

AMENDED AND RESTATED
DECLARATION OF PROTECTIVE COVENANTS FOR THE
ESTANCIAS DELPHINE BACA SUBDIVISION

THIS AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS FOR THE ESTANCIAS DELPHINE BACA SUBDIVISION ("Declaration") is made this 23rd day of October, 2002, by L&L Development, Inc., a New Mexico limited liability company (hereinafter referred to as "Declarant").

WHEREAS, Declarant is the present successor in interest to Robert E. Alexander, Jr. Revocable Trust under agreement dated May, 1987 as owner of all real property affected by that certain Declaration of Protective Covenants for the Estancias Delphine Baca Subdivision recorded in Book 1327 commencing at Page 110, and re-recorded in Book 1346 commencing at Page 128, and that certain First Amended Declaration of Protective Covenants for the Estancias Delphine Baca Subdivision recorded in Book 2116 commencing at Page 885, all of the Santa Fe County, New Mexico records (collectively, the "Initial Declaration"), which affects certain real estate described in Exhibit A attached hereto;

WHEREAS, Pursuant to Article XI, Section 1 of the Initial Declaration, Declarant, as the owner of one hundred percent (100%) of the real property described in Exhibit A and as the holder of one hundred percent (100%) of the votes in the Estancias Delphine Baca Homeowners Association, desires to amend the Initial Declaration and to establish this Amended and Restated Declaration; and

WHEREAS, Declarant desires to impose on and subject to all of the real estate described in Exhibit A attached hereto the provisions and covenants of this Declaration, including easements, for the purpose of protecting the value and standards of said real estate, the terms of which shall run with the land and be binding upon and inure to the benefit of all parties having any right, title or interest in or to the real estate described in Exhibit A attached hereto, or any part thereof, and their successors and assigns.

NOW, THEREFORE, Declarant hereby amends the Initial Declaration, establishes this Amended and Restated Declaration on this 23rd day of October, 2002, effective as of its recordation with the Office of the County Clerk of Santa Fe, New Mexico, and declares that the Subdivision (hereinafter defined) shall be subject to the following covenants, conditions and restrictions. This Amended and Restated Declaration amends, restates and supercedes the Initial Declaration in its entirety. "Declaration" as used herein means the Declaration as amended and restated herein.

Article I - Definitions

Section 1. "Association" shall mean the Estancias Delphine Baca Homeowners Association described in Article VI of this Declaration.

Section 2. "Board" shall mean the then acting Board of Directors of the Association.

Section 3. "Declarant" shall mean and refer to L&L Development, Inc., a New Mexico limited liability company, and its successors and assigns.

Section 4. "Lot" shall mean and refer to each of the five (5) Lots numbered 2 through 6 inclusively as shown on the Plat. Tract A as shown on the Plat shall be dedicated to the City of Santa Fe for the primary purpose of constructing erosion control structures, including a storm drainage pond, and other consistent uses. Unless the context provides otherwise, Tract A shall not be subject to this Declaration and specifically, the Owner of Tract A shall not be a member of the Association or subject to any easements by the Association.

Section 5. "Easements" shall mean and refer to all real property designated on the Plat as an access road, utility easements, landscape easement or drainage easement.

Section 6. "EPCSA" shall mean and refer to the Estancia Primera Community Services Association, a New Mexico non-profit corporation.

Section 7. "Estancias Delphine Baca 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 1995-23.

Section 8. "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.

Section 9. "Owner" shall mean and refer to any contract purchaser or record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Subdivision but excluding those having such interest merely as security for the performance of an obligation.

Section 10. "Plat" shall mean and refer to that certain plat of survey for the subdivision filed for record on December 2, 1996 with the County Clerk of Santa Fe County, New Mexico at Plat Book 350, pages 21-22 of the records of said County.

Section 11. "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 January 12, 1996, at Book 1232, Pages 702-715.

Section 12. "Structure" means any residence, dwelling, garage, outbuilding, wall, fence, tank or installation of any equipment or other facility.

