

**AMENDED AND RESTATED
DECLARATION OF PROTECTIVE COVENANTS
FOR THE LAS LOMAS SUBDIVISION**

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ACKNOWLEDGMENT

- EXHIBIT A. Legal Description—Las Lomas Subdivision
- EXHIBIT B. Articles of Incorporation of Las Lomas Homeowners’ Association
- EXHIBIT C. Bylaws of Las Lomas Homeowners’ Association

**AMENDED AND RESTATED
DECLARATION OF PROTECTIVE COVENANTS
FOR THE LAS LOMAS SUBDIVISION**

WHEREAS, the DECLARATION OF PROTECTIVE COVENANTS for the Las Lomas Subdivision (this "Declaration") was originally approved the 20th day of May, 1991, by the LAS LOMAS LIMITED PARTNERSHIP, a New Mexico Limited Partnership, the original Owner of all of the Lots in the Las Lomas Subdivision (hereinafter referred to as "Declarant"); and

WHEREAS, this Declaration was amended on March 23, 1993, and on May 14, 1994, with the approval of Owners of the Lots in the Las Lomas Subdivision holding, as of the date of each such amendment, at least 80 percent of the voting power of the Las Lomas Homeowner's Association, as required and in accordance with the procedures set forth in this Declaration; and

WHEREAS, on _____, 2007, this Amended and Restated Declaration of Protective Covenants for the Las Lomas Subdivision was approved by Owners of the Lots in the Las Lomas Subdivision holding, as of such date, at least 80 percent of the voting power of the Las Lomas Homeowner's Association, as required and in accordance with the procedures set forth in this Declaration;

NOW, THEREFORE, the Las Lomas Homeowner's Association and the Owners of the Lots in the Las Lomas Subdivision hereby declare that the Subdivision shall be subject to the following Covenants, conditions, and restrictions.

LAS LOMAS VISION

In 1991, Las Lomas was established as a quality neighborhood of single-family residences. The Las Lomas Vision was, and remains, that the Owners would build upon the neighborhood's fundamental assets—location, views, and topography—in an open and natural environment. Recognizing the natural beauty and the resulting high value of the Las Lomas landscape, the Las Lomas Covenants have been crafted to protect and preserve the attributes of the neighborhood.

Accordingly, development, improvement, and use of the lots are required to be in harmony with their natural environment. The following design principles are established to achieve harmony in—and thereby maximize the value of—the neighborhood for all Owners:

- Preserve views; views are fundamental to the Las Lomas Vision.
- Locate houses and driveways so as to minimize the impact on the views enjoyed by adjoining owners.
- Nestle residences into the land, providing a low profile and minimizing the visual prominence of the house.
- Emphasize quality design, construction, and landscaping.
- Preserve the environment, altering the site as little as possible.
- Avoid erosion and unnatural modifications to the existing drainage.
- Maintain the open and informal appearance of the neighborhood.

To complement this Vision, the architectural style of all houses is based on, but need not strictly adhere to, "Pueblo Spanish," "Old Santa Fe Style," or "Territorial Style." Reasonable, innovative, and creative modifications to these styles are encouraged; variety, not homogeneity, is desired.

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“Southwest Contemporary” designs, compatible with the spirit of the styles listed above, are permitted and encouraged.

The Las Lomas Vision describes the general guidelines on which the Covenants, Subdivision Rules, and Design Guidelines are based. However, the Vision is inherently general whereas the Covenants, Subdivision Rules, and Design Guidelines are more specific and have been formulated to balance competing priorities and needs. In the case of any conflict between the Vision and the Covenants, the Covenants shall prevail.

ARTICLE 1 – DEFINITIONS

1.1 **“Articles of Incorporation”** shall mean the Articles of Incorporation of the Las Lomas Homeowners’ Association filed with the Public Regulation Commission of the State of New Mexico on May 20, 1991.

1.2 **“Association”** shall mean the Las Lomas Homeowners’ Association, being a non-profit corporation, constituted under the laws of New Mexico for the purpose of maintaining facilities held under common ownership within the Subdivision, and any successor unincorporated association.

1.3 **“Board”** shall mean the Board of Directors of the Association and the governing body of any predecessor or successor unincorporated association.

1.4 **“Bylaws”** shall mean the Bylaws of the Las Lomas Homeowners’ Association.

1.5 **“Common Area”** shall mean certain interests in real property (either a fee simple interest or an Easement) including Structures thereon owned or controlled by the Association or owned by the public. The Common Areas to be owned and/or maintained by the Association are the private roadways and the areas described on the Plat as “reserved Common Area.” Additional common open space may be annexed into the Subdivision as provided herein.

1.6 **“Covenants”** shall mean this Declaration of Protective Covenants for the Las Lomas Subdivision and each provision hereof.

1.7 **“Day”** shall mean weekdays (Monday, Tuesday, Wednesday, Thursday, Friday) that are not federal holidays.

1.8 **“Declarant”** shall mean and refer to the Las Lomas Limited Partnership and its successors and assigns, if any such successor or assign acquires more than one undeveloped Lot from the Declarant for the purpose of development.

1.9 **“Design Review Committee”** shall mean the Design Review Committee (“DRC”) created pursuant to Article 3.

1.10 **“Design Guidelines”** shall have the meaning set forth at Section 3.2 hereof: guidelines for construction or improvements on a Lot approved and modified from time to time by the Board and the DRC.

1.11 **“Easements”** shall mean and refer to all real property designated on the Plat as private roadways, including Purple Aster, Starview, Painted Sky, Watchpoint, City Lights, Eastlook, and Day Break, as well as land reserved for utilities, drainage, or pedestrian use.

1.12 **“House”** shall mean the Structure located on each Lot, consisting of a single-family dwelling.

1.13 **“Lot”** shall mean each and every numbered Lot, improved or unimproved, held for sale in Las Lomas Subdivision as shown on the Plats of all phases of Las Lomas Subdivision filed in the Office of the County Clerk of Santa Fe County, New Mexico, at Plat Book 236, Page 46 and at Plat Book 258, Page 41. Lots shall not include property dedicated to the Las Lomas Homeowners’ Association.

1.14 **“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.

1.15 **“Plat”** shall mean and refer to those certain Plats of survey for the Subdivision filed for record with the County Clerk of Santa Fe County, New Mexico, at Plat Book 236, Page 46, of the records of said County on June 18, 1992, and at Plat Book 258, Page 41, of the records of said County on November 2, 1993.

1.16 **“Structure”** shall mean any residence, House, garage, outbuilding, wall, fence, gate, sign, driveway, parking area, utility, or communication installation (whether above or below ground), and any excavation of any kind.

1.17 **“Subdivision”** shall mean and refer to the real estate commonly known as the Las Lomas Subdivision described in Exhibit A attached hereto and such additions as may hereafter be brought within the jurisdiction of this Declaration.

1.18 **“Subdivision Rules”** shall mean the rules made by the Board pursuant to the authority granted by this Declaration and from time to time in effect pursuant to the provisions of Article 5. The Subdivision Rules shall include the Design Guidelines.

1.19 **“Vision”** or **“Las Lomas Vision”** shall mean the overriding principles intended to govern the design, construction, improvement, and maintenance of Structures on Lots in the Subdivision that are set forth as a preface to the Covenants.

