

AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
KACHINA HILLS SUBDIVISION

1151259

This Amended and Restated Declaration of Covenants, Conditions and Restrictions ("Declaration") is made this 30th day of MARCH, 1995, by Kachina Hills Partners, a New Mexico general partnership (the "Declarant").

WHEREAS, Declarant is the owner of certain real property situated in the City of Santa Fe, Santa Fe County, New Mexico, known as Kachina Hills Subdivision (the "Subdivision"), as more particularly described and shown on that plat entitled "Amended Survey Plat Prepared For Kachina Hills Subdivision . . .," by Gary E. Dawson, N.M.P.L.S. #7014, filed in the real property records of Santa Fe County, New Mexico, on January 27, 1995, as Document No. 892,930, and recorded in Plat Book 295, at page 035 (the "Plat"); and

WHEREAS, Declarant intends to develop the Subdivision as a residential neighborhood comprised of twenty-five (25) lots, each suitable for the construction of a residential unit and appurtenances, and desires to provide for the preservation and maintenance of the character, quality, appearance and value of the Subdivision and the residential units, and to this end desires to subject the real property comprising the Subdivision to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of Declarant, the Subdivision and the future owners of lots in the Subdivision;

WHEREAS, Declarant previously executed that certain Declaration of Covenants, Conditions and Restrictions for Kachina Hills Subdivision, which was recorded on June 3, 1994 in the real property records of Santa Fe County, New Mexico, in Miscellaneous Book 1063, pages 106-134 (the "Prior Declaration");

WHEREAS, Declarant desires to wholly amend and replace the Prior Declaration, in its entirety.

NOW, THEREFORE, Declarant wholly amends and replaces the Prior Declaration with this Declaration and declares that the real property comprising the Subdivision is and shall be purchased, owned, transferred, sold, conveyed, encumbered, used, occupied, and improved subject to the covenants, conditions, restrictions, easements, charges, and liens hereinafter set forth, and all other terms and conditions of this Declaration. All of the covenants, conditions, restrictions, easements, charges, and liens hereinafter set forth, and all other terms and conditions of this Declaration, are equitable servitudes, which shall run with the title to the real property comprising the Subdivision, and any portion thereof, and shall be binding upon and inure to the benefit of all parties having or acquiring any right, title, or interest in or to the Subdivision or any portion thereof, whether or not mentioned or embodied in any future instruments of conveyance.

**ARTICLE 1
DEFINITIONS**

- 1.1 **AB** shall mean the Architectural Board established pursuant to Article 6 of this Declaration.
- 1.2 **Association** shall mean the Kachina Hills Owners Association, Inc. a New Mexico nonprofit corporation, its successor and assigns.
- 1.3 **Board** shall mean the Board of Directors of the Association.
- 1.4 **Common Areas** shall mean Tracts A, B and E as shown on the Plat, which are and shall be "Tract Common Areas," as such term is defined in the Master Declaration.
- 1.5 **Common Expense** shall mean any expenditure made or to be made, or financial liability incurred or to be incurred, by the Association, together with any allocations for reserves, for or in connection with the exercise of the Association's powers and duties established herein or in the Governing Documents.
- 1.6 **Common Property** shall mean that landscaping and those signs, lighting devices, utility boxes, pipes, wires, conduits, and other fixtures and property now or hereafter constructed upon or within the Subdivision by Declarant for the common benefit of the Subdivision and the Owners.
- 1.7 **Declarant** shall mean Kachina Hills Partners, a New Mexico general partnership, and its successors or assigns.
- 1.8 **Declarant Control** shall mean that period of time during which members of the Board appointed by the Declarant, pursuant to Section 4.7 of this Declaration, constitute at least a majority of the members of the Board.
- 1.9 **Development Plan** shall mean the Final Development Plan (Sheet 3) submitted by Declarant to the City of Santa Fe in connection with the approval of the Subdivision.
- 1.10 **Drainage Plan** shall mean the Drainage Plan (Sheet 7) submitted by Declarant to the City of Santa Fe in connection with the approval of the Subdivision.
- 1.1A **EPCSA** shall mean and refer to the Estancia Primera Community Services Association, a New Mexico non-profit corporation.
- 1.11 **Erosion And Drainage Control Devices** shall mean the storm water retention ponds, check dams and drainage control structures located within the Stormwater Ponding Areas, check dams and drainage control structures located on Tract A and

- within the drainage easement on Lot 8 (which serve to stabilize the water released from the retention ponds), bank control rip-rap, check dams and drainage control structures located within the drainage easement on Lots 2, 3 and 7, and wire enclosed rock rip-rap on lots 12 and 13, all as shown on the Plat and Drainage Plan.
- 1.12 **Governing Documents** shall mean the Association's Articles of Incorporation and Bylaws, as amended from time to time.
- 1.13 **Hiking Trail** shall mean that trail to be located within Tracts A, B, and C, as shown on the Plat, the location of which trail shall be determined by the Declarant within one year of the filing of the Plat.
- 1.14 **Kachina Hills - Special Maintenance District** shall mean that special maintenance and assessment district established upon the petition of Declarant by the Santa Fe City Council by Ordinance Number 1994-29.
- 1.15 **Lot** shall mean any and all of the twenty-five (25) numbered parcels of land originally designated upon the Plat, as the same may hereafter be amended from time to time.
- 1.1B **Master Declaration** shall mean that certain Declaration of Covenants and Restrictions for Estancia Primera Community Services Association, recorded in Book 433, pages 614-660 of the miscellaneous real property records of Santa Fe County, New Mexico, as amended on August 13, 1994, which amendment was recorded in Book 1119, pages 852-853 of the miscellaneous real property records of Santa Fe County, New Mexico, and as hereafter amended from time to time.
- 1.16 **Owner** shall mean the holder of fee simple title to a Lot, or the holder of equitable title to a Lot by virtue of a real estate contract, but shall exclude those having an interest in a Lot merely as security for the performance of an obligation.
- 1.17 **Plat** shall mean that plat entitled "Amended Survey Plat Prepared For Kachina Hills Subdivision . . . ," by Gary E. Dawson, N.M.P.L.S. #7014, filed in the real property records of Santa Fe County, New Mexico, on January 27, 1995, as Document No. 892,930, and recorded in Plat Book 295, at page 035.
- 1.18 **Roads** shall mean that portion of the Subdivision designated on the Plat as 38' wide access easements named "Calle Kokopelli" and "Kachina Court."
- 1.19 **Semi-Public Open Space** shall mean Tract E as shown on the Plat.

- 1.1C **Settlement Agreement** shall mean that certain Settlement Agreement between Declarant and EPCSA filed for record in the miscellaneous real property records of Santa Fe County, New Mexico, on 3/31, 1995, at Book 1151, Pages 246-258.
- 1.20 **Stormwater Ponding Areas** shall mean Tracts C and D as shown on the Plat.
- 1.21 **Subdivision** shall mean all of the real property constituting the Kachina Hills Subdivision as the same is described and shown on the Plat.
- 1.22 **Walking/Jogging Trail** shall mean that trail to be located in the Semi-Public Open Space, the location of which trail shall be determined by the Declarant within one year of the filing of the Plat.
- 1.23 **Working Capital Fund** shall mean the fund established pursuant to Section 5.6 hereof.