Section 13. "Subdivision" shall mean and refer to the real estate commonly known as the Estancias Delphine Baca Subdivision described in the Plat, excepting and excluding Lot 1, and such additions as may hereafter be brought within the jurisdiction of this Declaration.

Article II - Affirmation

Section 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.

Section 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, and (ii) affirms that the Subdivision is, and all Lots are, bound by, subject to, and benefited by the terms and provisions of the Master Declaration, as provided for in the Settlement Agreement.

Article III - Subject Property

Section 1. Property Subject to This Declaration. Subject to Article I, Section 5, 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.

Section 2. Road Easement. As indicated on the Plat, the Declarant hereby creates an easement on the area identified as Alexander Lane for public utilities and a private road for ingress and egress to the Lots (including Lot 1 shown on the Plat but excluded and excepted from the Subdivision). The private road shall be maintained by the Association, unless and until such time as the Owners and governing body of the City of Santa Fe shall agree to dedicate the road for maintenance purposes to the City.

Section 3. Storm Drainage Works. Tract A, as shown on the Plat, has been dedicated to the City of Santa Fe to provide a site for a storm water retention pond. Pursuant to Santa Fe City Ordinance 1995-23, a special maintenance district has been established for the Subdivision. Under Ordinance 1995-23, the City has the right to inspect, maintain and repair the storm water retention pond and drainage easements as shown on the Plat. It is intended that the Association will maintain and repair the drainage and erosion control works, including the retention pond. If the City performs any maintenance, inspection or repair to the drainage works, the Owners will be assessed pursuant to Ordinance 1995-23, without prior notice of such assessment. The Association shall select Lots on a

random basis for regular inspection and testing of French drains, pursuant to Santa Fe City Ordinance 1991-3, Section 7.C.2.

Section 4. Storm Drainage Maintenance Guidelines. The purpose of the following guidelines is to set forth certain procedures approved by the City of Santa Fe for the maintenance of the drainage pond located on Tract A.

Upon completion of the drainage retention improvements, bench marks shall be established for the retention pond. 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 the pond at all times. At such time as the sediment level in the 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 within the Subdivision, 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 area 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.

Section 5. Landscape Installation and Maintenance. In order to satisfy City of Santa Fe landscaping requirements in the area south of the Subdivision's common boundary with Hyde Park Road, and to further enhance the quality of the living environment of the Owners by reducing the negative impact of traffic noise, vehicular pollution and visual interference arising from Hyde Park Road traffic, Declarant shall install, and the Association shall maintain, a terrain berm with landscape plantings in the area between Alexander Lane and Hyde Park Road to the extent allowed by the New Mexico State Highway Department.

Article IV - Common Scheme and Use Restrictions

The Subdivision shall be subject to the following land use restrictions:

Section 1. Intent. The intent of Declarant herein is (i) to promote architecture which is both harmonious and responsive to the existing topography; (ii) to encourage buildings which respect and merge with, rather than dominate, the natural landscape; and (iii) to attempt to ensure the protection of view corridors for the various Lots while recognizing that complete protection is not always possible.

Section 2. Single-Family Dwelling. No structure shall be erected, altered, placed or permitted to remain on any Lot or building site subject to this Declaration other than one single-family dwelling for private use, one detached guest house (if permitted under Section 22), attached garage, recreational facilities, solar heating devices, evaporative cooler or coolers, and improvements incidental to residential use of the Lot. This paragraph does not limit or prohibit guest quarters or studios attached to the dwelling.

Section 3. Prohibited Structures. No modular homes, prefabricated structures or mobile homes may be placed on or kept at any building site. No temporary structure shall be placed or erected upon the Subdivision except as permitted by this Declaration.