ARTICLE 2 – STRUCTURES

2.1 **Single-Family Dwelling.** No Structure shall be erected, altered, placed, or permitted to remain on any Lot subject to this Declaration other than one detached single-family dwelling for private use, an attached guest house, a private attached garage, attached recreational facilities, solar heating devices, landscaped areas, evaporative cooler or coolers, and improvements incidental to residential use of the Lot. Sheds, if approved, shall be attached.

2.2 **Escarpment Overlay District.**

2.2.1 **Ordinance.** Notwithstanding any other provision contained herein, Declarant hereby declares that each Lot shall be treated as though it is situated within the Escarpment Overlay District (hereinafter referred to as the “District”) as established by the City of Santa Fe, New Mexico, Ordinance No. 1988-28, as amended (hereinafter collectively referred to as the “Ordinance”). The standards, terms, and conditions of such Ordinance are incorporated by reference and shall apply to such Lot in addition to the Covenants and conditions set forth herein.

2.2.2 **Stricter Provision Controls.** In the event a conflict exists between the Covenants and the provisions of the Ordinance with respect to any Lot, the more strict of the

conflicting provisions shall control. For purposes of this Section 2, "more strict" means the provision which imposes the highest standard with respect to construction, landscaping, or other matters. In the event the Ordinance is amended, improvements approved hereunder and existing within the Subdivision prior to the date of such amendment shall not be subject to such amendment.

2.3 **House Size and Use.** No principal residence, exclusive of the garage, shall be less than sixteen hundred (1600) square feet of interior heated space. Each House shall be occupied by no more than one (1) family and no House shall be used as a boarding house or divided into apartments or rooms for rental purposes. This subsection does not prevent the rental or lease of the whole House by the Owner thereof, but any such rental or lease must be by a written agreement which requires the tenant to observe the provisions of this Declaration and the Subdivision Rules and makes a breach of this Declaration a breach of such rental agreement or lease. No House may be leased for a period of fewer than thirty (30) Days.

2.4 **Prohibited Structures.** No modular home, prefabricated Structure, mobile home, or similar facility or Structure shall be kept, placed, or maintained within the Subdivision at any time. No temporary house, dwelling, garage, outbuilding, trailer, or other similar Structure may be placed or erected within the Subdivision. The provisions of this subsection shall not apply to temporary construction facilities maintained during, and used exclusively in connection with, the construction of any work or improvement permitted by the DRC.

ARTICLE 3 – DESIGN REVIEW COMMITTEE

3.1 **Design Review Committee.** The Association will have a Design Review Committee ("DRC") of at least three, but not more than five, individuals appointed by the Board. Members of the DRC must satisfy the requirements set forth in the Design Guidelines. If Owners with appropriate skills and/or time are not available, then persons other than Owners may be appointed by the Board to the DRC. Members of the DRC may be removed by the Board.

3.2 **Design Guidelines.** The Board and the DRC shall establish reasonable procedures, rules, restrictions, processes, architectural standards, and Design Guidelines that adhere to the Las Lomas Vision. In applying the Design Guidelines, the Association expects the DRC to show common sense, flexibility, and practicality. The DRC may amend, repeal, or augment the Design Guidelines, with Board approval. The Design Guidelines shall be binding on all Owners. A copy of the current Design Guidelines shall be a part of the Association's records. A copy may be obtained from the Association's managing agent by any Owner or prospective Owner at any time. The Design Guidelines shall include:

3.2.1 Time limitations for the completion of an approved project;

3.2.2 Procedures for ensuring conformity of completed projects to drawings and specifications approved by the DRC;

3.2.3 Such other limitations and restrictions as the DRC, at its reasonable discretion, shall adopt. These may relate to (i) the regulation of landscaping (and may prohibit certain types of landscaping, trees, and plants); (ii) the construction, reconstruction, exterior addition, or change to any building, Structure, wall, or fence (and may address the nature, kind, shape, height, materials, exterior color, surface texture, and location of any such improvement); and (iii) the types and sizes of any artwork visible from other Lots and Common Areas;

3.2.4 Standards the DRC shall follow in making determinations bearing on the compatibility of planned improvements with (i) Las Lomas Vision; (ii) other residences in the Las Lomas Subdivision; and (iii) the terrain within the property for which improvements are planned or any terrain visible from the property on which the improvements are planned;

3.3 **General Provisions.**

3.3.1 The DRC may assess reasonable fees, as approved by the Board, in connection with its review of drawings and specifications.

3.3.2 The DRC may delegate its responsibilities for review of drawings and specifications to one or more of its members or architectural consultants. The approval of drawings and specifications by the member or consultants shall be equivalent to the final approval by the entire DRC. The disapproval of drawings and specifications by the member or consultants shall be an interim disapproval. The interim disapproval shall become a final disapproval unless the Owner submits a written appeal of such interim disapproval to the entire DRC within fifteen (15) Days after a notice of interim disapproval is delivered. All approvals or disapprovals shall be in writing and delivered as provided in Paragraph 3.3.3.

3.3.3 The President of the Association shall be the single point of initial contact for the submittal of drawings and specifications and maintenance of the Design Guidelines. After the initial contact, all contacts from the Owner or his agents shall be with the DRC member assigned to the project. Any written communication from the Owner or his agent to the DRC shall also be sent to the Secretary of the Association. Applicants shall submit all appeals of DRC actions to the DRC or the Board at the address of the Secretary of the Association.

To avoid undue time, effort and expense, the initial submittal may be preliminary. The preliminary submittal shall show the nature of the work and the location on the Lot, and shall describe the proposed materials and colors. Preliminary plans shall contain sufficient detail for the DRC to evaluate whether the proposal is in harmony with the Las Lomas Vision and will conform to the Covenants and Design Guidelines.

All submittals to the DRC shall include the notice address of the Owner and, at the option of the Owner, the name, address and contact information of an agent expressly authorized by the Owner to receive copies of notices for the Owner and to represent the Owner with the DRC. Notices from the DRC to the Owner and/or his agent, which require Owner action or which advise of material issues with the project, shall be in writing.

3.3.4 The discretion of the DRC to establish Design Guidelines shall not be construed as changing any rights of or restrictions upon Owners specified in this Declaration, the Association Bylaws or the Subdivision Rules.

3.3.5 The DRC shall approve or disapprove any drawings and specifications submitted within the time period(s) specified in the Design Guidelines.

3.4 **Approval and Conformity of Drawings and Specifications.** DRC approval is required for the following improvements:

- (i) Any Structure, addition, or exterior change to an existing Structure;
- (ii) Landscaping, grading, or drainage for new construction. However, approval is not required for additional landscaping to existing Structures provided it conforms to the

Design Guidelines and provided it does not substantially impede any Owner's views or negatively impact drainage and erosion control. (Owners should be careful to avoid planting on any existing Easements);

- (iii) Fences and walls;
- (iv) Painting (including stucco work and staining), other than repair and maintenance using the same colors as before;
- (v) Patios and patio covers.

Drawings and specifications must be in accordance with the Design Guidelines and the Las Lomas Vision.

DRC approval is required to begin construction. The DRC is granted discretion to approve or disapprove plans.

