

**AMENDED DECLARATION OF COVENANTS AND RESTRICTIONS
FOR THE ESTANCIA PRIMERA COMMUNITY**

THIS AMENDED DECLARATION OF COVENANTS AND RESTRICTIONS FOR THE ESTANCIA PRIMERA COMMUNITY ("Amended Declaration") is made this 11th day of October, 2005 and amends the January 7, 1982 Declaration recorded January 8, 1982 in Book 433 at page 614-660, as amended on August 18, 1998 in the books and records of Santa Fe County, New Mexico, by NEW MEXICO RESOURCES, INC., a New Mexico Corporation ("Declarant"), with reference to the following facts:

RECITALS

A. WHEREAS, on January 8, 1982, Declarant was the owner, or had the authority of the owner or owners, of the real property described on Exhibit "A" attached hereto and incorporated herein, which was and is part of a larger parcel of real property (the "Estancia Primera Property") then owned by Declarant and described on Exhibit "B" attached hereto and incorporated herein, and Declarant declared its intent to develop the Estancia Primera Property, in phases, as the Planned Residential Community of Estancia Primera (the "Estancia Primera Community"), in accordance with the Estancia Primera PRC Ordinance adopted by the City of Santa Fe, Santa Fe City Ordinance 1981-3; and

B. WHEREAS, the real property described on Exhibit "A" was and is the first phase of the Estancia Primera Community and constituted the property initially subject to this Declaration and Declarant declared its intent to annex, from time to time, additional portions of the Estancia Primera Property to the property subject to this Declaration pursuant to Article 2 and all real property initially subject to or subsequently annexed to this Declaration was and is referred to herein as "the Property;" and

C. WHEREAS, Declarant declared its intent to establish the covenants, restrictions, easements, charges and liens contained herein as a general scheme for the management of the Property in order to enhance and protect the value, desirability and attractiveness of the Property and all subsequent development thereon for the benefit of Declarant and all owners thereof; and

D. WHEREAS, Declarant incorporated the Estancia Primera Community Services Association (the "EPCSA") under the laws of this state in order to administer, enforce and achieve the purposes of this Declaration and to meet the requirements of the City of Santa Fe; and

E. WHEREAS, the Declarant no longer is the owner of any portion of the real property described in Exhibit B; and

F. WHEREAS, by virtue of conveyances of the ownership of the property described on Exhibit B as the "Entire Tract North of Hyde Park Road" and the annexation of Tracts K, L, M, N, O, P, Q, and U, as shown on the Master Development Plan of Estancia Primera, to the Property, the Estancia Primera Community consists of, and is limited to, Tracts J, K, L, M, N, O, P, Q, R, S, T and U, as shown on the Master Development Plan; and

G. WHEREAS, pursuant to Article 9 of the Declaration, the Owners of the Property comprising the Estancia Primera Community on August 18, 1998 and on October 11, 2005, have amended the Declaration as set forth herein and, in doing so, intend that this Amended Declaration will, from the date of recordation, be binding upon them and their successors in interest as set forth herein.

DECLARATION

NOW, THEREFORE, Declarant declared in the Declaration that the Property is and shall be owned, held, transferred, sold, conveyed, encumbered, used, occupied and improved subject to the covenants, conditions, restrictions, easements, charges, and liens set forth in the Declaration and the Owners of the Property hereby affirm, adopt and restate such declaration for the purposes of this Amended Declaration and further affirm, adopt and restate that this Amended Declaration is established to further a plan for the subdivision, improvement and sale of the Property and for the purpose of enhancing the value, desirability and attractiveness of the Property and every part thereof; and that all of the covenants, conditions, restrictions, easements, charges, and liens contained herein are equitable servitudes and shall run with the title of the real property subject hereto and every part thereof, and shall be binding upon and inure to the benefit of all parties having or acquiring any right, title or interest in

any portion of the Property; and that Declarant and the Owners have delegated and assigned to EPCSA the ownership, maintenance and administration of the Community Common Areas and the right and obligation to administer and enforce this Amended Declaration, to exercise the management responsibilities and other rights and duties specified herein, to collect assessments and disburse funds for the benefit of the Property, and to promote the recreation, health, safety and welfare of all Owners and residents thereof.

ARTICLE 1 DEFINITIONS

1.0 **Amended Declaration** shall mean the covenants, conditions and restrictions and all other provisions herein set forth in this document, as amended from time to time.