Section 4. Insurance: Hazards and Waste. Nothing shall be done or kept on the Property which will increase the rate of insurance without the prior written consent of the Board of Directors. No Owner shall permit anything to be done or kept on his Lot, Living Unit or Parcel or on any Common Area which will result in the cancellation of insurance on any Lot, Living Unit, Parcel or Common Area, or which would be in violation of any law or ordinance. No waste shall be committed anywhere in the Subdivision.

Section 5. Reflective Materials. No reflective material shall be used where it would disturb any other house site within the Subdivision. If such reflection does occur, the reflective material shall be painted a subdued color or screened from view.

Section 6. Nuisances. No noxious or unreasonably offensive activities shall be carried on, nor shall anything be done or placed on any Lot which shall or will become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to the Owners or Declarant.

Section 7. Rubbish. No portion of the Subdivision shall be used or maintained by any owner as a dumping ground for rubbish, trash or waste. No oil or other refuse shall be allowed to enter storm drains. All rubbish, trash and waste shall be regularly removed from the Lots and shall not be allowed to accumulate thereon. Rubbish, trash or 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).

Section 8. Fires. There shall be no exterior fires, except barbecue fires contained within receptacles, unless approved by the Association, or Board.

Section 9. Signs. No sign of any kind shall be placed or displayed in the Property without the prior consent of the Board 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 of Directors to designate facilities or areas within the Subdivision.
- e. Declarant may locate on any common areas or private streets such signs as Declarant deems necessary or desirable, in its sole discretion, to facilitate the marketing of the Lots.

Section 10. 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.

Section 11. Recreational Vehicles. No housetrailers, mobile homes, campers, recreational vehicles, boats, or trailers shall be kept or stored within the Subdivision.

Section 12. Vehicles. No vehicle of any type, motorized or otherwise, shall be operated on any common area except as authorized by the Association. No automobile or other motor vehicles shall be parked in any common area or in any public or private street within the Subdivision except in designated parking areas. No portion of any Lot, Living Unit or Parcel 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 or in any public street, private street or driveway area within the Subdivision for purposes of accomplishing repairs thereto or the reconstruction thereof, except as permitted by resolution of the Board.

Section 13. Pets. No person shall keep or have within the Property more than three (3) pets over ten (10) weeks of age (dogs and cats or any combination thereof). No pet or other animal shall be permitted on any common area except as allowed by the Board. The owner of any pet or animal shall be responsible for the immediate removal and clean-up of any such animal's waste on the Subdivision. The owner of any pet or animal shall at no time allow such animal to run unrestrained on any common area or on the streets, sidewalks 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.

Section 14. Non-Residential Areas. Residential areas within the Property shall be used only for residential purposes, and no part of such areas shall be used, caused to be used, or permitted to be used, in any way, directly or indirectly, for any business, profession, or other non-residential purpose, except that home occupations, as allowed by ordinance or the City of Santa Fe, shall be permitted as long as said home occupations are approved by the Board. However, nothing in this Section shall be construed to restrict the ability of Declarant to develop and market Lots within the Subdivision.

Section 15. No Rezoning or Subdivision. No subdivision of any Lot shall be permitted. Combinations of Lots shall be permitted subject to the approval and requirements of the City of Santa Fe. Once combined, the newly created Lot shall not be resubdivided thereafter without the approval of 80% of the voting power of the Association. 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. Subject to the Master Declaration, nothing in this Section shall be construed so as to prevent Declarant, at any time and from time to time, upon approval of the EPCSA, from applying for and otherwise obtaining rezoning for any portion of the Subdivision, from subdividing any portion thereof, or from applying for and obtaining an amendment to the Plat or development plan.

Section 16. Livestock, Poultry, Bees, Commercial Pet Raising. No animal, fish or pet raising or trading as a business shall be carried on, directly or indirectly, on any part of the Subdivision.

Section 17. Occupancy of Unfinished Structures Prohibited. 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 and a permitted guest house, shall ever be lived in or used for dwelling purposes, including, but not limited to, tents, shacks, trailers, campers, motor homes, mobile homes, out-buildings, studios and garages. However, nothing in the 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 development and sale of any Lot.