ARTICLE 2 AFFIRMATION

2.1 **Terms and Conditions of Ordinance Binding Upon Subdivision.** Declarant affirms and declares that all of the terms, conditions, and restrictions contained in that certain "Conditions of Ordinance 1981-3 Estancia Primera PRC," filed for record in the office of the County Clerk, Santa Fe County, New Mexico, on April 28, 1981, at Book 419, Pages 679-685, as the same may be amended from time to time, shall apply to the Subdivision and all Lots.

2.2 **Terms and Conditions of Master Declaration Binding Upon Subdivision.** Declarant (i) consents to, ratifies and confirms the (a) August 13, 1994 vote of in excess of seventy-five percent (75%) of a quorum of the owners of EPCSA to annex the Subdivision to the Master Declaration, and (b) the resulting recordation by EPCSA of that certain Supplementary Declaration of Covenants and Restrictions, in Book 1089, pages 215-263 of the miscellaneous real property records of Santa Fe County, New Mexico, (ii) affirms that the Subdivision is, and all Lots are, bound by, subject to, and benefitted by the terms and provisions of the Master Declaration, as provided for in the Settlement Agreement, and (iii) rescinds and revokes any recorded statements or filings by Declarant to the contrary, including that certain Notice of Non-Applicability of Declaration recorded in Book 1079, pages 140-141 of the miscellaneous real property records of Santa Fe County, New Mexico.

ARTICLE 3 SUBJECT PROPERTY

3.1 **Property Subject to This Declaration.** The real property which is and shall be subject to this Declaration is all that real

property constituting the Subdivision as the same is described and shown on the Plat.

3.2 Title to Common Areas and Common Property. Declarant hereby grants and conveys the Common Areas and the Common Property to the Association, without representation or warranty of any kind, express or implied. Except as otherwise noted on the Plat or in this Declaration, the Common Areas and the Common Property are for the common use and benefit of the Owners and shall not be deemed to have been dedicated to the general public or local or state government in the absence of an express, written dedication. The Common Areas and Common Property are subject to all matters of record, including those set forth in this Declaration, the Master Declaration, or upon the Plat.

3.3 Semi-Public Open Space. Notwithstanding the provisions of Section 3.2 to the contrary, the Semi-Public Open Space is for the use of Owners and the general public, subject, however, to rules and regulations regarding the use thereof which shall be adopted from time to time by the Board. Maintenance of the Semi-Public Open Space shall be the responsibility of the Association. The Association shall also be responsible for the maintenance and regulation of any areas immediately adjoining the Semi-Public Open Space which are dedicated by adjoining land owners to the Association as semi-public open space.

3.4 Trails. Again notwithstanding the provisions of Section 3.2 to the contrary, the Walking/Jogging Trail and the Hiking Trail are for pedestrian use by Owners and the general public, subject to rules and regulations regarding the use thereof which shall be adopted from time to time by the Board. Maintenance of these trails shall be the responsibility of the Association.

3.5 Roads. As indicated on the Plat, the Roads have been dedicated by the Declarant for use by the general public. The Roads are to be maintained, however, by the Owners, through the Association, unless and until such time as the Governing Body of the City of Santa Fe shall, by resolution, accept a dedication of the Roads for maintenance purposes. Upon the completion of the construction of the Roads the Declarant intends to request acceptance of the Roads by the City of Santa Fe for maintenance purposes. If and when the Roads are so accepted by the Governing Body of the City of Santa Fe for maintenance purposes, then the Roads shall be deemed to be thereupon dedicated and conveyed, without consideration, to the City of Santa Fe, and the fee title to the Roads shall thereupon automatically vest in the City of Santa Fe, with the Roads to thereafter be not only for public use, but also for public maintenance.

3.6 Stormwater Ponding Areas and Guidelines for Maintenance. The Stormwater Ponding Areas have been dedicated to the City of Santa Fe by the filing of the Plat. As indicated on the Plat, the Stormwater Ponding Areas may be used, however, by the Association and Owners for any purpose which does not conflict with the primary

purpose of detaining stormwater runoff (i.e. trails). As also indicated on the Plat, the City of Santa Fe has the responsibility to maintain and repair certain of the Erosion And Drainage Control Devices. The Kachina Hills-Special Maintenance District was established to provide for assessments by the City of Santa Fe against all Lots for actual costs incurred by the City of Santa Fe in inspecting, maintaining and repairing the storm water retention ponds and drainage control structures located within Tracts C & D, and for those structures located on Tract A and within the drainage easement on Lot 8 (which serve to stabilize the water released from the retention ponds), all as shown on the Plat, Development Plan and Drainage Plan.

In order to reduce the amount of the assessments by the City of Santa Fe, Declarant believes that it is in the best interest of Owners for the Association to directly maintain and repair these drainage ponds and structures, so that the assessments from the City of Santa Fe shall be minimal in nature, reflecting only the actual costs incurred by the City of Santa Fe for the periodic inspection of the drainage ponds and structures, and not reflecting any costs for maintenance and repair, unless the Association does not adequately maintain and repair the drainage ponds and structures. As set forth on the Plat, the right was reserved for the Association to maintain and repair the Erosion And Drainage Control Devices located within the Stormwater Ponding Areas. Pursuant to Section 4.4(g), the Association has the duty to maintain and repair the Erosion And Drainage Control Devices.

The purpose of the following guidelines is to set forth certain procedures approved by the City of Santa Fe for the maintenance of the two drainage ponds in the Stormwater Ponding Areas.

Upon completion of the drainage retention improvements, bench marks shall be established for the two retention ponds. These benchmarks shall indicate clearly the sediment levels necessary to obtain 140% and 160% of the water retention capacities required by the design guidelines set forth in the Master Drainage Contract Drainage Facilities Inspection and Maintenance Agreement at Estancia Primera, as recorded on pages 507-515 of Book 620 of the Santa Fe County Records. (This reference to the Master Drainage Contract is only for purposes of calculating approved water retention capacities and shall not subject, or be construed to subject, the Subdivision to the requirements of the Master Drainage Contract.)

The Association shall maintain at least a 140% water retention capacity for each pond at all times. At such time as the sediment level in a pond reaches the 140% limit, the sediment shall be removed to re-establish a 160% water retention capacity. Sediment so removed shall be disposed of in a manner consistent with the terrain management guidelines of the City of Santa Fe.

Whenever maintenance and repair work is performed on the drainage structures, every effort shall be made to preserve and protect established vegetation and plantings. At any time sediment is removed, the terrain will be raked clean and re-seeded according to the seeding mixes specified in the landscaping plan. Any trees or major plantings which are damaged shall be tended and any destroyed plantings shall be replaced.

The City of Santa Fe shall be entitled to inspect the ponding areas and the bench marks at any time, and to remove sediment to the 160% capacity at any time the capacity is found to be less than 140% of the required volume. The City of Santa Fe is not required to provide notice to the Association of the City's action if the 140% capacity volume is not maintained.

ARTICLE 4 ASSOCIATION

4.1 Organization of Association. The Association is a corporation duly organized and existing under the Nonprofit Corporation Act of the State of New Mexico, and is charged with the duties and is vested with the powers set forth in its Governing Documents and this Declaration.

4.2 Jurisdiction. The Association shall be the Owners' association for the Subdivision. The Association shall have jurisdiction over the Subdivision and each Owner.