1.1 **Annexation** shall mean the process by which additional real property may be included in the Property subject to this Amended Declaration, as specified in Article 2.

1.2 **Annexed Property** shall mean any real property annexed to this Amended Declaration, in one or more phases, pursuant to Article 2.

1.3 **Approval** shall mean the issuance by any public agency or by EPCSA or one of its boards or committees, of written approval, or any written waiver of approval rights, or a letter of "no objection."

1.4 **ARB** shall mean the Architectural Review Board described in Section 3.6.

1.5 **Architectural Guidelines** shall mean the standards, restrictions, regulations and guidelines to be used by Owners, developers, contractors and Merchant Builders and the ARB in developing, reviewing and approving architectural plans for improvements to the Property, as described in Section 3.7.

1.6 **Assessable Unit** shall mean and refer to any portion of the Property which is subject to assessments, as provided in Article 5.

1.7 **Board of Directors or Board** shall mean the Board of Directors of the EPCSA.

1.8 **Book of Resolutions** shall mean the rules, regulations and policies of the EPCSA, as amended from time to time.

1.9 [Open]

1.10 [Open].

1.11 [Open].

1.12 **Common Areas** shall mean all Community Common Areas and Neighborhood Common Areas. If there is an inconsistency between the Common Areas shown on the Master Development Plan and the Common Areas shown on a Final Development Plan or Final Plat Map for a portion of the Property as approved by the City of Santa Fe, the Final Development Plan or Final Plat Map shall control. All Common Areas are subject to this Amended Declaration and any applicable Supplementary Declarations.

1.13 **Community Assessment** shall mean a charge against a particular Owner and his or her Lot or Living Unit levied by the EPCSA pursuant to Article 5.

1.14 **Community Association** shall mean the Estancia Primera Community Services Association ("EPCSA") and its successors and assigns.

1.15 **Community Common Areas** shall mean all portions of the Property, other than Lots or Living Units, which are owned in undivided interests by all the Owners or owned or leased by EPCSA or over which EPCSA has an easement of use and/or maintenance for the benefit of all Owners. The Community Common Areas for the Property initially subject to this Amended Declaration are identified on Exhibit C. The Community

Common Areas may include, but are not limited to: private streets; medians and landscaped areas adjacent to public streets; major erosion and drainage control facilities; hiking and jogging trails; community recreational facilities; major slopes; park and open-space areas; major entry areas; and other areas or facilities which benefit or are designed to be used by all Owners. If there is any inconsistency between the Common Areas shown on the Development Plan and the Common Areas shown on the Final Subdivision Plat for any portion of the Property, the Final Subdivision Plat shall control.

1.16 **Community Expenses** shall mean the actual and estimated costs of: maintaining, managing, operating, repairing and replacing the Community Common Areas and facilities and improvements located thereon, including a reasonable amount for reserves for future repairs and replacements; managing and administering EPCSA, including, but not limited to, compensation paid to managers, accountants, attorneys and employees; and other expenses incurred by EPCSA in connection with exercise of its powers and duties as specified herein or in furtherance of the purposes of EPCSA and the development of the Estancia Primera Community.

1.17 **Declarant** shall mean New Mexico Resources, Inc., and its successors and assigns, provided Declarant has recorded a document which expressly names such party as a Successor Declarant and assigns the rights and duties of Declarant hereunder, or unless such rights and obligations pass by operation of law. Under the Declaration, the rights and obligations of Declarant set forth herein ceased when Declarant no longer owned any portion of the Estancia Primera Property.

1.18 **Declaration** shall mean the covenants, conditions, and restrictions and all other provisions set forth in that certain Declaration of Covenants and Restrictions for Estancia Primera Community Services Association dated January 7, 1982, recorded January 8, 1982, in Book 433 at Page 614-660 in the books and records of Santa Fe County, New Mexico.

1.19 **Estancia Primera Community** shall mean the Planned Residential Community developed on the Property as described on Exhibit B-1 attached hereto subject to this Amended Declaration in accordance with the Estancia Primera PRC Ordinance, as amended from time to time.

1.20 **Original Estancia Primera Property** shall mean the real property described on Exhibit "B," consisting of approximately 189 acres in the City of Santa Fe, which is the real property covered by the Master Development Plan.

1.21 **Estancia Primera PRC Ordinance** shall mean Ordinance 1981-3 adopted by the City of Santa Fe for the Estancia Primera Planned Residential Community and the conditions thereof, recorded in the Clerk's Office for Santa Fe County, New Mexico, on April 28, 1981, in Book 419, Pages 679-685.