Section 18. Antennas and Cable Television. No Owner (other the Declarant) 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 EPCSA Architectural Review Board. No Owner shall install any equipment or apparatus upon his Lot which in any way interferes or otherwise impedes the normal reception of radio and/or television transmission signals upon or to other Lots. No Owner shall subscribe to or otherwise be connected to any cable or master television system unless the attachment thereof has been previously approved by the EPCSA Architectural Review Board.

Section 19. Window Opening. No window opening in a dwelling situated on any Lot visible from a public street, private street, or any common area or open space area shall have affixed

to it or be otherwise lined with (a) any non-transparent foil, paper or similar material; or (b) any material or apparatus which is other than a neutral color, except as provided by the rules and regulations of the EPCSA Architectural Review Board.

Section 20. Guest Houses. Guest quarters and studios attached to a dwelling are permitted. There shall be no detached guest houses within the subdivision, except on Lot 3, where the lot is in excess of .75 acre in size and not visible from lots in other Estancia Primera tracts. Guest houses will be permitted subject to all other provisions of this Declaration. There will be no detached studios.

Section 21. Time-Share Interests. No time-share interest or interests shall be allowed within the Subdivision. The Subdivision is intended to be primarily an owner-occupied residential Planned Residential Community, and any time-sharing ownership will detract from the purpose of single-family occupancy of the Subdivision.

Section 22. 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 rents more than two (2) residential units in the Subdivision shall be deemed to be in the business of renting. This paragraph shall not prevent the rental or lease of the whole house or guest house by the Owner thereof, provided the Owner's primary residence remains either the main house or the guest house.

Section 23. Standard of Maintenance. All improved Lots shall be maintained by their Owner or Owners substantially in the original condition of delivery of said Lot or except for improvements, alterations and additions approved by the EPCSA Architectural Review Board.

Section 24. Sheds. No shed or other such building shall be permitted on any Lot after it has been conveyed to an Owner purchasing the original completed residence.

Section 25. Garage Doors. All garage doors shall be kept closed except when in actual use.

Section 26. Guests. A guest or guests may be allowed in any improved Lot or for a period not to exceed thirty (30) days. A guest is a person or persons who has been invited by the legal Occupant to visit said legal Occupant without pay. A guest or guests shall not remain within any Lot or Living Unit for longer than thirty (30) days without the express consent of the Board and the EPCSA Board of Directors.

Section 27. Lawns. There shall be no lawns in excess of 800 square feet. All lawns must be of native grasses that are low water consuming.

Section 28. Gardens. Non-commercial gardens not to exceed 1,000 square feet may be allowed subject to the prior written consent of the EPCSA Architectural Review Board.

Section 29. Miscellaneous. No uses are permitted that are or would be inconsistent with the single-family residential character of the Subdivision.

Section 30. Building Materials. There shall be no storage of building materials within the Property other than during construction.

Section 31. Height and Grading Limitations. Height and grading limitations shall be equivalent to the limitations contained in Santa Fe City Ordinance 1981-3, Section 7.A.

Section 32. Windmills. No windmills of any kind shall be allowed within the Property.

Section 33. Waiver. Unless otherwise provided herein, the Board may waive any of the use restrictions provided for herein, provided the waiver is in writing and is not inconsistent with the purpose and intent of this Declaration. The Board shall have no authority to grant variances to the Master Declaration.

Section 34. Right to Convey. The right of an Owner to sell, transfer or otherwise convey his Lot, shall not be subject to any right of first refusal or similar restriction in favor of the Association.

Section 35. 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.

Section 36. 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.

Section 37. Drainage Control. The Subdivision is subject to the Estancias Delphine Baca - Special Maintenance District for the inspection, maintenance and repair by the City of Santa Fe of the storm water retention pond, check dams and drainage control structures located within the

Subdivision. Guidelines for maintenance of these structures and the pond are in Article III 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.