4.3 Powers. The Association, again by and through such directors, officers, agents, contractors, or employees as it may designate or as may be designated in its Governing Documents, shall have all of the powers of a nonprofit corporation organized under the laws of the State of New Mexico, including but not limited to the power to do any and all acts which are authorized, required, or permitted under its Governing Documents or this Declaration and any and all acts which may be reasonable and necessary for, or incidental to, the exercise of any of its powers or duties, including but not limited to the following powers:

A. Hire, supervise and discharge such agents, employees, and independent contractors as the Board may from time to time determine to be in the best interest of the Association;

B. Make such contracts and incur such liabilities as the Board may from time to time determine to be in the best interest of the Association;

C. Grant such easements, leases, licenses, and concessions through or over the Common Areas as the Board may from time to time determine to be in the best interest of the Association;

D. Impose such charges for late payment of assessments and, after notice and an opportunity to be heard, levy such reasonable fines for violations of this Declaration, the Governing Documents, or rules and regulations of the Association, as the Board may from time to time determine to be in the best interest of the Association;

E. Impose such reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid assessments as the Board may from time to time determine to be in the best interest of the Association;

F. Contract for and maintain such policy or policies of insurance as the Board may from time to time determine to be in the best interest of the Association, including liability and property damage insurance for the Common Areas, Common Property, Stormwater Ponding Areas, Erosion And Drainage Control Devices, Walking/Jogging Trail and Hiking Trail, and such insurance as may be necessary to protect the Association and Owners from the failure of the Erosion And Drainage Control Devices;

G. Commence, intervene in, and maintain such legal or administrative actions or proceedings as the Board may from time to time determine to be in the best interest of the Association, and do so in the name of the Association and on its own behalf or on behalf of any Owner who consents thereto;

H. Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate; and

Notwithstanding the foregoing, the Association shall not be entitled to:

(a) by act or omission, dissolve or terminate the Association;

(b) change the pro-rata interest or obligations of any Lot for the purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards;

(c) partition or subdivide any Lot;

(d) by act or omission, abandon, partition, subdivide, encumber, sell, or transfer the Common Areas or Common Property, provided that the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas shall not be deemed an encumbrance or transfer within the meaning of this clause; or

(e) use hazard insurance proceeds for losses to the Common Property for other than the repair, replacement, or reconstruction of the Common Property;

unless the same is consented to by eighty-five percent (85%) of the Owners.

4.4 Duties. The Association, again by and through such directors, officers, agents, contractors, or employees as it may designate or as may be designated in its Governing Documents, shall:

A. Adopt and amend annual budgets of revenues and expenditures, including reserves; establish and collect the assessment of each Owner for any Common Expense; and, establish and maintain the Working Capital Fund;

B. Defend actions or administrative proceedings brought against the Association;

C. Regulate the use, maintenance, repair, replacement, and modification of the Common Areas, Stormwater Ponding Areas, Erosion And Drainage Control Devices, Common Property, Walking/Jogging Trail and Hiking Trail, and in connection therewith, adopt, publish and amend rules and regulations, including those governing the use of the Semi-Public Open Space and the Walking/Jogging Trail and the Hiking Trail, as required under the Declaration;

D. Inspect, maintain and repair the Common Areas, Stormwater Ponding Areas, Erosion And Drainage Control Devices (according to the provisions of Article 3.6 of this Declaration), Common Property, Walking/Jogging Trail and Hiking Trail;

E. Pay taxes, including real estate taxes, on the Common Areas and Common Property;

F. Notify the holder of any mortgage affecting a Lot of any violation of the Declaration, the Governing Documents, rules, or regulations of the Association by an Owner of the Lot subject to the mortgage, if such violation remains unremedied for a period exceeding thirty (30) days, provided the mortgagee has notified the Association that it is the holder of the mortgage affecting the Lot;

G. Enforce the covenants, restrictions, easements, charges, and liens, and all other terms and conditions of, the Declaration;

H. Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by one-fourth ($\frac{1}{4}$) of the members who are entitled to vote;

I. Issue, or cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made

by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

J. Suspend the voting rights and right to use of the Common Area of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period to be set by the Board for infraction of published rules and regulations; and,

K. Declare the office of a member of the Board of Directors to be vacant if such member shall be absent from three (3) consecutive regular meetings of the Board of Directors;

4.5 Membership. Each Owner automatically shall be a member of the Association, and the membership of the Association shall consist exclusively of Owners.

4.6 Voting. With respect to each matter submitted to the membership, there shall be one vote allocated to each Lot. The Owner of each Lot shall be entitled to exercise the vote allocated to his or her Lot. In the event of multiple ownership of a Lot, the vote of such Lot shall be cast by the person designated in a certificate executed by all the Owners of such Lot and filed with the Secretary. If no such certificate has been filed or the person designated is absent from the meeting, and only one of the multiple Owners of such Lot is present, he or she shall be entitled to cast the vote allocated to that Lot. If no such certificate has been filed or the person designated is absent from the meeting, and more than one of the multiple Owners are present, the votes allocated to that Lot may be cast only in accordance with an agreement of a majority of such multiple Owners then present. In the absence of such a majority, the votes allocated to that Lot shall not be cast.

4.7 Board of Directors. The Board shall consist initially of three (3) members. No later than sixty (60) days after fifty percent (50%) of the Lots are conveyed to Owners other than the Declarant, the number of Directors shall be increased to five (5).

At the first and each subsequent annual meeting of the Association, until such time as fifty percent (50%) of the Lots are conveyed to Owners other than the Declarant, Directors shall be appointed by Declarant, and need not be Owners. The two (2) additional Directors resulting from the increase in the number of Directors from three (3) to five (5) shall be appointed by the Declarant, but shall be Owners who are not affiliates of the Declarant. Members appointed by the Declarant may be removed from the Board at any time by the Declarant, with or without cause. The Declarant, at its option, may surrender all or a portion of its right to appoint and remove members of the Board. If the Declarant shall surrender such right or any portion thereof, Declarant shall be entitled to require, for the duration of the period of Declarant Control, that specified actions of the Board must be approved by

the Declarant before the same become effective. All elected members of the Board shall be Owners and shall be elected at large from the membership of the Association.

Except as provided below, the initial Board shall serve until the first annual meeting of the Association. Again except as provided below, members of each subsequent Board appointed by the Declarant shall hold office until the next annual meeting of the Association or until their successors have been elected or appointed. Notwithstanding the foregoing to the contrary, no later than the earlier of:

(a) one hundred twenty (120) days after conveyance of seventy-five percent (75%) of the Lots to Owners other than the Declarant,

(b) two (2) years after the Declarant has ceased to offer Lots for sale in the ordinary course of business, or

(c) three (3) years after conveyance of the first Lot, the term of all Directors appointed by the Declarant shall expire, and each such Director shall be replaced by a Director elected by Owners.

At the first annual meeting of the Association following the end of the above-described period of Declarant Control, the number of Board members shall be divided into two (2) classes, the first class comprised of two (2) Board members and the second class comprised of three (3) board members. The members of the first class shall have an initial term of one (1) year or until their successors have been elected. The members of the second class shall have an initial term of two (2) years or until their successors have been elected. Thereafter, members of each class shall have terms of two (2) years or until their successors have been elected.

As indicated above, any appointed Director may be removed from the Board, with or without cause, by the Declarant. Any elected Director may be removed from the Board, with or without cause, by a majority vote of Owners. In the event of death, resignation, or removal of a Director appointed by Declarant, Declarant shall appoint a successor to serve for the unexpired term. In the event of death, resignation, or removal of a Director elected by Owners, the remaining Directors shall elect a successor to serve for the unexpired term.

From time to time, as necessary, the Board shall appoint an Owner to serve as the representative of the Association on the EPCSA Architectural Review Board.