1.22 **Federal Mortgage Agencies** shall mean those agencies which have an interest in any portion of the Property, such as the Federal Housing Administration, the Veterans Administration, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation, or successors to their interests.

1.23 **Final Development Plan or Final Plat Map** shall mean a recordable plat or map approved by the City of Santa Fe for a portion of the Property.

1.24 **First Mortgagee** shall mean an institutional lender which holds a first mortgage or trust deed on a Lot or Living Unit and which has notified EPCSA in writing of its interest.

1.25 **Founding Documents** shall mean the Articles of Incorporation of EPCSA, the Declaration, all Supplementary Declarations, and EPCSA Bylaws, all as initially drawn by the Declarant and filed or recorded, as the case may be, and all as may be duly amended from time to time.

1.26 **Governing Documents** shall mean the Founding Documents and the Book of Resolutions, as amended from time to time, including without limitations, the Amended Articles of Incorporation, this Amended Declaration and the Amended Bylaws of EPCSA.

1.27 **Institutional Lender** shall mean one or more commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds, or business trusts, including, but not limited to, real estate investment trusts; any other lender regularly engaged in financing the purchase, construction, or improvement of real estate or any assignee of loans made by such a lender, or any private or governmental institution which has insured the loan or such a lender; or any combination of any of the foregoing entities.

1.28 **Living Unit** shall mean a structure or portion of a structure situated upon the Property and designed and intended for use and occupancy as a residence by a single family, other than those which meet the definition of "Lot".

1.29 **Local Association** shall mean a Neighborhood Association.

1.30 **Lot** shall mean any improved or unimproved plot of land shown on any recorded subdivision map for any portion of the Property, other than designated Common Areas and any condominium unit created under the Condominium Act of this state, as amended from time to time.

1.31 **Master Development Plan** shall mean the development plan for the Original Estancia Primera Property as a Planned Residential Community, pursuant to the Estancia Primera PRC Ordinance, as amended from time to time.

1.32 **Members** shall mean members of the EPCSA, which shall consist of all Owners.

1.33 **Merchant Builder** shall mean a person or entity which acquires a portion of the Property for the purpose of improving such portion in accordance with the Master Development Plan for resale to future Owners.

1.34 **Neighborhood** shall mean a portion of the Property , which constitutes a separate development for single-family living units defined by a recorded Final Subdivision Plat.

1.35 **Neighborhood Association** shall mean the governing body of a Neighborhood which shall be primarily responsible for maintaining Neighborhood Common Areas.

1.36 **Neighborhood Common Areas** shall mean portions of the Neighborhood, other than Lots or Living Units, which are owned by all Owners within the Neighborhood or by the Neighborhood Association or over which the Neighborhood Association has an easement of use and/or maintenance for the benefit of Owners within the Neighborhood. Portions of the Community Common Areas which are intended primarily for the use and enjoyment of Members residing in a particular Neighborhood may be designated as Neighborhood Common Areas, as provided in Section 3.5(g). Neighborhood Common Areas shall be identified in a Supplementary Declaration and/or a Final Subdivision Plat recorded for the Neighborhood.

1.37 [Open]

1.38 **Owner** shall mean the record holder of fee simple title to any Lot or Living Unit , whether one or more persons or entities, but excluding those having such an interest merely as security for the performance of an obligation.

1.39 [Open].

1.40 **Property** shall mean and refer to the real property described on Exhibit B, all of which real property is subject to this Amended Declaration and the jurisdiction of EPCSA.

1.41 [Open]

1.42 **Quorum of Owners** shall mean the representation by presence or proxy of Members who hold seventy-five percent (75%) of the votes.

1.43 **Supplementary Declaration** shall mean any Declaration of Covenants and Restrictions annexing additional real property to the Property pursuant to Article 2 and subject to this Amended Declaration.

1.44 **Tract** shall mean a portion of the Property which is identified as a tract on the Master Development Plan, as amended from time to time. The tracts which comprise the Property are limited to Tracts J, K, L, M, N, O, P, Q, R, S, T and U.

1.45 [Open].

1.46 [Open].

1.47 [Open].