Section 38. Building Setbacks. Building setbacks for the individual Lots are as shown on the Plat.

Section 39. Variances. The Board may, in its discretion, grant reasonable variances to the use restrictions set forth in this Article. 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 V - The Association

Section 1. The Association. The Estancias Delphine Baca Homeowners Association has been duly incorporated and organized pursuant to New Mexico law, the Articles of Incorporation and Bylaws attached hereto as Exhibits B and C respectively and incorporated herein by this reference. The membership of the Association, powers and duties of members, and powers and duties of the Association are specified in the Articles and Bylaws and are supplemented herein.

Section 2. Unincorporated Successor. In the event that the Association, as a corporate entity, loses its corporate powers or is dissolved, a non-profit unincorporated association shall forthwith and without further action or notice, be formed and shall succeed to all rights and obligations of the Association hereunder until a qualified non-profit corporation is formed. Said unincorporated association's affairs shall be governed by the laws of the State of New Mexico, and to the extent not inconsistent therewith, by the Declaration, the Articles of Incorporation and the Bylaws, respectively, as if they were created for the purpose of governing the affairs of an unincorporated association.

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

Section 4. Board of Directors. The affairs of the Association shall be managed by the Board of Directors. The Board shall be elected and shall exercise all of the rights and powers and perform all of the duties and responsibilities as provided in this Declaration and the Articles and Bylaws for the Association. 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. Declarant shall have the right and authority to appoint and remove the initial members of the Board and thereafter continue to appoint and remove a majority of the members of the Board, until the first to occur of the following: (a) all Lots within the Subdivision have been conveyed to Owners other than Declarant, (excepting a successor Declarant), as evidenced by written conveyance documents recorded in the office of the County Clerk of Santa Fe County, New Mexico, and construction of residential improvements on all Lots within the Subdivision have been completed as evidenced by final building and occupancy approvals issued by the governing building inspection authority, or (b) the tenth (10th) anniversary of the date this Declaration is recorded in the Office of the County Clerk of Santa Fe County, New Mexico (the "Control Period"). Declarant may voluntarily surrender the right to appoint and remove members of the Board before termination of the Control Period, in which case Declarant reserves the right to record an instrument specifying that, until the time Declarant would have been required to end control of the Board, certain actions of the Board must be approved by Declarant before they become effective.

Section 5. Voting Rights. Each Owner shall be a member of the Association. Each Owner shall be entitled to one (1) vote for each Lot owned subject to the Declarant's rights under Section 4. When more than one person or entity is an Owner to any Lot, all such persons shall be members but shall be entitled to only one vote. The right to vote may not be severed from any Lot, and any sale, transfer or conveyance of the beneficial interest of the fee of any Lot to a new Owner shall transfer the voting rights of the Lot. Unless the parties agree otherwise, the purchaser of a Lot under a real estate installment sale contract shall exercise the vote.

Section 6. Voting Rules. Unless this Declaration or Bylaws of the Association call for the consent of the Association members in any stated percentage, a majority vote is sufficient for any action.

Article VI Assessments

Section 1. Mutual Covenants to Pay Assessments. Declarant, as owner of the Subdivision, covenants, and each Owner, by acceptance of a deed to a Lot, covenants and agrees with each other Owner and with the Association, to pay all assessments levied by the Board, as required in this Declaration, whether or not such covenant is contained in such deed.

Section 2. Creation of Common Expense Fund. The Board shall establish a "Common Expense Fund" to enable the Association and the Board to exercise the powers and perform the rights, obligations and duties stated herein. Such fund shall be funded by assessments as hereinafter provided, to be paid by all Owners, including Declarant; provided, however, until the Association makes an assessment for the Common Expenses, Declarant shall pay all Common Expenses. Such fund shall be administered on a fiscal year basis. The first assessment shall be determined by the

Board in accordance with this Declaration and the Bylaws of the Association and shall be prorated over the Association's fiscal year commencing with the date set by the Board for the first assessment.