3.5 Non-Liability for Approval of Drawings and Specifications. Submittal of drawings and specifications to the DRC is only for approval as to style, exterior design, appearance, location, and compliance with the Design Guidelines. The DRC is not authorized to and will not review drawings and specifications for engineering design or for compliance with zoning and building ordinances. Neither the DRC members, nor the Association, nor the Association members, officers, or directors shall be liable to any Owner or other person for any damage, loss, or prejudice suffered or claimed on account of:

- (i) The approval or disapproval of any drawings and specifications, whether or not defective;
- (ii) The construction or performance of any work, whether or not pursuant to approved drawings and specifications;
- (iii) The development or manner of development of any property within the Subdivision;
- (iv) The modification of the natural grade of any Lot; or
- (v) The issuance or non-issuance of an Association Certificate of Occupancy or a Conditional Certificate of Occupancy (see Paragraph 3.7, below).

Approval of drawings and specifications by the DRC, or the approval of any change in the size, configuration, or location of any Structure, or a change in the natural grade of any Lot is not a representation or warranty by the DRC, the Association, or any officer or director of the Association that the drawings, specifications or changes comply with any governmental ordinance, rule, regulation, or building code.

3.6 Inspection; Notice of Approval. Any DRC member or authorized agent may at any reasonable time, after reasonable advance notice to the Owner, enter upon a Lot to inspect improvements or any changes in the grade of the Lot. The sole purpose of such entry is to ascertain that such improvements or changes are in compliance with the plans and specifications approved by the DRC. At the written request of an Owner, the DRC will conduct an inspection for this purpose at a time agreed to by the Owner and the DRC member assigned to the project by the DRC. The DRC shall prepare and deliver to the Owner an inspection report as to the compliance of the improvements or changes described in the drawings and specifications approved by the DRC.

If the DRC fails to inspect the improvements or changes within fifteen (15) Days after its receipt of an Owner's request for an inspection, the improvements or changes will be deemed approved.

3.7 Required Inspection; Certificate of Occupancy. After completion of construction, the Owner shall notify the DRC in writing (the "Completion Notice") and shall include a list of any

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incomplete items. Within fifteen (15) Days after the receipt of a Completion Notice, the DRC shall inspect the work and take one of the following actions:

3.7.1 Issue a written Association Certificate of Occupancy ("Certificate of Occupancy") if the work is in conformity and compliance with the approved plans and specifications and the Design Guidelines; or

3.7.2 Provide the Owner a written list of all items that are not in conformity and compliance with the approved plans and specifications, along with the DRC's estimate of the cost for correcting such items and the date by which the DRC determines the items should be corrected (the "completion list").

An Owner shall not occupy a new residence until a Certificate of Occupancy has been received for the residence.

Upon receipt from the DRC of a completion list, the Owner may either (i) correct the items on the completion list, request a re-inspection, and occupy the residence only after the DRC has issued a Certificate of Occupancy, or (ii) deposit with the Association an amount equal to 150 percent of the DRC's estimate for correcting or completing the items in exchange for a Conditional Certificate of Occupancy.

At any time before the date set forth in the completion list, the Owner may request a re-inspection by the DRC. If the DRC determines that the completion list items are in conformity and compliance with the approved plans and specifications, the DRC shall issue the Owner a Certificate of Occupancy and the Board shall deliver to the Owner the amount deposited with the Association. If the DRC, upon re-inspection, determines that items on the completion list remain to be corrected, or if the Owner fails to request re-inspection by the date fixed for completion, then the Board may draw upon the amount deposited by the Owner with the Association to complete the needed corrections.

The officers, directors, agents, and employees of the Association shall have authority to enter the Lot and the new residence at reasonable times after no less than two (2) Days' written notice solely for the purpose of completing work (through agents of the Las Lomas Homeowners' Association hired by the Board or the President) necessary to effect such corrections. If, after one year, the needed actions have not been completed, at the request of the Owner a meeting of the Owner, the Board, and the DRC may be held to promote a mutual understanding of the impediments to completion and to develop a mutually agreed-upon action plan. A Board Member may be assigned to work with the Owner and the DRC to achieve compliance. The Owner shall be responsible for implementing the agreed-upon plan. The Owner may, at any time, request that the Board release part or all of the deposited monies in order to complete the needed corrections. The Board may, at its sole discretion, grant such a request.

3.8 Failure to Complete; Notice of Non-Compliance. If, at the time for completion of a project (including any extensions granted by the DRC), it remains incomplete or fails to comply with the Design Guidelines, the DRC or the Board may deliver a notice of non-compliance to the Owner or the Owner's agent. If the project is incomplete or is not made compliant with the Design Guidelines within a reasonable time after delivery of the notice, as determined by the DRC, the Board may file a lien on the property with the Santa Fe County real estate records. The notice will be in writing and specific as to the matters to be addressed. If the DRC and Board fail to deliver a notice of non-compliance within one year after the time for completion of a project, then the project will be deemed compliant with respect to any purchaser or encumbrancer in good faith and for

value. Notwithstanding the failure of the DRC or the Board to deliver a notice of non-compliance, an Owner shall remain responsible for complying with the Design Guidelines.

3.9 **Additional Powers of the DRC.** Subject to Board approval, the DRC may promulgate such additional reasonable architectural and landscape standards, rules, and regulations as it deems to be appropriate and in conformity with this Declaration.

ARTICLE 4 – COMMON SCHEME RESTRICTIONS AND REQUIREMENTS

4.1 **Native Growth Preservation.** The native growth of the Lot, including but not limited to cacti, piñon, and juniper trees, shall not be destroyed or removed, except such native growth that is dead or diseased or that may be necessary to remove for the construction and maintenance of the driveway, the House, and other approved Structures, without prior written approval of the DRC. Owners are responsible for keeping trees in a healthy condition and not permitting them to become infested with insects. In addition, landscaping shall comply with the provisions of the Ordinance (see Section 2.2.1).

4.2 **Height of Landscaping.** Notwithstanding Section 4.1 above, no shrub, hedge, tree, or other landscaping that interferes with the view or solar access of any Lot (except as reasonably determined by the DRC) shall be planted, permitted, or maintained on any Lot or Common Area. If the Owner of a Lot allows a shrub, hedge, tree, or other landscaping to violate the provisions of this Section, then the DRC shall have the right (but not the obligation) upon ten (10) Days' prior notice to the offending Owner to:

4.2.1 Enter upon the offending Lot or Common Area; and

4.2.2 Cut back or otherwise trim the offending shrub, hedge, tree, or landscaping; and

4.2.3 Assess the Owner(s) of said Lot for the cost of such activities.

4.3 **Setbacks.** No House, garage, or guest house, including porches, shall be located on any Lot so that any part thereof shall be nearer than twenty-five (25) feet to a Lot line adjacent to a street or nearer than ten (10) feet to any other Lot line. The DRC may vary the setback requirements from any Lot line necessitated by the topography or configuration of the Lot, consistent with the variance procedures. However, in all cases, building setbacks shall minimally conform to the regulations for R-1 through R-5, Single-Family Residential Districts, as set forth in the Santa Fe City Code, Section 14-17, as may be amended from time to time.