ARTICLE 2 THE PROPERTY; ANNEXATIONS

2.1 **Property Subject to Declaration and Amended Declaration.** The real property which is and shall be held, transferred, sold, conveyed, and occupied subject to this Amended Declaration, located in the City of Santa Fe, New Mexico, and more particularly described on Exhibit "A" and Exhibit "B-1" represents the Estancia Primera Community. Additional real property may be annexed to this Amended Declaration, in one or more phases, only in accordance with this Article 2. Upon such annexation, the provisions of this Amended Declaration shall fully apply to such Annexed Property. Declarant's express intention was to establish a cohesive plan of covenants and restrictions to be uniformly applied to all portions of the Property subject to the Declaration, including those portions added by annexation, and the Owners of the Property in the Estancia Primera Community hereby affirm, adopt and restate that intention under this Amended Declaration.

2.2 **Annexations to the Property.** Additional real property may become subject to this Amended Declaration in the following manner:

a) Additional real property, other than that described above, may be annexed to the Property only upon approval of seventy-five percent (75%) of the votes of a Quorum of Owners. In approving any annexation of real property to the Property, EPCSA, with approval of the Owners, may impose such conditions as it deems necessary to preserve and protect the interests of the Owners of the Property and EPCSA then existing.

2.3 **Procedure for Annexation.** Any annexation authorized under Section 2.2 shall be made by complying with the requirements of the Zoning Ordinance of the City of Santa Fe, by filing of record a Supplementary Declaration of Covenants and Restrictions for each separate annexation, and by filing with EPCSA the final plat for such Annexed Property. The Supplemental Declaration covering the Annexed Property shall extend the plan of this Amended Declaration to the Annexed Property and shall include a designation of all Community Common Areas, if any, for which EPCSA has agreed to accept maintenance responsibilities.

2.4 **Effect of Annexation.** Upon recording of a Supplementary Declaration, the Annexed Property described therein shall be subject to the provisions of this Amended Declaration and to the jurisdiction of EPCSA in the same manner as if it were part of the Property initially subject hereto.

(a) **Supplementary Restrictions.** A Supplementary Declaration may specify modifications to the covenants and restrictions contained in this Amended Declaration, as long as they are in no manner less restrictive than those contained herein, and may specify additional, complementary covenants and restrictions, as may be necessary to reflect the different use, development or character, if any, of the Annexed Property. The Supplementary Declaration shall also establish a Neighborhood Association to govern the Annexed Property. Provided, however, no Supplementary Declaration shall purport to revoke, distinguish or in any manner modify the covenants and restrictions established by this Amended Declaration, except as expressly provided herein.

(b) **Rights of Owners.** Upon annexation, all Owners of Property subject to this Amended Declaration shall be entitled to use any designated Community Common Areas in the Annexed Property, subject to the provisions of this Amended Declaration, and Owners of the Annexed Property shall thereupon be subject to this Amended Declaration and shall be entitled to use the Community Common Areas in any portion of the Property.

(c) **Assessments.** After each annexation, the Annexed Property shall be subject to Community Assessments for a proportionate share of the Community Expenses on the same basis as the other Property subject to this Amended Declaration.

2.5 The Master Development Plan.

(a) **Purpose.** The Master Development Plan covering the real property, illustrated on Exhibit "B," was the original design for the phased development of the Original Estancia Primera Property as a Planned Residential Community, and it was modified and amended during the several years required to develop the community.

(b) **Amendments.** To the extent there are further amendments to the Master Development Plan, they shall be effected only after: (1) giving Notice of the proposed changes to EPCSA and any affected Lot Owners; and (2) securing the approval of the governing body of the City of Santa Fe.

2.6 **Merger.** In accordance with its Articles of Incorporation, the property, rights, and obligations of EPCSA may, by operation of law, be transferred to another surviving or consolidated association similar in corporate nature and purpose or, alternatively, the property rights, and obligations of an association similar in corporate nature and purpose may, by operation of law, be added to the property, rights, and obligations of EPCSA as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established for the Property and any other property as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Amended Declaration for the Property except as hereinafter provided. Any such merger or consolidation shall require the assent of seventy-five percent (75%) of the votes of a Quorum of Owners.

ARTICLE 3 EPCSA

3.1 **Organization of EPCSA.** EPCSA is a nonprofit, nonstock corporation organized and existing under the laws of this state and charged with the duties and vested with the powers prescribed by law and set forth in the Governing Documents, as amended from time to time, provided no Governing Documents shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Amended Declaration.