**ARTICLE 5
ASSESSMENTS**

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5.1 Preparation of the Budget. The Declarant shall pay all Common Expenses prior to the fiscal year 1995. No later than sixty (60) days before the beginning of the fiscal year 1995, and each fiscal year thereafter, the Board shall prepare and adopt a budget for the Association. The budget shall include an estimate of the Common Expenses for the ensuing fiscal year, including an amount for such reserves as the Board may determine to be necessary.

5.2 Ratification of the Budget. Within fifteen (15) days after adoption by the Board of any proposed budget for the Association, the Board shall mail a summary of the budget to all Owners and set a date for a meeting of the Owners to consider ratification thereof. The date of the meeting shall be not less than fifteen (15) nor more than sixty (60) days after mailing of the summary. The budget shall be deemed ratified whether or not a quorum is present at the meeting, unless a majority of all the Owners reject the budget. If the proposed budget is rejected, the periodic budget last ratified by the Association shall be continued until such time as the Association shall ratify a subsequent budget proposed by the Board.

5.3 Annual Assessment. An annual assessment to cover the Common Expenses, and reserves, as set forth in the budget, shall be made by the Board. The assessment shall be allocated in equal shares among the Lots. The Owner of each Lot, including the Declarant, shall be assessed for the share allocated to his or her Lot. If any Common Expense is caused by the misconduct or negligence of an Owner, the Association may allocate that expense exclusively to or against his or her Lot. The Board shall notify each Owner in writing of the amount of his or her annual assessment and the time at which it will be due and payable, subject to the provisions of Section 5.5. For the fiscal year ending December 31, 1995, the annual assessment allocated to each Lot shall not exceed Four Hundred Dollars (\$400.00) per year. Thereafter, the amount of the annual assessment allocated to each Lot shall not be increased by more than ten percent (10%) per annum, unless approved by two-thirds (2/3rds) of the Owners.

5.4 Special Assessment. If the revenues and reserves provided for in the budget are inadequate for any reason, including nonpayment of any Owner's assessment, the Board may at any time levy an additional special assessment, which shall be allocated in equal shares among the Lots. The Owner of each Lot shall be assessed for the share allocated to his or her Lot. The special assessment may be payable in a lump sum or in installments, as the Board may determine. The Board shall notify each Owner in writing of the total amount of such special assessment, the Owner's allocated share of the special assessment, the reason for the special assessment, and the time at which the Owner's allocated share is payable.

5.5 Payment of Assessment. Each Owner shall pay the annual assessment allocated to his or her Lot at the time specified by the Board, provided that no Owner shall be required to pay more than twenty-five percent (25%) of such share in each quarter of the fiscal year. Each Owner shall pay any special assessment allocated to his or her Lot at the time specified by the Board. No Owner shall be exempt from liability for payment of assessments by waiver of his or her right of enjoyment or use of the Common areas or Common property, non-use thereof, or abandonment of his or her Lot. Any past due assessment or installment thereof shall bear interest at the rate established from time to time by the Board not in excess of the maximum rate permitted by law.

5.6 Working Capital Fund Contribution. Upon the purchase of a Lot, from the Declarant or otherwise, the purchasing Owner thereof shall make a contribution to the Working Capital Fund in an amount equal to the greater of either \$50.00, or one-sixth (1/6) of the share of the annual assessment allocated to that Lot for the fiscal year in which the purchase of the Lot occurs. Such fund shall provide working capital for the Association, including funds for improvements to the Common Area and Common Property.

5.7 Lien for Assessments. The Association shall have a continuing lien on a Lot for any assessment allocated to that Lot or fine imposed against its Owner from the time the assessment or fine becomes due. The Association may foreclose such lien in like manner as a mortgage upon real estate. The Association shall also be entitled to recover its reasonable attorneys fees and costs incurred in collecting any assessment and/or foreclosing any such lien.

5.8 Effect of Failure to Prepare Budget or Assessment. The failure or delay of the Board to prepare or adopt a budget for any fiscal year, or make an assessment in connection therewith, shall not constitute a waiver or release in any manner of an Owner's obligation to pay any assessment allocated to his or her Lot, whenever the same shall be determined.

5.9 Agreement to Pay Assessment. By acceptance of a deed or execution of a real estate contract for the purchase of a Lot, each Owner hereby covenants and agrees to pay to the Association any assessments allocated to his or her Lot and any fines assessed against him or her by the Association, together with the costs and expenses, including reasonable attorneys' fees, incurred by the Association in collecting such assessments or fines. Such assessments, fines, costs, and expenses shall be the personal obligation of the Owner of the Lot at the time the same becomes due and payable. If more than one person or entity is the Owner, the personal obligation to pay shall be joint and several.

5.10 Rights of First Mortgagees. Each holder of a first mortgage lien on a Lot who comes into title of such Lot by virtue of the foreclosure of such mortgage, or by deed in lieu of foreclosure, and any purchaser at a foreclosure sale, shall take

such Lot free of any claim for unpaid assessments and Charges ¹¹⁵¹⁶⁷² against the Lot which accrued prior to the time such holder comes into possession, except for claims for a share of such assessments or charges resulting from a reallocation of the same among all Lots within the Subdivision, including the mortgaged Lot.

5.11 EPCSA Assessments. Lots and owners of Lots also shall be subject to assessments by the EPCSA according to the Master Declaration, subject to the provisions of the Settlement Agreement.

ARTICLE 6 ARCHITECTURAL BOARD

6.1 Establishment, Composition, Term of Members. The AB shall be composed of three (3) members. During the period of Declarant Control, the members of the AB shall be appointed by the Declarant and need not be Owners. Upon the termination of the period of Declarant Control, the members shall be appointed by the Board, and one member shall be an Owner. A member appointed by the Declarant shall serve at the pleasure and discretion of the Declarant, but in no case beyond the end of the period of Declarant Control. A member appointed by the Board shall serve until the next annual meeting of the Board following his or her appointment or until his or her successor has been appointed. The appointing authority shall designate one (1) member to serve as chairperson.

6.2 Duties and Powers. The AB shall adopt architectural guidelines, rules, and regulations regarding development, construction, modification, repair, and decoration of any improvement within the Subdivision; landscaping or alteration of vegetation or topography within the Subdivision; land use within the Subdivision and the review and enforcement of its own procedures; and shall otherwise carry out such functions as may be assigned to it from time to time by the Board. The guidelines, rules, and regulations adopted by the AB shall not become effective until approved by the Board. The AB shall review and approve, with or without conditions, or disapprove all plans for development, construction, modification, repair, or decoration of any improvement within the Subdivision; landscaping or alteration of vegetation or topography within the Subdivision; or sustained or periodic use of the Common Areas or any part thereof.

6.3 Development, Construction, Modification, Repair, Decoration. No development, construction, modification, repair, or decoration of any improvement within the Subdivision; no landscaping or alteration of the vegetation or topography within the Subdivision; and no other activity howsoever denominated which affects or will affect the character, quality, appearance, or value of the Subdivision or any portion thereof or any improvement thereon shall be undertaken or permitted without the prior written consent of the AB; except for such activity as affects or will affect only the interior space of an improvement situate within the Subdivision.

6.4 Sustained or Periodic Use. No sustained or periodic use of the Common Areas shall be made without the prior written approval of the AB.

6.5 Meetings. The AB shall meet regularly, on a periodic basis, as specified by the Board. The AB shall meet specially upon the call of the Chairperson or two of its members, provided that written notice stating the date, time, place, and purpose of the meeting shall be given to members not calling the meeting at least two (2) days prior thereto.