Section 3. Annual Budget. At least seventy-five (75) days prior to the end of the Association's fiscal year, the Board shall prepare and adopt a proposed estimate of the total amount it deems necessary for the Association's next fiscal year (hereinafter referred to as "Annual Budget") to pay the common expenses of the Association. Within thirty (30) days after such adoption of the Annual Budget, the Board shall furnish each Owner an itemized copy thereof, together with notification of the date, time and place of the Association's annual meeting at which meeting the Owners will consider ratification of the Annual Budget. The Annual Budget shall be deemed ratified unless rejected by Owners having seventy-five percent (75%) of the voting power of the Association.

Section 4. Common Expenses. The Annual Budget shall be based upon the cash requirements deemed to be such aggregate sum as the Board shall from time to time determine is to be paid by all of the Owners, to provide for the payment of all estimated common expenses. Common expenses may include expenses of management; costs to maintain the private access road and other easements; costs to maintain the drainage and erosion control works; premiums for all insurance in the amounts and types required hereunder; landscaping; common lighting; legal and accounting fees; expenses and liabilities incurred by the Board under or by reason of this Declaration; for any deficit remaining from a previous period; the creation of a reasonable contingency or other reserve or surplus fund as well as other costs and expenses relating to the Association's affairs and duties.

Section 5. Insurance. The Association shall select and obtain liability and property damage insurance to protect Owners of Lots within the Subdivision and adjacent property owners from damage caused by failure of drainage and erosion control structures as required for the Subdivision by the City, other than failure caused by "acts of God," such as natural disasters and extreme weather. In addition, the Association shall select and obtain appropriate liability and/or property damage insurance covering the common easement areas as shown on the Plat.

Section 6. Assessments. After ratification of the Annual Budget each Owner shall be assessed a sum equal to his percentage of Lot ownership of the total Subdivision Lots multiplied by the total Annual Budget. The assessment shall be paid by the Owner in a single annual installment within sixty (60) days of ratification of the Annual Budget. The Board shall prepare and deliver or mail to each Owner an itemized annual statement showing the various estimated or actual expenses for which the assessments are made, specified by type of improvement.

- a. Contributions for assessments shall be prorated if the ownership of a Lot commences on a day other than the first day of a fiscal year. The omission or failure of the Board to fix the assessment for any fiscal year shall not be deemed a waiver, modification or a release of the Owners from their obligations to pay the assessment for that period.

b. If the amount of the Annual Budget proves inadequate for any reason including without limitation, non-payment of any Owner's assessment, the Board may at any time levy a further assessment by increasing the Annual Budget and each Owner shall be assessed a sum according to his percentage of ownership. The Board shall give written notice of any such increase, and the reasons therefor, to each Owner, and shall state the date and terms of payment of such increase.

c. All assessments collected shall be paid and expended for the purposes authorized herein, and (except for such special assessments as may be levied against less than all the Owners and for such adjustments as may be required to reflect delinquent or unpaid assessments) shall be deemed to be held for the benefit, use and account of all Owners in the same percentages as their percentage ownership of the total Subdivision Lots.

Section 7. Special Expenses. In the event any Owner or his agents, employees, or invitees commits a negligent or intentional act that causes damage to the private access road or anything maintained by the Association as a common expense, repairing the damage shall be the responsibility of such Owner. The Board shall have the right to levy a special assessment against such Owner for the expense.

Section 8. 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.

Section 9. Annual Accounting. Together with the notice of the annual meeting of members, the Board shall furnish to all Owners, for the preceding fiscal year, an itemized accounting of all the common expenses actually incurred, paid or accrued, together with a statement of the total assessments collected, showing the net operating loss or gain.

Section 10. Books of Account. The Board shall maintain current, detailed books of account in accordance with generally accepted accounting principles and procedures, which reflect all receipts, disbursements, assets and liabilities of the Association. Such records shall be available for inspection by any Owner, or his representative, at reasonable times.