The final determination of the siting of a Structure on a Lot shall be subject to DRC approval. Such approval may be withheld if the proposed site lies within the only view corridor of another Lot. In such a case, alternative siting of the Structure may be required; such alternative siting will consider the potential impact to all affected Lots. In addition to views, siting decisions will consider principles such as nestling into the land, preserving the environment, and avoiding erosion and unnatural drainage modifications.

4.4 **Fences and Walls.** It is the intent of the Declarant to preserve 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 have been approved by the DRC, subject to the following exception:

An Easement for the existing wall bordering Paseo de Vistas shall be granted by the Owner in favor of the Las Lomas Homeowners' Association at the time of sale of any of these Lots. Wall

maintenance costs shall be the responsibility of each Lot Owner; nevertheless, the work shall be performed as needed by the Homeowners' Association. With DRC approval, these Lots may be temporarily accessed from Paseo de Vistas for construction purposes. DRC approval is contingent upon a satisfactory security plan. It is the Owner's responsibility to return the wall to an acceptable condition.

4.5 **Driveways.**

4.5.1 All driveways shall be graded and sloped for proper drainage.

4.5.2 All driveways shall have culverts large enough for proper drainage. An 18"-diameter culvert shall be installed where the ditch adjoining the front yard of the Lot carries storm waters; it shall extend no less than four (4) feet from the outer-most edge of each side of the driveway. No culvert is required for those Lots with access from The High Road, unless determined necessary by the DRC.

4.6 **Restricted Access.** All access to Lots must be by way of the private roads or in the case of Lots 30, 31, 32, 33, 34, 35, 36, and 37 by The High Road. No access is allowed from West Alameda, Calle Nopal, or Paseo de Vistas.

4.7 **Building Materials.** No storage of building materials other than during construction shall be permitted. No storage yard for materials other than those commonly and regularly in residential use shall be permitted.

4.8 **Refuse.** No clippings from trees, shrubs, or lawns, trash, ashes, garbage, or other refuse may be thrown, dumped, or allowed to accumulate on any land within the Subdivision. All refuse, trash, or waste shall not be kept except in sanitary containers, which containers shall be kept screened and concealed from view at all times (other than when being placed for pickup).

4.9 **Nuisances.**

4.9.1 No Lot shall be used for the storage of any property or item that will cause such Lot to appear in an unclean or untidy condition or that will be visually offensive or obnoxious, toxic, dangerous, or unhealthy, and no substance, item, or article may be kept upon any Lot that will emit foul or obnoxious odors, or that will cause any noise that will disturb the peace, quiet, comfort, or serenity of any occupants or Owners of Lots in the Subdivision.

4.9.2 No devices emitting noise levels exceeding decibel limits set for residential areas shall be permitted in the Subdivision.

4.10 **Garages and Parking of Vehicles.**

4.10.1 An attached garage of sufficient size to accommodate at least two automobiles shall be constructed with each House; open carports are prohibited.

4.10.2 The garage shall primarily be used for vehicles and not storage. Storage in garages cannot take precedence over the garage's primary function: to park automobiles. No garage shall be used or converted for any use other than parking of vehicles.

4.10.3 All garages shall be equipped with an automatic opener, and vehicles shall be parked in the garage at all times. All garage doors shall be kept closed except when in actual use.

4.10.4 No trucks or other commercial vehicles, motorcycles, campers, motor homes, boats, trailers, or similar vehicles shall be kept or maintained in the Subdivision, except

within garages, and except where customary or required for the limited purposes of building, repairing, refinishing, or maintaining the Subdivision or House, or for the purpose of moving household goods or other necessary or customary furnishings, equipment, or supplies in or out of the Subdivision.

4.10.5 No vehicles, parts of vehicles of any type, or large unsightly equipment or machinery shall be permanently or semi-permanently parked in any portion of the Subdivision visible from other Lots, Easements, and public roads for purposes of repairs or reconstruction or storage. When temporary situations exist (driveway repairs, overnight guests, etc.) which an Owner believes may require overnight parking on the street, this may be permitted.

4.10.6 No vehicle of any type, except maintenance vehicles and machinery, motorized or otherwise, shall be operated on any Common Area except as authorized by the Association. No automobiles or other motor vehicles shall be parked in any Common Area. 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.

4.11 **Stored Items.** Clothes lines, mechanical or other equipment, wood piles (except fire logs less than one (1) cord in size), storage piles, campers, horse trailers, boat trailers, trailer homes, recreational vehicles, and similar vehicles are prohibited from the Subdivision in all areas outside of Houses and garages.

4.12 **Storage Tanks.** No storage tanks, with the exception of rain water collection receptacles (above ground barrels, troughs or below ground cisterns) which are screened in accordance with the Subdivision Rules, shall be erected, placed or permitted within the Subdivision.

4.13 **Billboards and Signs.** No billboards or advertising signs will be permitted on any Lot or on any building except:

4.13.1 The name plate of the occupant and address of any residence. The size and placement of the name plate and address must be approved by the DRC.

4.13.2 Such signs as may be required by legal proceedings or are useful for such proceedings.

4.13.3 During the construction of any Structure, a job identification sign having a maximum face area of six (6) square feet and of the type usually employed by a contractor.

4.13.4 Appropriate safety, directional, and identification and safety signs installed adjacent to the Easements or public rights-of-way by the City of Santa Fe, the Association, or as required by law.

4.13.5 Not more than one "for sale" or "for rent" sign having a maximum face area of six (6) square feet to be placed on each Lot, except as may be provided in the Subdivision Rules.

4.13.6 Such residential or commercial identification signs, e.g., street names and Subdivision signs, as the Association has the right to maintain, or as are specially approved by the Board in accordance with the rules Subdivision Rules.

4.14 **Animals.** No animals may be kept or maintained on any Lot in any manner or number which is a nuisance or offensive to the neighboring Lots, whether by reason of noise, habits, odors, or otherwise, anything to the contrary hereinabove notwithstanding. No pet or other

animal shall be permitted on any Common Area except as allowed by the Board of Directors. The Owner of any pet or animal shall be responsible for the immediate removal and clean-up of any such animal's waste within the Subdivision. At no time shall the Owner of any pet or animal 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 animal or pet training or trading as a business shall be carried on, directly or indirectly, on any part of the Subdivision. The Board of Directors of the Association shall have the right to order the removal of any animals which are kept in violation of this Declaration. Enclosures for animals shall be constructed in accordance with the Design Guidelines. Small household pets which remain inside the residence on a Lot shall be allowed at the Lot Owner's discretion so long as the "nuisance" portions of this provision are not violated.

4.15 Home Occupations. No business or commercial activity of any nature shall be conducted upon or from any Lot, except that so-called home occupations shall be permitted if such activity does not disturb Owners of other Lots or increase traffic upon public or private roadways to undesirable levels.

4.16 Drainage. Surface drainage courses within Lots must be kept free and clear of debris or obstructions which prevent free flow of storm waters.

Owners shall, prior to construction of any Structure, submit to the DRC for construction approval the design and engineering of appropriate drainage control structures that will retain excess water runoff from impervious surfaces within said Lot. Thereafter, Owner shall also obtain the approval of the City of Santa Fe for said design and engineering of said drainage control structures. Prior approval of both the City of Santa Fe and the DRC are required as conditions for construction.