6.6 Manner of Acting. The act of a majority of the members of the AB at a regular meeting or a special meeting duly called shall constitute the act of the AB.

6.7 Review Process. Subject to rules and regulations adopted pursuant to Section 6.2 hereof, the AB shall review and, in writing, approve, with or without conditions, or disapprove all proposals for development, construction, modification, repair, or decoration of any improvement within the Subdivision; landscaping or alteration of vegetation or topography within the Subdivision; or sustained or periodic use of Common Areas or any portion thereof. The review shall be conducted and the decision regarding approval or disapproval shall be announced within thirty (30) days of receipt by the AB chairperson of plans and specifications indicating the nature, extent, location, and appearance of the proposed development, construction, modification, repair, decoration, landscaping, alteration, or use, together with such other documents as may be required by the AB's rules and regulations. If the proposal is approved, with or without conditions, by the AB, then, when required by the Master Declaration and/or the EPCSA Architectural Guidelines, the proposal shall be submitted by either the AB or the applicant to the EPCSA Architectural Review Board for review pursuant to the provisions of the Master Declaration and EPCSA Architectural Guidelines enacted thereunder.

Prior to granting its approval, the AB shall determine that the proposed development, construction, modification, repair, decoration, landscaping, alteration, or use:

(a) conforms with this Declaration, the Master Declaration, the guidelines, rules, and regulations adopted pursuant to Section 6.2 hereof, and the EPCSA Architectural Guidelines;

(b) does not detract from the overall character, quality, appearance, or value of the Subdivision; and

(c) is adequately financed for initial construction, maintenance, and repair.

Any Owner who is aggrieved by a decision of the AB shall be entitled to appeal the decision of the AB to the Board, by written request delivered to the Chairman of the Board within fifteen (15) days after the issuance of the written decision of the AB. The Board shall render a decision, in writing, on the appealed matter, within thirty (30) days after the receipt by the Chairman of the written request of the aggrieved Owner. If the proposal is approved by the Board, with or without conditions, then, when required by the Master Declaration and/or the EPCSA Architectural Guidelines enacted thereunder, the proposal shall be submitted by either the Board or the applicant to the EPCSA Architectural Review Board for review pursuant to the provisions of the Master Declaration and EPCSA Architectural Guidelines enacted thereunder.

The AB shall be entitled to indicate to the Board their favorable or unfavorable recommendation on any variance requested pursuant to Section 7.39.

6.8 Record. The AB shall prepare and maintain a written record of its deliberations and determinations.

6.9 No Liability for Approval Errors. Declarant, the Association, the Board, the AB, and the directors, officers, members, agents, or employees of any of them, shall not be liable for any damage, loss or prejudice suffered or claimed by any person on account of:

(a) the approval, with or without conditions, or disapproval of any plans or specifications, whether or not defective;

(b) the construction or performance of any work or improvement, whether or not pursuant to approved plans or specifications, whether or not defective; or

(c) the development of any portion of the Subdivision;

provided that such parties have acted in good faith on the basis of such information as may be possessed by them. Specifically, all Owners acknowledge that the development of a Lot may impair or block the view from other Lots.

ARTICLE 7 USE RESTRICTIONS

The Subdivision shall be subject to the following use restrictions:

7.1 Architectural Style. All construction and architecture shall conform to what is known as the Santa Fe Pueblo Style of architecture. Moderate modifications of that style in reasonable, innovative and creative ways are permitted. The use of construction materials having the appearance of local, indigenous

and traditional building material is encouraged and favored. Other materials may be used where their use will be in accordance with sound architectural practice and will be unusually inoffensive in the sole discretion of the AB. The determination of whether modification of architectural style is moderate and reasonable shall likewise be in the sole discretion of the AB. The only requirement for AB shall be that it act in good faith for the benefit of the majority of Owners. Unless otherwise provided herein to the contrary, structures shall adhere to the Architectural Design Review Guidelines adopted by the City of Santa Fe, in January of 1982. In the event of any variation or difference between this Declaration and the City of Santa Fe Guidelines, this Declaration shall control.

7.2 Exterior Color. All exterior stucco shall be an earth tone color approved by the AB.

7.3 Insurance, Hazards and Waste. Nothing shall be done or kept on any portion of the Subdivision which will increase any rate of insurance without the prior written consent of the Board. No Owner shall permit anything to be done or kept on any portion of the Subdivision which will result in the cancellation of insurance on any portion of the Subdivision, or which would be in violation of any law or ordinance. No waste shall be committed anywhere on the Subdivision.

7.4 No Obstructions or Construction. There shall be no obstruction of, and nothing shall be constructed, placed, or stored upon or within, any portion of the Common Areas except as permitted by the Board.

7.5 Nuisances. No noxious or unreasonably offensive activities shall be carried on, nor shall anything be done or placed on the Subdivision which shall or will become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to any Owner or Declarant.

7.6 Rubbish and Weeds. No portion of the Subdivision shall be used or maintained by any Owner as a dumping ground for rubbish, trash or waste. Weeds, rubbish, trash and waste shall be regularly removed from the Lots by Owners and shall not be allowed to accumulate thereon. Rubbish, weeds, trash, tree clippings, garden debris or any other waste shall not be kept except in sanitary containers, which containers shall be kept screened and concealed from public view at all times (other than when being placed for pickup). Composting will be permitted, provided that it does not unreasonably attract flies, pests or generate odors. Notwithstanding the above, the placement of organic rubbish behind checkdams in washes in Common Areas and on individual Lots is encouraged to increase the humus in the Subdivision. Rubbish in this use includes leaves, grass clippings, prunings, and other organic source material. Placement of these materials will be done only after receiving approval from the AB and in a manner to enhance the beauty of the washes and so as to not attract flies,

pests or generate odors. No oil or other refuse shall be allowed to enter storm drains.

7.7 Fires. There shall be no exterior fires upon any portion of the Common Areas except barbecue fires contained within receptacles permitted by the Board.

7.8 Signs. No sign of any kind shall be placed or displayed in the Subdivision without the prior written consent of the AB, except:

(a) such signs as may be required by legal proceedings, or the prohibition of which is precluded by law;

(b) during the time of construction of any improvement by Declarant, identification signs regarding location, financing, or construction;

(c) such signs as may be required for traffic control and regulation of areas within the Subdivision.

(d) such identification signs as may be deemed appropriate by the Board to designate facilities or areas within the Subdivision; and

(e) such signs as Declarant deems necessary or desirable, in its sole discretion, to facilitate the marketing of real estate, building sites or residential units within the Subdivision.

7.9 No Oil, Quarrying, or Mining Operations. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted within or upon the Subdivision, nor shall oil wells, tanks, tunnels, or mineral excavations or shafts be permitted within or upon the Subdivision. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted within or upon the Subdivision.

7.10 Recreational Vehicles. No housetrailer, mobile home, camper, recreational vehicle, boat, or trailer shall be kept or stored within the Subdivision, except in an enclosed structure approved by the AB.

7.11 Vehicles. No vehicle of any type, motorized or otherwise, shall be operated, parked or stored on any Common Area. No automobile or other motor vehicle shall be parked on any public or private street within the Subdivision, except in designated parking areas, and no portion of any improvement which is intended to be used as a garage or carport shall be used or converted for use for any other purpose. No vehicles shall be kept or stored on any Common Area, on any public or private street, or on any driveway area for purposes of accomplishing repairs thereto or the reconstruction thereof, except as permitted by the Board.

7.12 Pets. No person shall keep or have within the Property more than three (3) pets over ten (10) weeks of age. The owner of any pet or animal shall be responsible for the immediate removal and clean-up of any such animal's waste. The owner of any pet or animal shall at no time allow such animal to run unrestrained on any Common Area, the Roads, the Hiking Trail, the Walking/Jogging Trail, or other areas of the Subdivision (except for enclosed yards or patios), and the Owner shall at all times have full and complete control over such animal. No pet or animal creating excessive noise or odor shall be maintained within the Subdivision.

7.13 Nonresidential Uses. The Subdivision shall be used only for residential purposes, and no part thereof shall be used, caused to be used or permitted to be used, in any way, directly or indirectly, for any business, profession, or other nonresidential purpose, except that home occupations, as allowed by ordinance of the City of Santa Fe, shall be permitted if said home occupations are approved by the Board. However, nothing in this Section shall be construed to restrict the ability of Declarant to improve, develop, and market real estate, lots, and residential units within the Subdivision.

7.14 No Rezoning of Subdivision. No Lot, residential unit, or Tract within the Subdivision shall be further subdivided without the express written consent of all Owners. No portion of the Subdivision shall be rezoned other than as a Planned Residential Community (PRC) as set forth in Santa Fe Zoning Ordinance 1981-3, without the express written consent of all Owners.

7.15 Livestock, Poultry, Bees, Commercial Pet Raising. No animal, bird, fish, or pet raising or trading as a business shall be carried on, directly or indirectly, on any part of the Subdivision.

7.16 Occupancy of Unfinished Structures. No residence situated within the Subdivision shall in any manner be occupied or lived in while in the course of original construction. No structure anywhere in the Subdivision, other than a residence, shall ever be lived in or used for dwelling purposes, including, but not limited to, tents, shacks, trailers, campers, motor homes, mobile homes, outbuildings, and garages. However, nothing in this Section shall be construed to prevent the erection, placement, or maintenance by Declarant of trailers, offices, or buildings in connection with the conduct of its business, or the improvement, development, and sale of any Lots or residential units within the Subdivision.

7.17 Roofs. All structures constructed in the Subdivision shall have roofs approved by the AB. No roofs shall have slopes greater than $\frac{1}{2}$ " per linear foot.

7.18 Antennas and Cable Television. No Owner (other than Declarant during or for the conduct of its business) shall

construct or otherwise maintain upon or within any portion of the Subdivision any external or internal radio or television antenna, saucer, or other reception device or equipment, except as otherwise permitted by the AB. No Owner shall install any equipment or apparatus which in any way interferes or otherwise impedes the normal reception of radio and/or television transmission signals upon or to other portions of the Subdivision.

7.19 Window Opening. No window opening visible from the Roads, private street, or any portion of the Common Areas shall have affixed to it or be otherwise lined with,

(a) any nontransparent foil, paper, or similar material;
or

(b) any material or apparatus which is other than a neutral color;

except as may permitted by the AB.

7.20 Height of Shrubs, Hedges, Trees, Landscaping. No shrub, hedge, tree, or other landscaping which interferes with the view, solar access and/or privacy of any residential unit shall be planted or maintained on any portion of the Subdivision, except as permitted by the AB. If an Owner allows a shrub, hedge, tree or other landscaping on such Owner's Lot to violate the provisions of this section, then the AB shall have the right (but not the obligation) upon ten (10) days' prior notice to the offending Owner to: (a) enter upon the offending Lot, (b) cut back or otherwise trim the offending shrub, hedge, tree or landscaping to that the same complies with said height limitation, and (c) assess the Owner(s) for the cost of such activities.

7.21 Guest Houses and Garages. There shall be no detached guest houses or detached garages or other detached structures on any Lot within the Property. Garages and guestquarters shall be integrated into the main residential structure.

7.22 Time-Share Interest. No time-share interest or interests shall be allowed within the Subdivision.

7.23 Renting. The renting of residential units for a short term (less than one (1) month) shall be prohibited. The renting of residential units for a long term (one (1) month or more) shall be allowed on the condition that any tenants shall comply with the terms and provisions of this Declaration, and all rules and regulations adopted pursuant hereto, and the Master Declaration, and that the Owner(s) of such long term rented residential unit shall have continuing responsibility for the compliance by the tenant with the terms and provisions of this Declaration, and all rules and regulations adopted pursuant hereto, and the Master Declaration. The renting of residential units as a business shall only be allowed with the permission of the Board. Any owner who

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rents more than two (2) residential units in the Subdivision shall be deemed to be in the business of renting.

7.24 Sheds, Storage. No shed or other such building shall be permitted on the Subdivision, except in connection with and during the term of construction. Except as provided in Section 7.29, there shall be no storage of any materials or matter outdoors except as may be permitted by the AB.

7.25 Garage Doors. All garage doors shall be kept closed, except when in actual use.

7.25A Guests. A guest or guests may be allowed in any residence and/or guestquarters for a period not to exceed thirty (30) days. A guest is a person or persons who has or have been invited by the legal Occupant to visit said legal Occupant without pay. A guest or guests shall not remain within any residence and/or guestquarters for longer than thirty (30) days without the express consent of the Board and EPCSA Board of Directors.

7.26 Fences and Walls. It is the policy of this Declaration to preserve for the Subdivision an open and unobstructed terrain free of fences and walls. Accordingly, no fences or walls shall be constructed or allowed to remain on any Lot, except as may be approved by the AB under the following requirements:

(a) No fences or walls shall be constructed or allowed to remain on any Lot nearer to the front street than the front of any residence constructed thereon without the express written approval of the Board;

(b) No fences or walls shall be constructed or allowed to remain on any Lot nearer to the side street than the side of a residence constructed thereon without the express written approval of the Board;

(c) Owners shall not fence any portion of the perimeter or boundary of their Lots without the express written consent of the Board;

(d) Patio walls are permitted, provided the Owner of the Lot obtains the prior written approval of the AB. Said walls shall be limited in height to not more than six (6) feet and are to be constructed of materials similar to that of the residence and shall be plastered and finished to match the color coat and texture of that residence.

7.27 Lawns. There shall be no lawns in excess of 500 square feet. All lawns must be of blue grass or fescue sod that are low water consuming. Notwithstanding this provision, owners are encouraged to cultivate native plantings, including native grasses,

and may develop lawns of buffalo and other native grasses in excess of 500 sq. ft.

7.28 Gardens. Noncommercial gardens not to exceed 1,000 square feet may be allowed, subject to the prior written approval of the AB.

7.29 Building Materials. There shall be no storage of building materials within the Subdivision other than during construction.

7.30 Height of Building. One-third (1/3rd) of the heated area of a residence may have a parapet height not exceeding sixteen feet (16') above adjacent natural grade at any point. The maximum parapet height of the rest of the residence is limited to fourteen feet (14') above the adjacent natural grade at any point. The residence to be constructed on Lot 1 is excepted from this height restriction. All residences are subject to condition 7A3 of the "Conditions of Ordinance 1981-3 Estancia Primera P.R.C."

7.31 Windmills. No windmills of any kind shall be allowed within the Subdivision without the express written consent of the AB.

7.32 Right to Convey. The right of an Owner to sell, transfer, or otherwise convey his or her Lot or residential unit shall not be subject to any right of first refusal or similar restriction in favor of the Association.

7.33 Minimum Residence and Garage Size. No residence shall be constructed with less than fifteen hundred (1,500) square feet of heated area. In addition, all residences shall be constructed, and maintained, with a garage capable of parking a minimum of two cars.