Section 11. Lien for Non-Payment of Common and/or Special Expenses. All sums assessed, interest and fines imposed by the Association under this Declaration, which are unpaid shall constitute a lien on the Lot assessed.

a. If any assessment shall remain unpaid for thirty (30) days after the due date thereof, the Board or managing agent shall assess interest thereon at a rate equal to eighteen percent (18%) per annum, commencing on the date such assessment was due, together with reasonable costs and any attorney's fees incurred in connection with the collection thereof.

b. In any foreclosure of such lien the Owner shall be required to pay the costs and expenses of such proceeding, all reasonable costs of collection and all reasonable attorney's fees. The Owner shall also be required to pay to the Association any assessment due for the Lot during the period of foreclosure. The Board shall have the power to bid on the Lot at foreclosure sale and to acquire, hold, lease, mortgage and convey the same.

c. Any encumbrancer holding a lien on a Lot may pay, but shall not be required to pay, any unpaid Common and/or Special Expenses due with respect to such Lot, and upon such payment such encumbrancer shall have a lien on such Lot of the same rank as the lien of his encumbrance for the amounts paid.

d. The Association shall give notice to the Lot Owner and any known Mortgagee(s) of a Lot of any unpaid assessments remaining unpaid for longer than thirty (30) days after the same are due.

Section 12. Personal Debt of Owner. Any amounts assessed under this Declaration shall be the personal and individual debt of the Owner at the time the assessment is made. Any sale of the assessed Lot shall not affect the debt of the selling Owner or the enforceability of the lien. A suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien securing the same. If a person is in possession of a Lot pursuant to a real estate installment sale contract, the Association shall seek the assessment first from such person and then from the Owner.

Section 13. Disclosure of Unpaid Assessments. Upon payment of a reasonable fee established by the Board, and upon the Board's receipt of a written request from any Owner, any prospective buyer, any Mortgagee or prospective Mortgagee of a Lot, the Board, shall issue an acknowledged, recordable written statement in accordance with the provisions of §47-7C-16G, N.M.S.A. 1978, setting forth the amount of the unpaid Common and/or Special Expenses, if any, with respect to the subject Lot, the amount of the current quarterly assessment and the date that such assessment becomes due, and credits for advanced payments or for prepaid items, including but not limited to insurance premiums, which statement shall be conclusive upon the Association in favor of all persons who rely thereon in good faith. Unless such request for a statement of indebtedness shall be complied with within ten (10) business days of its actual receipt by the Association, all unpaid Common and/or Special Expenses which become due prior to the date of making such request shall be subordinate to the lien of the person requesting such statement. An Owner, by acceptance of a deed to a Lot, waives any objection to the disclosure to such persons by the Association and releases the Association, the Board, and its agents from any liability therefor.

Section 14. No Waiver of Common and/or Special Expenses. No Owner may waive or otherwise escape liability for assessments by non-use of the Easements or his Lot, by abandonment of his Lot or by any other means whatsoever.

Article VII - Exterior Maintenance

Section 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.

Section 2. Maintenance by Association. If the Owner of a Lot fails to comply with the provisions of the preceding section, 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 VIII - Easements

Section 1. Owner's Easement Across Road. The Owner of each Lot shall have a perpetual, nonexclusive easement and right-of-way for ingress and egress upon and along the road identified as Alexander Lane as shown on the Plat.

Section 2. Landscape Easement. The Association shall have a perpetual, nonexclusive easement for landscaping purposes on the areas identified as "Landscape Easement," within certain Lots as indicated on the Plat (the "Landscape Easement"). No structure shall be permitted within this Landscape Easement. No grading, landscaping, signs or alteration shall be permitted within the Landscape Easement without the permission of the Association. The Association shall be responsible for landscaping and maintenance of vegetation within the Landscape Easement.

Section 3. 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, 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.