(a) **Institutional Plan.** This Amended Declaration and the Governing Documents shall guide the controlled and orderly evolution of EPCSA into a comprehensive community institution with two major operating and administrative levels, each with associated membership rights and assessment obligations as follows:

(1) **Neighborhood.** A Neighborhood shall be established by recording a Supplementary Declaration which sets forth its boundaries, purposes, membership constituency and the rights and obligations unique to members of such Neighborhood. A Neighborhood Association shall be established for each Neighborhood in accordance with the Bylaws and shall serve to administer supplementary covenants and restrictions for a Neighborhood and advise the Board of Directors on matters pertaining to such Neighborhood. The failure by a Neighborhood to establish a Neighborhood Association shall operate as a forfeiture of the right to do so and shall subject the Neighborhood to governance by the Board of Directors as to matters pertaining to the Neighborhood. Any such forfeiture shall continue as long as the Neighborhood has failed to establish a Neighborhood Association.

(2) **Community level refers** to administrative and operational activities determined by the Board of Directors to be of material benefit to all Members without respect to the type or location of Lot or Living Unit in which they reside.

(b) **Subsidiary Corporations or Trusts.** By a majority vote of the Board of Directors, EPCSA shall have the right to form one or more subsidiary corporations or independent or dependent trusts for any purpose or purposes deemed appropriate; provided, however, such subsidiary corporations or trusts shall be subject to this Amended Declaration and may not take any action to reduce or abate the rights of Members. Without limiting the generality of the foregoing, one or more subsidiary corporations or trusts may be formed for the operation and maintenance of any specific Community Common Area or facility or improvement thereon or to perform any function within the Property.

3.2 Membership. All Owners shall be members of EPCSA on the basis provided herein.

(a) **Membership Classes.** There shall be one class of Membership in the Community Association. This Class shall include all Owners of Lots or Living Units within the Property which are platted, developed, and sold to Owners. Each Member receives one vote for each Living Unit or Lot owned by the Member. The maximum number of votes shall be the number of Lots or Living Units approved by the City of Santa Fe for the Property and as shown on the Final Subdivision Plat.

(b) **Members' Rights.** All Members who are in good standing shall by virtue of their membership be entitled to the following rights:

(1) The freedom to use and enjoy their property, the property of EPCSA, and the Community Common Areas, subject to the provisions of this Amended Declaration, any applicable Supplementary Declarations, and the rules and regulations established by EPCSA.

(2) The freedom to delegate such rights of enjoyment to their family members, their tenants, or contract purchasers, who also reside on their property.

(3) The right to run for election to the Board of Directors.

(4) The right to participate in hearings held by EPCSA.

(5) The right to serve on committees of EPCSA.

(6) The right to vote, as provided in Section 3.3.

(c) **Members' Obligations.** Obligations of the Members include, but are not limited to, adhering to the provisions and restrictions of this Amended Declaration, any applicable Supplementary Declarations, and the rules and regulations established by EPCSA, including property use restrictions, the Architectural Guidelines, rules for use of the Community Common Areas and facilities and improvements thereon, rules contained in the Book of Resolutions, and procedures for payment of Neighborhood and General and Special Assessments. No Member in default of any of his or her obligations is a Member in good standing under this Amended Declaration.

3.3 Voting Rights.

(a) **Matters Subject to Vote.** Members may vote on the following matters:

(1) Any increase in the annual assessments beyond the maximum permitted in this Amended Declaration.

(2) Special capital assessments.

(3) Mergers, consolidations, or dissolutions affecting EPCSA.

(4) Conveyance, dedication, or mortgaging of all or any part of the Community Common Areas.

(5) Amendments of this Amended Declaration or Supplementary Declarations.

(6) Amendments of the Articles or Bylaws of EPCSA.

(7) Election of the Board of Directors.

(b) **Exercise of Vote.** All decisions shall be by majority vote unless otherwise specified herein. The vote for any membership which is held by more than one person may be exercised by any one of them, unless any objection or protest by any holder of such membership is made prior to the completion of a vote, in which case the vote for such membership shall not be counted. If fewer than twenty-five percent (25%) of the membership votes

are cast in an election for any elective office, the Board of Directors may declare the results of such election invalid and may elect a Member to fill such office. Any provision of this Amended Declaration which requires the vote or written assent of a specified majority of the Members shall be deemed satisfied by: (1) the vote of the specified majority at a duly-called meeting, (2) a writing signed by the specified majority; or (3) a combination of votes and written assent, provided that Members shall not change their vote or written assent after it is cast or delivered, and provided further that only those written assents executed within sixty (60) days before or thirty (30) days after a meeting may be combined with votes cast at such meeting to constitute the specified majority.