7.34 Preservation of Terrain and Natural Vegetation.

(a) Owners shall use vegetation cover consistent with existing natural vegetation, including piñon and juniper, with chamisa and native grasses.

(b) Structures shall be designed to reduce and minimize the visual impact of construction on a Lot.

(c) No poplars, elms, or weeping willows shall be allowed to be planted or to grow upon any lot, nor shall any tree be allowed to grow to a height that exceeds twenty (20) feet.

7.35 Drainage Control. Kachina Hills is subject to the Kachina Hills Special Maintenance District for the inspection, maintenance and repair by the City of Santa Fe of the storm water retention ponds, check dams and drainage control structures located within the Stormwater Ponding Areas, and the check dams and drainage control structures located on Tract A and within the

drainage easement on Lot 8 (which serve to stabilize the water released from the retention ponds). Guidelines for maintenance of these structures and ponding areas are in Section 3.6 of this Declaration. Stormwater ponding on Lots is encouraged, though not required. Maintenance of ponding areas on Lots is the responsibility of the Lot Owner. In no instance can the construction of any building or other hard surface, or the grading of a Lot, increase the flow of water across another Lot except in a water course/drainage easement described on the Plat.

7.36 Contiguous Lots. If two (2) or more contiguous Lots are owned by the same Owner or Owners, they may be combined into a larger, single residential Lot pursuant to and upon compliance with the requirements of governmental authorities. The property line(s) separating contiguous lots may be adjusted in the same manner, subject, however, to the prior written approval of the Board.

7.37 Restricted Access. No Lot shall have driveways or access directly to or from Avenida Primera with the exception of Lots 15, 16, and 24.

7.38 Building Setbacks. Building setbacks for each Lot shall be fifteen feet (15') from all perimeter boundaries of the Subdivision, fifteen feet (15') from the Lot line of rear yards, fifteen feet (15') from the Lot line of side yards, and seven and one-half feet (7.5') from the Lot line of front yards, provided that any garage facing a Road shall be set back twenty feet (20') from the Lot line along the Road. On Lots 10, 14, 15, 16, and 25, the front yard setback will be fifteen feet (15'), provided that any garage facing a Lot line shall be set back twenty feet (20') from such Lot line. On Lot 23 the setback on the property line with Lot 22 shall be seven feet (7'). Lot lines of perimeter boundaries, front yards, side yards and rear yards for each Lot are and shall be as designated on the Plat. The setback distances set forth in this Declaration, however, shall control in the event of any conflict with the Plat.

7.39 Variances. The Board may, in its discretion, grant reasonable variances to the use restrictions set forth in this Article 7. Any request by an Owner for a variance shall be addressed to the Board in writing, and the Board shall promptly schedule a special meeting to consider the request, which meeting shall be held within thirty (30) days after receipt of the request. At least fifteen (15) days prior to the date of such meeting, written notice of the date, time, place and purpose of such special meeting of the Board shall be mailed, to all Owners, by the Owner requesting the variance, by certified mail, return receipt requested, addressed to Owners at the addresses shown on the Association's records. The determination of whether a variance is reasonable shall be in the sole discretion of the Board. The only requirement for the Board shall be that it act in good faith for the benefit of a majority of Owners of Lots in the Subdivision. The Board shall have no authority to grant variances to the Master Declaration.

**ARTICLE 8
EXTERIOR MAINTENANCE**

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8.1 Owner's Responsibility. The Owner of each Lot shall maintain the facades and external aspects of all improvements on his or her Lot in first class order and repair and in substantially the same condition as prevailed when the improvements were newly completed. The Owner of each Lot shall maintain the landscaping and vegetation on a Lot in neat, orderly, and healthy condition.

8.2 Maintenance by Association. If the Owner of a Lot fails to comply with the provisions of the preceding section 8.1, the Board, upon a two-thirds (2/3rds) vote, may give notice to the Owner, specifying the failure to comply, and requiring the Owner to take such action as is necessary to cause the facades and external aspects of the improvements to be restored within sixty (60) days to first class order and repair, in substantially the same condition as prevailed when the improvements were newly completed, and/or to cause the landscaping and vegetation to be restored within sixty (60) days to a neat, orderly, and healthy condition. If the Owner has not so restored the improvements, landscaping, or vegetation within such allotted time, the Board, upon a two thirds (2/3rds) vote, shall be entitled to enter upon the Lot and the improvements thereon and to take such action as is necessary or reasonable to so restore the same. The cost of such activity shall be assessed against the Lot and shall become a lien against the Lot, subject to enforcement in the same manner as the annual and special assessments. The remedy provided herein shall be in addition to and not exclusive of any other remedy which the Association may be entitled to at law or equity.

**ARTICLE 9
EASEMENTS**

9.1 Owner's Easement Across Roads and to Common Areas. The Owner of each Lot shall have a perpetual, nonexclusive easement and right-of-way for ingress and egress upon and along the Road, together with a perpetual, nonexclusive easement to walk upon and across the Common Areas, including but not limited to the Hiking Trail and Walking/Jogging Trail, which easements shall be appurtenant to, shall pass with, and shall not be severed from the title to each Lot.

9.2 Declarant's Reservation of Easements. Declarant reserves for itself and its assigns an easement and right-of-way in, through, over, under, across, and upon all portions of the Subdivision, including all Lots and Common Areas for the purpose of commencing, conducting, and completing its development and improvement work on the Subdivision. Declarant reserves the right to grant easements and rights-of-way in, through, under, over, across, and upon all portions of the Subdivision, including all Lots and Common Areas, for the installation, construction.

operation, maintenance, inspection, repair, and replacement of lines and appurtenances for public or private water, sewer, drainage, telephone, cable television, gas power, or other utilities and for other materials or services necessary for the completion of said development and improvement work. Declarant shall have the right to change the location or terms and conditions of any such easement or right-of-way. Declarant reserves the right to connect with and make use of the utility lines, wires, pipes, conduits, cable television, sewers, and drainage lines which may from time to time be in or along the Roads. In addition, Declarant reserves the right to use the Subdivision and any sales offices, model homes, signs, and parking spaces located or which may be located on the Subdivision in its efforts to develop, improve, and market portions of the Subdivision. Notwithstanding any other provisions herein to the contrary, this Section may not be amended without the prior written consent of Declarant. Any of the easements and rights reserved by Declarant in this Section may be assigned to Declarant's successors in interest and may be exercised by Declarant's agents, officers, employees, and representatives.

9.3 Easement for Common Property. Declarant reserves for itself and the Association an easement in, through, over, under, across, and upon all necessary portions of the Subdivision, including all Lots and Common Areas, for the installation, construction, operation, maintenance and inspection, repair and replacement of the Common Property.

9.4 Easement to Correct Drainage. Declarant reserves for itself and the Association an easement to enter upon all necessary portions of the Subdivision, including all Lots and Common Areas and/or improvement thereon, for the purposes of operating, inspecting, maintaining, repairing, or replacing the Erosion And Drainage Control Devices and such other drainage ponds or erosion control devices or structures as may be deemed necessary. Prior notice of entry shall be given to the occupant, except to the extent prohibited by an emergency.

9.5 Easement for Emergency. Declarant reserves for itself and the Association an easement to enter upon all portions of the Subdivision, including all Lots and Common Areas and any improvement thereon, to perform emergency repairs. Prior notice of said entry shall be given to the Owner, except to the extent prohibited by the nature of the emergency.

9.6 Easement for Governmental Personnel. There is hereby established a right of entry for public officials, police, fire, rescue, and other personnel to come upon the Subdivision to carry out and enforce their official duties.

9.7 Right to Dedicate. Nothing contained in this Declaration shall be deemed to restrict or otherwise impede the Declarant or Association, at any time and from time to time, from dedicating portions of the Subdivision to any public or private agencies,

authorities or utilities, prior to sale of such portion to an Owner.

ARTICLE 10
RIGHTS OF LENDERS AND PUBLIC AGENCIES

10.1 Interests Subject to Lenders' Rights. It is anticipated that part or all of the real estate or improvements within the Subdivision may be financed or the loans therefor insured or guaranteed for the Owners through agencies such as the Federal Housing Administration, the Veterans Administration, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation.

The interest of the Association, and each of the Owners other than Declarant is and shall be subject to and subordinate to the rules, regulations, and requirements of such agencies purchasing, insuring, or guaranteeing mortgages or deeds of trust for portions of the Subdivision.

10.2 Access to Financial Records. Any Owner and any mortgagee holding a mortgage or deed of trust on any Lot, upon written request to the Association shall be entitled to inspect the books and records of the Association during normal business hours, and to receive a copy of an audited financial statement of the Association prepared at the expense of the party making the request or, in the alternative, to receive an annual financial statement of the Association prepared in accordance with standard accounting principles.

10.3 Notice to Lenders. Any mortgagee holding a first mortgage or deed of trust on any portion of the Subdivision or improvement thereon that has filed written notice of the same with the Association shall be entitled to:

(a) written notice of all meetings of the Association and the right to designate a representative to attend all such meetings;

(b) written notice if the Association is to be abandoned or terminated;

(c) written notice of any material amendment to this Declaration or the Governing Documents of the Association;

(d) upon request, written notice of any default by such mortgagee's mortgagor in the performance of that mortgagor's obligation to the Association;

(e) any condemnation or casualty loss that affects a material portion of the Subdivision or the Lot securing the mortgagee's mortgage;

(f) any lapse, cancellation or material modification of any insurance policy or bond maintained by the Association.

10.4 Filing with Association. Any mortgagee holding a mortgage or deed of trust on any Lot may file copies of said instruments with the Association after taking such Lot or improvement as security for a debt.

**ARTICLE 11
TERM, AMENDMENTS, DECLARANT'S RIGHTS**

11.1 Term of Declaration. This Declaration, and the covenants, restrictions, terms, and conditions set forth herein, shall run with and bind the Subdivision and every part thereof, and shall inure to the benefit of and shall be enforceable by the Association and any Owner, his or her legal representative, heirs, successors, or assigns, for a term of fifty-five (55) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years each, unless an instrument in writing, agreeing to terminate or revise this Declaration and signed by Owners holding two-thirds (2/3rds) of the votes in the Association has been recorded within the year preceding the beginning of any such ten-year (10) period.

11.2 Amendment Procedure. This Declaration may be amended only by the affirmative vote of Owners holding two-thirds (2/3rds) of the votes in the Association; provided, that no such amendment shall impair the improvement or development of the Subdivision in accordance with the Plat. Notwithstanding the foregoing provisions of this Section 11.2, if any mortgagee shall hold a mortgage or deed of trust on any portion of the Subdivision, no amendment shall be made which impairs the interests arising under such mortgage or deed of trust without such mortgagee's written approval.

11.3 Limitation on Amendments. By the acceptance of a deed or execution of a real estate contract for any Lot, each Owner acknowledges and agrees, on behalf of himself and his respective heirs, legal representatives, successors, and assigns, that:

(a) this Declaration was created and recorded, in part, to protect and otherwise enhance the value of the Subdivision; and

(b) in order to ensure such protection and enhancement in value, no provision or condition of this Declaration which either directly or indirectly affects the use or operation of the Subdivision, including, but not limited to, those provisions and conditions relating to the operation and management of the Common Areas, the use by any Owner or his licensees and invitees of any part of the Subdivision, or the operation of the Association, shall be amended or otherwise modified without the express written consent of Declarant or its successors in interest or assigns.

11.4 Development Rights. Because the completion of development of the Subdivision and the development and marketing of portions thereof and improvements thereon is essential to the welfare of all Owners, nothing in this Declaration or any amendment hereto shall be understood or construed to prevent Declarant or any of its contractors, subcontractors, representatives, agents, or assigns from doing, upon any portion of the Subdivision, including and Lot or Common Area, the following:

(a) activities reasonably necessary or appropriate in connection with the development or improvement of the Subdivision in accord with the Plat, Development Plan, and Drainage Plan;

(b) erecting, constructing, and maintaining such structures and facilities as may be reasonably necessary for the development or improvement of the Subdivision; or

(c) maintaining such signs on the Subdivision as the Declarant may deem necessary for the sale, lease, or disposition thereof.

Until all of the Lots are sold to an Owner other than Declarant, the Association may not use its financial resources to defray any costs of opposing development or improvement activities which are not inconsistent with the Plat or Development Plan. Nothing in this section shall be construed to limit the right of members to act as individuals or in affiliation with other members or groups.

11.5 Rights of Declarant. For so long as the Declarant shall own any portion of the Subdivision, unless Declarant gives its prior written consent, its rights and interests shall not be prejudiced by any amendment to this Declaration or any Governing Documents which:

(a) discriminates or tends to discriminate against Declarant's rights as an Owner;

(b) changes the definitions in Article 1 in a manner which alters Declarant's rights or status;

(c) alters the character and rights of membership or the rights of the Declarant as set forth in Article 4;

(d) alters previously recorded or written agreements with public or quasi-public agencies or utilities with respect to easements and rights-of-way;

(e) alters Declarant's rights with respect to architectural review of improvements, plans and specifications, as provided in Article 6;

(f) alters the basis for assessments, as provided in Article 5;

(g) alters the provisions of the use restrictions set forth in Article 7;

(h) alters the Declarant's easement rights, as provided in Article 9;

(i) alters the number or selection of members of the Board of Directors of the Association, as provided in the Bylaws and this Declaration; or

(j) alters the Declarant's rights provided under this Article 11.

ARTICLE 12 GENERAL PROVISIONS

12.1 Invalidity of any Provision. Should any provision or condition of this Declaration to be declared invalid or in conflict with any law, statute, or ordinance, the validity of all other provisions and conditions hereof shall remain unaffected and in full force and effect.

12.2 Owner's Compliance. Each Owner or Occupant of a portion of the Subdivision or any improvement thereon shall comply with the provisions of the Governing Documents and decisions, resolutions, rules and regulations of the Association or its duly authorized representatives. Failure to comply with any such provision, decision, resolution, rule, or regulation shall constitute the basis for an action to recover sums due for damages or for injunctive relief. All agreements and determinations lawfully made by the Association in accordance with the voting procedures established in this Declaration shall be binding on all Owners and Occupants.

12.3 Notices. Except as otherwise may be provided by specific provisions herein, any notice permitted or required by this Declaration shall be in writing and delivered either personally or by mail. If intended for an Owner, mailed notice shall be directed to the Owner:

(a) at the address of such Owner's residential unit, or

(b) to the last known address of the Owner.

If no address is known, notice shall be directed to the Lot owned by the Owner. If intended for Declarant, notice shall be directed to:

Mr. Jim Hays
President, Hays Associates, Inc.
Managing General Partner of Kachina Hills Partners
721 West Manhattan
Santa Fe, NM 87501