Section 4. Easement for Drainage Works. Declarant reserves for itself and grants to the Association an easement to enter upon all necessary portions of the Subdivision, including all Lots and/or improvement thereon, for the purposes of operating, inspecting, maintaining, repairing, or replacing the storm drainage works indicated on the Plat 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.

Section 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 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.

Section 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. The City of Santa Fe shall have an easement over all Lots for the purpose of inspecting, maintaining and repairing the storm drainage works located in the Subdivision.

Section 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 IX - Rights of Lenders and Public Agencies

Section 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. As used

herein, "mortgagee" includes a trustee and beneficiary under a deed of trust and seller under a real estate installment sale contract (commonly referred to as a "real estate contract"), and "mortgagor" includes the grantor of a deed of trust and buyer under a real estate contract.

Section 2. Access to Financial Records. Any Owner and any mortgagee holding a mortgage 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.

Section 3. Notice to Lenders. Any mortgagee holding a first mortgage 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.

Section 4. Filing with Association. Any mortgagee may file copies of its security instruments with the Association after taking such Lot or improvement as security for a debt.

Article X - Term, Amendments, Declarant's Rights

Section 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 the Initial 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 the Initial 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.

Section 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, if any mortgagee shall hold a mortgage on any portion of the Subdivision, no amendment shall be made which impairs the interests arising under such mortgage without such mortgagee's written approval.

Section 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, 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.

Section 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, the following:

- a. activities reasonably necessary or appropriate in connection with the development or improvement of the Subdivision in accord with the Plat, and drainage plan for the Subdivision;
- 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.

Section 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 applicable document which:

- a. discriminates or tends to discriminate against Declarant's rights as an Owner;

- b. changes the definitions in Article I 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 herein;
- 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 the basis for assessments, as provided herein;
- f. alters the provisions of the use restrictions set forth in Article V;
- g. alters the Declarant's easement rights, as provided herein;
- h. alters the number or selection of members of the Board of Directors of the Association, as provided in the Bylaws and this Declaration; or
- i. alters the Declarant's rights provided under this Article.

Article XI General Provisions

Section 1. Enforcement. The Board, Declarant and any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by a party to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Notices. Any notices required or permitted to be delivered hereunder shall be deemed to be delivered when personally delivered to the respective addressee or upon deposit of the same in the United States mails, postage prepaid, certified or registered mail, return receipt requested. Addresses of Owners shall be as shown in the records maintained by the Association. The Association shall designate its address or shall receive notices at the address of any Board member. Any Owner may change his address by giving notice to Declarant or to any Director of the Association.

Section 3. Severability. Invalidation of any provision of this Declaration by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 4. Inconsistent Covenants. In the event that any covenant, condition or restriction stated in this Declaration is inconsistent with any provision of the Master Declaration the more restrictive provision will apply.

Section 5. Binding Effect. This Declaration shall be binding upon and shall inure to the benefit of Declarant, the Owners, and their respective heirs, successors and assigns and shall run with the land.

IN WITNESS WHEREOF, Declarant has executed this Amended and Restated Declaration this 23rd day of OCTOBER, 2002.

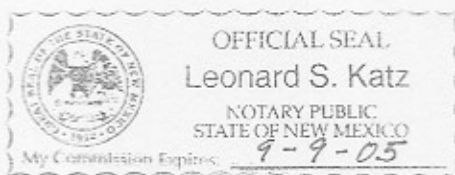
L&L Development

By: [Signature]
John LeMaster, Manager

By: [Signature]
Bob Lockwood, Manager

ACKNOWLEDGEMENT

The foregoing instrument was duly acknowledged before me this 23rd day of October, 2002, by John LeMaster as Manager of L&L Development, LLC, a New Mexico limited liability company.



[Signature]
Notary Public

My Commission Expires:

ACKNOWLEDGEMENT

The foregoing instrument was duly acknowledged before me this 23rd day of October, 2002, by Bob Lockwood as Manager of L&L Development, LLC, a New Mexico limited liability company.



Leonard S. Katz
Notary Public

My Commission Expires:
