or monthly installments.

9.4. Notice and Quorum for any Action. Written notice of any meeting of members of the Association which is required for the purpose of taking any action under shall be sent to all members, not less than 15 days or more than 30 days in advance of such meeting in the manner provided by the By-Laws of the Association. At the first meeting called, the presence of members or of proxies entitled to cast 50% of all votes shall constitute a quorum. If the required quorum is not present, and another meeting may be called subject to the same notice requirement, and the required quorum at the subject meeting shall be 50% of all votes of the members of the Association. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

9.5. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the filing of the Articles of Incorporation of the Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors of the Association shall fix the amount of the annual assessment against each Lot, at least 30 days in advance of the annual assessment. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors of the Association. The Associations shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specific Lot have been paid.

9.6. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within 30 days after the due date shall bear interest from the due

date at the rate of ten percent (10%) per annum. The Board of Directors of the Association may do any or all of the following:

- (1) File a lien for any unpaid assessment by recording an affidavit of such fact in the office of the County Clerk of Bernalillo County, New Mexico;
- (2) Bring an action at law against the Owner personally obligated to pay the same; or
- (3) Foreclose the lien against the property.

In the event any of the foregoing actions are taken by the Association, the Owner shall be obligated to pay to the Association reasonable attorneys fees and necessary costs incurred by the Association in enforcing its rights and taking such action. No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his Lot.

9.7. Subordination of the Lien to Mortgages. The lien of the assessments provided herein shall be subordinate to the lien of any first mortgage granted by an Owner of a Lot. Sale or transfer of any Lot shall not effect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of a first mortgage, or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which become due prior to such sale or transfer. No such sale or transfer or foreclosure of first mortgage or proceeding in lieu thereof shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

9.8. Right of Access. The Association or its agents may enter upon any Lot when necessary and in connection with any maintenance or construction for which the Association is responsible. Such entry shall be made with as little inconvenience to the owners as practicable, and any damage caused thereby shall be repaired by the Association out of the common expense fund.

**ARTICLE X.
LIMITATION OF RESTRICTIONS ON DECLARANT**

10.1 Limitation of Subdivision Restrictions on Declarant. Declarant is undertaking the work of constructing the Subdivision. The completion of that work and the sale, rental and other disposition of the Lots is essential to the establishment of the Subdivision. In order that said work may be completed and said property be established and fully occupied as rapidly as possible, nothing in this Declaration shall be understood or construed to:

(1) Prevent Declarant or its agents, employees, and contractors from doing on the properties whatever is reasonable necessary or advisable in connection with the completion of the work; or

(2) Prevent Declarant or its agents, employees, and contractors from erecting, constructing and maintaining on any part or parts of the Subdivision, such structures as may be reasonably necessary for the conduct of its business or completing the work and establishing the Subdivision, including, without limitation, sales offices, model units, general business offices for its staff, employees and contractor, and storage and parking facilities for materials and equipment, and disposing of the Subdivision in parcels by sale, lease or otherwise; or

(3) Prevent Declarant from conducting on any part of the properties its business of completing the work, and of establishing and disposing of the Subdivision; or

(4) Prevent Declarant from maintaining such sign or signs on the Subdivision as may be necessary for its sale, lease, or disposition, or the sale, lease or disposition of any Lot.

10.2 Use of Subdivision Name. Declarant may use the name of the Subdivision and the Subdivision Restrictions in other subdivisions or projects, whether located adjacent to the Subdivision or not, provided such names have a distinctive number or other designation so that they are not identical with the names of the Subdivision and Association. Consent is hereby given to Declarant or Declarant's assigns to use such names of a corporation and upon request of Declarant, the Association agrees to execute a written consent authorizing Declarant to use the same or similar name which consent will be filed with the State Public Regulatory Commission.

10.3 No Amendment or Repeal. The provision of this Article may not be amended or repealed without the consent of Declarant.

**ARTICLE XI.
GENERAL PROVISIONS**

11.1 Enforcement. Any Lot Owner shall have the right to enforce, by any proceeding, at law or in equity, all restrictions, covenants and reservations now or hereafter imposed by the provisions of this Declaration. Delay or failure by any Lot Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Any Lot Owner or any party purchasing any part of the real estate may proceed at law or in equity to prevent the violation of any of the restrictions hereinabove set forth. No Lot Owner shall be liable for damages of any kind to any party for



failing to enforce any of the restrictions. Any Lot Owner suing to enforce this Declaration shall be entitled to reasonable attorney's fees and costs if he or she prevails in such litigation.

11.2 Amendment. Written consent is required of sixty six percent (66%) of the Lot Owners of the real estate in order to revoke or amend the restrictions, covenants and conditions contained herein. The provisions of Section 3.3 may not be modified or amended while Declarant or its lessee or license retains its rights under Section 3.2, without Declarant's prior written consent. Any modification or amendment hereof shall be reduced to writing, signed by the Lot Owners and their successors or assigns, acknowledged, and recorded in the office of the Clerk of Bernalillo County, New Mexico. Amendments shall be subject to prior approval by FHA or VA, as applicable, if any Lot within the Property is encumbered by a FHA or VA mortgage loan.

11.3 Severability. In the event that any one or more of the restrictions, covenants and conditions contained herein shall be void by a court of competent jurisdiction, all remaining restrictions, covenants and conditions contained herein shall remain in full force and effect.

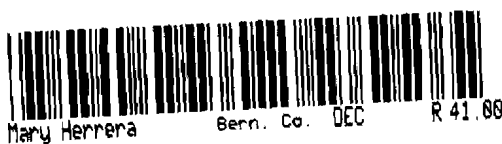
11.4 Binding Effect. Any Grantee of a deed or contract purchaser acquiring an interest in any tract of the real estate shall, upon the acceptance of such deed, or execution of such contract, become bound by the restrictions, covenants and conditions contained herein, and he, his heirs, personal representatives, successors and assigns shall keep, observe and comply with the restrictions contained herein.

11.5 Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the land until _____, 20_____, after which time they shall be automatically extended for successive periods of ten (10) years, except that this Declaration may be terminated or amended by an instrument signed by not less than a majority of the Lot Owner. Any such amendment must be recorded in the same manner as this Declaration.

11.6 Variances. The Association, in its sole reasonable discretion, may grant a reasonable variance or adjustment of these covenants, conditions and restrictions in order to overcome practical difficulties and prevent unnecessary hardships arising by reason of the application of the restrictions contained herein. Such variance or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the Subdivision or improvements of the neighborhood and shall not defeat the general intent and purpose of those restrictions.

11.7. Miscellaneous Provisions. Any provision of the within Declaration or of the Articles of Incorporation and Bylaws to the contrary notwithstanding, the following provisions shall control:

(1) If any prospective Owner applies for FHA or VA mortgage financing and receives a commitment therefor, the following actions will require approval of the Federal Housing Administration and the Veterans Administration as applicable: (1) mortgaging or dedication of Common Areas, (2)



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amendment of this Declaration or the Articles of Incorporation or Bylaws of the Association, and (3) dissolution of the Association.

(2) The following actions will require notice to all institutional holders of first mortgage liens: (1) abandonment or termination of the Association; or (2) material amendment to the Declaration.

(3) Upon the request of any first mortgagee of a dwelling on a Lot, the Association shall furnish to such mortgagee a written notice of any default by the Owner of such dwelling in the performance of such Owner's obligations under the within Declaration or the Bylaws or Association rules or regulations which is not cured within thirty (30) days. Any first mortgagee of a dwelling who comes into possession of the said dwelling pursuant to the remedies provided in the mortgage, a foreclosure of the mortgage, or deed (or assignment) in lieu of foreclosure, shall take such property free of any claims for unpaid assessments or charges in favor of the Association against the mortgaged dwelling which accrued prior to the time such holder comes into possession of the dwelling.

(4) Unless at least sixty seven percent (67%) of the first mortgagees (based upon one vote for each mortgage) have given their prior written approval, neither the Association nor the Owners shall be entitled to:

(A) by act or omission seek to abandon, partition, encumber, or transfer the Common Areas, if any, or any portion thereof or interest therein;

(The granting of easements for public utilities or other public purposes consistent with the intended use of such property shall not be deemed a transfer within the meaning of this clause.)

(B) substantially change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner by the Association;

(C) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance of the dwellings or maintenance of the dwellings or Lots;

(D) fail to maintain liability and extended coverage insurance on insurable property comprising a part of the Common Areas on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement costs).

(E) Any improvements made to a Lot or Common Area by Declarant, any Builder or the Association, and any other action with respect to the Property, shall be in compliance with the Site Plan, the Plat and governmental ordinances and regulations.



Mary Herrera

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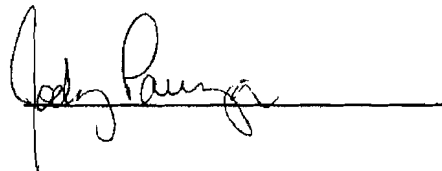
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(F) All personal pronouns used in this Declaration, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa.

11.8. Headings. The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration.

11.9 Conflicts. In the event of conflict between the terms of this Declaration and any Bylaws, rules, regulations or Articles of Incorporation of the Association, this Declaration shall control.

IN WITNESS WHEREOF, the undersigned Lot Owner has hereunto set its hand this 17 day of MAY, 2005.



ACKNOWLEDGMENT

STATE OF NEW MEXICO)
)
COUNTY OF Bernalillo) ss.

The foregoing instrument was acknowledged before me this 17th day of May, ²⁰⁰⁵ 2004, by Jody Pauza.

My Commission Expires:

Maureen A. Gibson
Notary Public

10-01-06



OFFICIAL SEAL
MARIANNE A. KETCHEM
NOTARY PUBLIC-STATE OF NEW MEXICO

My commission expires: 10-01-06

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