Drainage control devices may include backyard ponding, grading, landscaping, French drains, and other appropriate structures or devices. Notwithstanding the foregoing DRC and City approval, the responsibility for drainage control is and shall be that of the Lot Owner and no one else.

4.17 Hunting and Firearms. No hunting or discharge of firearms shall be permitted within the Subdivision.

4.18 Mining and Drilling. In no event shall the Subdivision be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas or other hydrocarbons, minerals, rocks, stones, gravel, or earth.

4.19 Motor Vehicles; Off-Road Vehicles. No mini-bikes, motorcycles, off-road vehicles, nor any unlicensed vehicles of any kind, shall be driven or permitted on the Easements except for ingress and egress to an Owner's residence. Except for maintenance vehicles, no motor-driven vehicle shall be driven or permitted on drainage or Common Areas within the Subdivision. No person who is not licensed to operate motor vehicles by the State of New Mexico or other state shall be permitted to operate any motor-driven vehicle on any road within the Subdivision. Any Owner responsible for damage to any paved or unpaved areas of the Easements may be assessed for such damage by the Association.

4.20 Rate of Insurance Increase. No portion of the Subdivision shall be used for any purpose or in any manner that would increase the rate at which insurance against loss or damage by fire and the perils covered by extended coverage, bodily injury, or property damage liability insurance covering any other House may be obtained or cause any other House to be uninsurable or have such insurance cancelled or suspended.

4.21 Lot Splitting and Consolidation. No Lot within the Subdivision shall be split. No two or more Lots within the Subdivision shall be consolidated into one Lot unless the Board gives

its written consent. Nothing in this subsection shall apply to the consolidation of two or more Lots into one by the Declarant.

4.22 **No Inconsistent Uses.** No uses are permitted that are or would be inconsistent with the single-family residential character of the Subdivision.

4.23 **Waiver of Provisions.** Any of the Covenants set forth in this Article 4 may be waived by the DRC where the proposed waiver is consistent with the purpose and intent of this Declaration and said waiver is granted pursuant to the provisions for variances.

4.24 **Health, Safety, and Welfare.** In the event that any uses, activities, and facilities are deemed by the Board to be an unreasonable annoyance or a nuisance, or to adversely and unreasonably affect the health, safety, or welfare of Owners or occupants, the Board may make such reasonable rules restricting or regulating their presence on a Lot as part of the Subdivision Rules or may direct the DRC to make rules governing their presence on Lots as a part of the Design Guidelines. Any such rules shall be consistent with the provisions of this Declaration.

ARTICLE 5 – EASEMENTS AND COMMON AREA; USES; RESTRICTIONS

5.1 **Common Area and Easements.** Common Area and Easements shall be reserved by the Association for the benefit of all Owners, to enhance the value and desirability of the Subdivision, for vehicular and pedestrian access to the Lots, for hiking and other recreational activities, for watering, planting, cutting, removing, and otherwise caring for the landscape, for maintaining the security of the Subdivision, and for installing, maintaining, and repairing signs identifying the Subdivision and roads therein, and utility lines necessary for the homes and for the maintenance of the landscaping, subject, however, to the following limitations and restrictions:

5.1.1 The use of the Common Area and Easements shall be subject to the Subdivision Rules as they may be adopted from time to time.

5.1.2 The Common Area and Easements shall be subject to the following:

- (i) Such rights and Easements as may have been offered for dedication to public use;
- (ii) Such Easements as may have been reserved by Declarant;
- (iii) Such Easements or other interests as may from time to time be taken under power of eminent domain;
- (iv) The right of the Association to suspend the right of an Owner (and his licensees, invitees, and tenants) to use the Common Areas and facilities thereon (except the streets, sidewalks, and other means of ingress and egress) for any period during which any assessment levied by the Association against his Lot remains unpaid or for a reasonable period for any infraction of the Bylaws, Subdivision Rules, or this Declaration, as amended from time to time;
- (v) The right of the Association to limit or permit the use of Common Areas by non-members, as the Association deems appropriate, and the right of the Association to limit the number of guests of Owners using Common Area facilities; and

(vi) Such other Easements as may from time to time be granted or conveyed by the Association pursuant to this Declaration.

5.1.3 There shall be no improving, landscaping, decorating, or repairing of any Common Area or Easement except by the Association in conjunction with its maintenance of Common Area and Easements.

5.1.4 The Association shall have the right to control access to the Common Area; however, the Association shall not impair the Owners' rights of access to their Lots.

5.1.5 All or a portion of the Common Area may be dedicated to the City of Santa Fe or other governmental body if approved by a sixty-seven percent (67%) vote or written consent of the voting power of the Association and evidenced by a written consent to dedication executed and acknowledged by the Board and recorded. Such dedication shall be approved and accepted by the City of Santa Fe or other governmental body.

5.1.6 Each Owner shall be liable to the Association for all damage to the Common Area or improvements or facilities, including the Paseo de Vistas wall, situated thereon by such Owner, his invitees, licensees, or tenants.

5.1.7 The ownership and access rights of the Association and the Owners of the Common Areas and Easements shall be subject to the following Easement and encroachment rights:

- (i) **Utilities.** Each Owner of a Lot, served by utility connections, lines, or facilities, including but not limited to those for water, gas, sanitary sewer, telephone, drainage, and cable television services, shall have the right and is hereby granted a non-exclusive Easement, to the full extent necessary, to enter upon the Common Areas and Easements and/or to have utility companies and/or City of Santa Fe personnel enter upon the Common Areas and Easements where such connections, lines, or facilities or any portion thereof may lie, to repair, replace, and generally maintain the same. Lot Owners themselves shall only have the right to establish, repair, or maintain sanitary sewer line connections with the proper permit. Whenever utility connections, lines, or facilities installed within the Subdivision serve more than one Lot, the Owner of each Lot served hereby shall be entitled to the full use and enjoyment of the portions thereof which service his Lot. Declarant hereby reserves to itself Easements over, under, and through the Common Areas and Easements for installation of such utility connections, lines, or facilities for the benefit of the Subdivision or as may otherwise be needed for the development of the Subdivision, together with the right, as Declarant deems necessary or appropriate, to grant and transfer such Easements to the Association, utility companies, or governmental agencies, or authorities within whose jurisdiction the Subdivision lies, and other appropriate entities and individuals.
- (ii) **Development and Sales.** There is hereby reserved to Declarant non-exclusive Easements over the Common Areas and Easements and the facilities located thereon for all construction and sales activities relating to their development of the Subdivision. It is anticipated that said construction and sales activities shall relate to individual projects developed from time to time on portions of the Subdivision and to the

promotion or enhancement of either all or a portion of the Subdivision by Declarant.

5.2 Decorative Feature Easements. The Declarant and the Association shall have an Easement within the building setback lines on the corner of each Lot which is located at an intersection of streets within the Subdivision or at the entry of the Subdivision to install decorative entrance treatments, street signs, and landscaping.

5.3 Declarant's Reservation of Easements. Declarant reserves an Easement and right-of-way in, through, over, under, and across all portions of the Subdivision for the purpose of completing its development and improvement work on the Subdivision, and, toward this end, Declarant reserves the right to grant Easements and rights-of-way in, through, under, over, on, and across the Subdivision for the installation, maintenance, and inspection of lines and appurtenances for public or private water, sewer, drainage, cable television, gas, or other utilities, and for any other materials or services necessary for the completion of said development and improvement work. 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 streets and roads located within the Subdivision. In addition, Declarant reserves the right to continue to use the Subdivision and any sales offices, model homes, signs, and parking spaces located on the Subdivision in its effort to develop and market portions of the Subdivision. 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 exercised by Declarant's agents, employees, and representatives.

5.4 Easement to Correct Drainage. Declarant and/or the Association is granted an Easement to enter upon each Lot conveyed to an Owner in perpetuity after each such conveyance for purposes of correcting drainage problems or Structures. Prior notice of entry shall be given to the occupant, except in an emergency. Such Easement to enter shall include, but is not limited to, vehicular access to the gabion dams and the pond retention areas behind them, to the railroad tie check dams, to the pond retention areas behind them, and to any arroyos or drainage, areas or basins, whether or not platted on the Subdivision Plat. The Association shall be responsible for maintenance of the gabion dams and other erosion control Structures, and the periodic removal of silt from behind such Structures.

5.5 Easement to Inspect. The Association and its duly authorized agents are granted the right to enter Lots to ascertain the extent of compliance with the Bylaws, Subdivision Rules, and this Declaration and to perform maintenance or remedy non-compliances with the Covenants or Subdivision Rules, if necessary. Prior notice of said inspection shall be given to the occupant, except in cases of emergency.

5.6 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.

ARTICLE 6 – THE ASSOCIATION

6.1 The Association. The Las Lomas Homeowners' Association has been duly incorporated and organized according to New Mexico law pursuant to the Articles of Incorporation and Bylaws attached hereto as Exhibits B and C, respectively, and incorporated herein by this reference (hereinafter collectively referred to as the "Articles and Bylaws"). The membership of the Association, powers and duties of members, and power and duties of the Association are specified in the Articles and Bylaws and are supplemented herein. The Association has the duties, among others, to maintain the Easements and Common Area.

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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.

The President and Secretary of the Association or any two (2) 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 and the then current DRC. The most recently recorded affidavit shall be conclusive evidence of the identity of the persons then comprising the Board and DRC in favor of any person relying thereon in good faith.

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

The Board shall, from time to time, make, establish, promulgate, amend, and repeal the Subdivision Rules. The DRC shall have the same rights, with respect to the Design Guidelines, if ratified by the Board. The Association shall prepare an annual operating statement reflecting the money received by the Association and the expenditures of the Association for each fiscal year and shall distribute such statement to each member and each mortgagee upon request. The Association shall take such action as may reasonably be necessary to enforce or carry out the purposes of this Declaration and the Subdivision Rules.

6.2 Membership. Each Owner shall be a member of the Association and shall be entitled to one (1) vote for each Lot owned. When more than one person or entity is an Owner of any Lot, all such persons shall be entitled to only one vote. The vote for such Lot shall be exercised as such Owners determine. In no event shall such multiple Owners vote more votes than they are entitled by the Lots owned.

6.3 Voting Rights. As provided in this Article, each Owner shall be entitled to vote on all matters properly submitted for vote to the membership of the Association. Every Owner entitled to vote at any election of members of the Board may not cumulate his votes. The right to vote may not be severed or separated from any Lot, and any sale, transfer, or conveyance of the beneficial interest of the fee of any Lot to a new Owner shall operate to transfer the appurtenant voting rights without the requirement of any express reference thereto. Voting may be by written proxy, but no Lot Owner may vote by proxy for more than one (1) additional Lot Owner.

6.4 Voting Rules. When any provision of the Declaration or Bylaws calls for the vote or the consent of the members in a stated percentage, the following rules apply, unless the specific language of the provision provides to the contrary:

6.4.1 Any provision of this Declaration providing for a vote by the members shall be satisfied if the required percentage or number of members give their written consent; and

6.4.2 The percentage vote requirement shall be a percentage of the total voting power of the Association and not a percentage of the number of members of the Association.

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

ARTICLE 7 – ASSESSMENTS

7.1 **Mutual Obligation to Pay Assessments.** Each Owner, by acceptance of a deed to a Lot or contract of sale, promises and agrees with each other Owner and with the Association to pay all assessments levied by the Board.

7.2 **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.

7.3 **Annual Budget.** Each year, and at least seventy-five (75) Days prior to the end of the Association’s current 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 the “Annual Budget”) to pay the Common Expenses to be incurred to maintain and repair the roads, drainage structures, and landscaping within the Easements. 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 meeting of the Association shall be set within the period set forth in the Declaration and shall be not less than fourteen (14) nor more than thirty (30) Days after mailing (via regular mail or email) of the Annual Budget to the Owners described hereinabove. The Annual Budget shall be deemed ratified if approved by fifty-one percent (51%) of those attending the Annual Meeting, assuming a quorum. If a quorum is not present, then the Board's proposed budget is approved. Should, for any reason, the Annual Budget not be approved, the prior years dues assessment shall carry forward. The Board may, at its discretion, allocate within the overall dues to the various budget categories.

The Annual Budget shall be based upon the cash requirements deemed to be such aggregate sum as the managing agent or 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, which sum may include, among other things, expenses of management, premiums for all insurance in the amounts and types required hereunder, landscaping and care of grounds, common lighting, legal and accounting fees, management fees, expenses and liabilities incurred by the managing agent or Board under or by reason of this Declaration, 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.

7.4 **Assessments.** Effective the first Day of each such fiscal year, 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, which sum shall be paid by the Owner in a yearly installment on the first Day of each fiscal year, continuing until a new assessment is made by the Board. For the foregoing purposes, the Declarant shall be assessed a sum equal to one-third of its percentage of Lot ownership. The managing agent or Board shall prepare and deliver or mail to each Owner an itemized yearly statement showing the various estimated or actual expenses for which the assessments are made and which vary from the itemized Annual Budget ratified by the Owners.

Contributions for yearly assessments shall be prorated if the ownership of the Lot commences on a Day other than the first Day of the year. In the case of transfer of ownership from the Declarant to a new Owner, the proration shall be based upon a one-third assessment up to the date of transfer, and a full assessment thereafter. Any unpaid assessments by a prior Owner shall attach to the Lot and shall be assessed to any new Owner who acquires said Lot. The omission or failure of the managing agent or Board to fix the assessment for any year shall not be deemed a

waiver, modification, or release of the Owners from their obligations to pay the assessment for the year.

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. In this case, each Owner shall be assessed a sum equal to his percentage of ownership of Subdivision Lots multiplied by such increase, provided, however: (a) the Declarant shall be assessed an amount equal to one-third of its percentage of Lot ownership multiplied by such increase; and (b) extraordinary expenses omitted from the Annual Budget, which may become due during the year, shall first be paid from the replacement and contingency reserve. The Board shall give written notice (via regular mail or email) of any such increase, and the reasons therefor, to each Owner, and shall state the date and terms of payment of such increase.

All such 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 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 percentage as their percentage ownership of the total Subdivision Lots. Notwithstanding any other provision contained herein, no Owner shall have the right to demand that more than his pro rata share of the assessments collected be used to benefit his Lot.

7.5 Special Expenses. In the event any of the Easements or signage is damaged in any way through the intentional or negligent act or omission of any Owner or his agents, employees, or invitees, the expense incurred by the Association for the repair of such damage shall be deemed a "Special Expense." Such Special Expenses shall be levied by the Board and assessed only to the Owner whose act or omission resulted in the aforementioned damage and shall be paid by the Owner together with his next assessment due the Association.

Special Expenses shall include amounts assessed to any Owner for road damage which may be established pursuant to Subdivision Rules.

7.6 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. Any budget surplus may, at the discretion of the Board, be transferred to capital reserves. Any budget overrun shall be apportioned according to each Lot Owner's percentage of ownership in the total Subdivision Lots and added to the next yearly assessment.

7.7 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 books, records, purchase orders, and payment vouchers shall be available for inspection by any Owner, or duly authorized representative of any Owner, at reasonable times during normal weekday business hours. Any Owner's mortgagee(s) shall be deemed an authorized representative of Owner. Upon ten (10) Days' notice to the Board and payment of a reasonable fee established by the Board, any Owner or his mortgagee(s) may demand and be furnished a statement of his account reflecting the amount of any unpaid assessments or other charges due and owing from such Owner.

7.8 Lien for Non-Payment of Common and/or Special Expenses. All sums assessed and fines imposed by the Association, but unpaid, for the share of Common Expenses, including, without limitation, any assessment for Special Expenses and violations of this

Declaration, the Bylaws, or Subdivision Rules or chargeable to any Lot or its Owner shall constitute a lien on such Lot.

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 twenty percent (20%) 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.

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.

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.

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

7.9 Personal Debt of Owner. The amount of the Common and/or Special Expenses assessed against each Lot shall be the personal and individual debt of the Owner thereof at the time the assessment is made. Suit to recover a money judgment for unpaid Common and/or Special Expenses shall be maintainable without foreclosing or waiving the lien securing same. Notwithstanding anything to the contrary contained herein, the Association shall seek any sums due for unpaid Common and/or Special Expenses from a person in possession of a Lot pursuant to a real estate installment sale contract for a period of forty-five (45) Days following notice to such person of unpaid Common and/or Special Expenses before seeking such sums from the legal Owner of such Lot.

7.10 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 or any mortgagee or prospective mortgagee of a Lot, the Association, by its Secretary or 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 yearly assessment and the date that such assessment becomes due, and credits for advance 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) 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. The Owner of any Lot, by acceptance of a deed thereto, waives any objection to the disclosure of the aforementioned information by the Association and releases the Association, its officers, the Board, and its agents from any liability therefor.

7.11 Joint Liability for Common and/or Special Expenses upon Transfer of Lot. The grantee of a Lot shall be jointly and severally liable with the prior Owner for all unpaid assessments against the latter for his proportionate share of the Common and/or Special Expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the Declarant the amounts paid by the grantee therefor, provided, however, that upon payment of a reasonable fee established by the Board, and upon written request, any such

prospective grantee shall be entitled to a statement from the Treasurer of the Association or Board setting forth the amount of the unpaid assessments, if any, with respect to the subject Lot, the amount of the current yearly assessment, the date that such assessment becomes due, and credits for advance payments or for prepaid items, including but not limited to insurance premiums, which statement shall be conclusive upon the Association. If such statement is not tendered by the Association within ten (10) Days of its actual receipt of such request, then such requesting grantee shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments against the subject Lot, unless such lien has been recorded with the Santa Fe County Clerk prior to the date the request is received by the Association.

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

ARTICLE 8 – DUTIES AND RESPONSIBILITIES OF OWNERS

8.1 **Owner's Responsibility to Repair.** Each Owner shall be responsible for the maintenance and repair of his House and Lot without limitation as well as water laterals serving the Lot to the junction of the lateral with the utility line in the street. In the event of partial or complete destruction, the Owner shall be responsible for the prompt rebuilding of his House or the removal of all debris to the satisfaction of the DRC.

8.2 **Maintenance of Landscaping.** Each Owner shall maintain the landscaping of his Lot in a neat and attractive manner.

8.3 **Observance of Responsibilities.** Each Owner shall comply with the provisions of this Article 8 and will cause and be responsible for Owner's family, agents, guests, contractors, employees, and any person renting or leasing Owner's House to do likewise.

8.4 **Rights of Action.** The Board of the Association shall have a right of action against Owners for failure to comply with the provisions of this Article 8 of the Declaration. The Board shall be entitled to recover all costs, expenses, and reasonable attorney's fees incurred in the enforcement of this Article 8.

ARTICLE 9 – GENERAL PROVISIONS

9.1 **Enforcement.** Except as restricted in Article 8, the Board and/or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, Covenants, Design Guidelines, 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. The Board and/or any Owner shall be entitled to recover all costs, expenses, and reasonable attorney's fees incurred by the Board or such Owner in the enforcement of the provisions of this Declaration.

9.2 **Notices.** Except as otherwise provided in this Declaration, any notices required or permitted hereunder shall be sent by certified or registered U.S. mail return receipt requested, or by email or facsimile, or may be hand delivered by an Association officer to the addresses shown in the records maintained by the Association. Notices shall be deemed delivered four (4) Days after they have been sent. Any Owner may change his address by giving notice thereof to the Association care of the Secretary of the Association at **P.O. Box 31131, Santa Fe, New Mexico 87594.**

9.3 **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.

9.4 **Amendment.** The Covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, provided, however, that Owners holding at least sixty-seven percent (67%) of the voting power of the Association may release the land subject hereto from all of the restrictive Covenants contained in this Declaration, or may at any time change, amend, modify, or revise any of said restrictive Covenants except as prohibited herein. Every amendment must be recorded in the Office of County Clerk, Santa Fe County, New Mexico.

9.5 **Annexation.** Declarant may, from time to time and at its sole discretion, and without necessity of any approvals by any Lot Owner, subject real property that is contiguous to the Subdivision and is owned by Declarant or by other persons, with the permission of such other persons, to this Declaration, whereby such property will have all of the rights and obligations of membership in the Association, including the right to use the Easements. The annexation of any such property shall become effective when Declarant shall have recorded in the Office of County Clerk, Santa Fe County, New Mexico, an amendment to this Declaration that describes the real property to be annexed, declares that such property is held pursuant to this Declaration, and states the amended total number of Lots within the Subdivision for assessment and voting purposes and for the filing of a Subdivision Plat of the property.

No property may be incorporated into the Subdivision without Declarant's consent and thereby entitled to the use of the Easements unless consented to by a majority of the voting power of the Association.

9.6 **Variances and Appeals.** The procedures for requesting or objecting to variances to the Covenants or the Design Guidelines are as follows:

9.6.1 **Covenants.** Any Owner may apply to the Board for a variance with respect to Articles 3 and 4 of the Covenants set forth in this Declaration. A good cause for a variance must be shown. Variances must conform to the Las Lomas Vision.

The Board will review the proposed variance for possible detrimental impact on other Owners. The Board may then, by majority vote, grant a variance on such terms and conditions as the Board shall specify in a written report sent (via regular mail or email) to all Owners. The variance shall become effective thirty (30) Days after delivery (see Section 9.2). If the variance is disapproved, the Board will mail (via regular mail or email) notice of its disapproval to the Owner who requested the variance.

Any five (5) Owners, provided one (1) adjacent Lot Owner is included in the five (5), or any ten (10) Owners may appeal the approval of a variance by submitting a written request to the Secretary of the Association that provides a summary of the basis for appeal. The written appeal must be received by the Secretary on behalf of the Board no later than one (1) Day before the variance would become effective, whereupon the Board shall, within a reasonable time, schedule a special meeting of all Owners. The variance shall become effective unless it is rejected by the vote of at least a majority interest of the votes cast at the special meeting at which a quorum is present.

An Owner whose request for a variance has been disapproved by the Board may appeal the disapproval of the variance request by submitting a written request to the Secretary of the Association that provides a summary of the basis for appeal. The written appeal must be received by the Secretary on behalf of the Board within fifteen (15) Days after the Owner has received

notice of the variance request disapproval, whereupon the Board shall, within a reasonable time, schedule a special meeting of all Owners. The variance disapproval shall be sustained unless it is rejected by the vote of at least a majority interest of the votes cast at the special meeting at which a quorum is present.

9.6.2 Design Guidelines. An Owner may apply to the DRC for a variance. A good cause for a variance must be shown. Variances must conform to the Las Lomas Vision. The DRC will review possible detrimental impact of the variance on other Owners. The DRC may then, by majority vote, grant a variance.

If the variance is approved, the DRC will mail (via regular mail or email) a copy of its written report on the variance to all Owners. Fifteen (15) Days after that mailing, the variance shall become effective. If the variance is disapproved, the DRC will mail (via regular mail or email) notice of it disapproval to the Owner who requested the variance.

The Owner who requested the variance may appeal the DRC's disapproval of the variance by submitting to the Secretary of the Association a written request for a hearing before the Board. Any five (5) Owners, provided one (1) adjacent Lot Owner is included in the five (5), or any ten (10) Owners may appeal any action of the DRC (including approval or disapproval of a variance) by submitting to the Secretary of the Association a written request for a hearing before the Board. Any request must provide a summary of the basis for appeal. The written appeal must be received by the Secretary of the Association (i) in the case of the requesting Owner's appeal of a variance request disapproval, within fifteen (15) Days after the Owner has received notice of the variance request disapproval, and (ii) in the case of the appeal of a variance approval, no later than one (1) Day before the variance would become effective, whereupon the Board shall, within a reasonable time, schedule a special Board meeting. Those invited shall include the Board, the DRC, the Owner requesting the variance, and any appealing Owners.

Following the meeting, the Board shall meet in executive session and make its decision. The Board's decision shall be based on the comments and information presented, and on the judgment of the Board. In addition, the Board may consult with independent advisors. The Board shall mail (via regular mail or email) a written summary of its decision to all Owners no later than the third (3rd) Day following the appeal hearing.

The decision of the Board on an appeal shall be final unless a written notice of appeal is received by the Secretary of the Association on behalf of the Board before the fifteenth (15th) Day after the Board mails its decision to all Owners. Any appeal must be signed by no less than ten (10) Owners.

If the Board receives a notice of appeal, the Board shall schedule a special meeting of all Owners for the purpose of discussing and voting on the Board's decision. The Board shall mail (via regular mail or email) a notice of the special meeting to all Owners indicating the time and place of the special meeting. The notice must be mailed no later than ten (10) Days prior to the meeting day. The Board's decision shall be sustained unless it is rejected by the vote of at least a majority interest of the votes cast at the special meeting at which a quorum is present.

9.7 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, the President of the Las Lomas Homeowner's Association has executed this Amended and Restated Declaration of the Protective Covenants of the Las Lomas Subdivision on behalf of the Las Lomas Homeowners' Association and the Owners of Lots in the Las Lomas Subdivision this 12th day of October, 2007.

LAS LOMAS HOMEOWNERS ASSOCIATION,
a New Mexico Not-For-Profit Corporation

BY: Jean Salazar
Jean Salazar, President

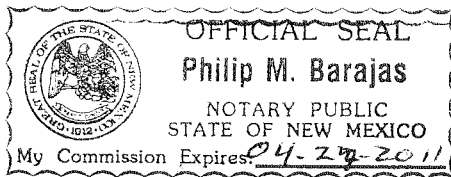
ACKNOWLEDGMENT

STATE OF NEW MEXICO)
36) SS.
COUNTY OF SANTA FE)

The foregoing instrument was duly acknowledged before me this 12th day of October, 2007, by Jean Salazar, President, Las Lomas Homeowners' Association, on behalf of said association and the Owners of Lots in the Las Lomas Subdivision.

Philip M. Barajas
Notary Public

My Commission Expires:
SEAL



SFC CLERK RECORDED 10/12/2007

SFC CLERK RECORDED 10/12/2007

Exhibit A

LEGAL DESCRIPTION
LAS LOMAS SUBDIVISION

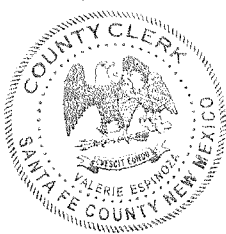
A tract of land lying within the City of Santa Fe, New Mexico, within extended Section 27, T17N, R9E, N.M.P.M., and being more particularly described as follows:

Beginning at the northern most corner of said tract from whence the U.S.G.L.O. brass cap bears N27°04'02"W., 783.21'; Thence from said Point of Beginning: S25°24'48"E., 356.61' along the easterly boundary of Calle Nopal;
Thence continuing along the boundary of Calle Nopal 1250.86'; Thence S48°33'28"E., 63.61';
Thence along a curve to the left 34.56', with radius of 22' and delta 90°;
Thence N41°26'32"E., 35.50';
Thence along a curve to the right 347.49', having radius = 1690.02, and delta 11°46'51";
Thence N53°13'23"E., 131.13';
Thence along a curve to the left 248.16', having radius 1379.40, and delta 10°18'28";
Thence N42°54'55"E., 425.62' to the easterly boundary of this property.
Thence N32°12'16"W., 62.02';
Thence N30°49'09"W., 579.66';
Thence continuing along the easterly boundary 1326.19';
Thence S36°53'43"W., 93.54' along the southerly boundary of Paseo de Vistas;
Thence S18°31'36"W., 392.13' along the southerly boundary of Paseo de Vistas;
Thence S29°15'30"W., 355.18' along the southerly boundary of Paseo de Vistas;
Thence S27°09'32"W., 175.67' along the southerly boundary of Paseo de Vistas;
Thence S48°20'12"W., 190.85 to the Point of Beginning.

Said Tract of land contains 43.19 acres, more or less, and is intended to describe all that part of Las Lomas shown hereon.

COUNTY OF SANTA FE) AMENDED & RESTATED COV
STATE OF NEW MEXICO) ss PAGES: 26

I Hereby Certify That This Instrument Was Filed for
Record On The 12TH Day Of October, A.D., 2007 at 10:11
And Was Duly Recorded as Instrument # 1502780
Of The Records Of Santa Fe County



Witness My Hand And Seal Of Office
Valerie Espinoza
Deputy *Valerie Espinoza* County Clerk, Santa Fe, NM

August 2007