3.4 Board of Directors.

(a) **Board Composition.** The Board of Directors shall consist of not less than five (5) or more than nine (9) members, with a member representing each of the Neighborhood Associations, if possible. Directors shall be elected at large by the membership, following nominations as provided in Article VI of the Bylaws of EPCSA. The terms of the Directors shall be two (2) year staggered terms. All members of the Board must be members in good standing of EPCSA. In the event of a vacancy on the Board, the position shall be filled by the appointment by the Board of any EPCSA member in good standing willing to serve until the next General Election.

3.5 Powers and Duties of EPCSA. EPCSA shall have all the powers of a non-profit corporation organized under the laws of the State of New Mexico, subject only to the limitations expressly set forth in the Founding Documents. EPCSA shall have the power to do any and all acts which are authorized, required or permitted under this Amended Declaration and any and all acts which may be reasonable and necessary for, or incidental to, the exercise of any express powers and duties granted to EPCSA herein. Without limiting the generality of the foregoing, EPCSA shall have the following powers and duties which, unless expressly provided otherwise, shall be exercised by the Board of Directors or by such committees, persons or agents expressly designated by the Board of Directors:

(a) **Management and Maintenance.** EPCSA shall maintain, manage, operate, replace and repair the Community Common Areas and all facilities and improvements located thereon and all personal property acquired by EPCSA.

(b) **Community Assessments.** EPCSA shall determine, levy, collect, and enforce all Community Assessments pursuant to Article 5.

(c) **Architectural Review.** The Board of Directors shall have the right to approve amendments and additions to the Architectural Guidelines and approve and appoint members of the ARB in accordance with Section 3.6 and Section 3.7.

(d) **Right of Entry.** The Board of Directors and its agents and representatives shall have the power and right to enter upon any portion of the Property, to the extent necessary, without liability to any Owner or Occupant, for the purpose of enforcing any of the provisions of this Amended Declaration or for the purpose of performing maintenance and repair duties imposed herein on EPCSA. Such right of entry upon Lots or Living Units shall be exercised so as to interfere as little as reasonably possible with the possession, use and enjoyment of such portion and shall be preceded by reasonable notice whenever the circumstances permit.

(e) **Right of Enforcement.** The Board of Directors, in its own name and on its own behalf or on behalf of any Owner or Owners who consent, shall have the power and authority to enforce the covenants and restrictions of the Amended Declaration and, if necessary, to commence and maintain legal or equitable actions or proceedings to recover damages or to restrain and enjoin any actual or threatened breach of any provision of this Amended Declaration or to enforce any such provision by mandatory injunction or otherwise, or to undertake all action necessary to remedy any harm to the Property caused by any breach of the covenants and restrictions and to seek recovery of reasonable attorneys' fees, costs and expenses incurred by EPCSA as a result.

(f) **Delegation of Duties.** EPCSA shall have the right to delegate any of its powers under this Amended Declaration. The Board of Directors shall have the power to employ a manager or other employee, or a professional manager or management company, subject to the direction and control of the Board of Directors, to perform all or any part of the duties and responsibilities of EPCSA.

(g) **Easements.** EPCSA shall have the right to grant one or more easements over portions of the Community Common Areas to any Neighborhood Association or to designate portions of the Community Common Areas for the exclusive use of Owners within one or more of the Neighborhoods and to otherwise act with respect to the Community Common Areas as set forth in Article 4.

(h) **Use Fees.** The Board of Directors shall have the power to charge reasonable use fees to Owners and others for any recreation facilities situated in or upon the Community Common Areas, but in no event shall any such fees be charged for the use of the streets, sidewalks or circulation system of the Property. The Board of Directors' power to charge use fees to Owners shall not be limited by Article 5.

(i) **Insurance.** EPCSA shall contract for and maintain such policy or policies of insurance as may be required to protect the interests of EPCSA and its Members, including, but not limited to, liability and property damage insurance to protect adjacent property owners from failure of private drainage and erosion control structures which are required for the development of the Estancia Primera Property. Said power shall be exercised so that such insurance shall not lapse at any time.

(j) **Taxes.** EPCSA shall pay any real and personal property taxes and other charges assessed against the Community Common Areas or any facilities or improvements located thereon, unless the same are separately assessed to the Owners.

(k) **Community Rules.** The Board of Directors may, from time to time, subject to this Amended Declaration, adopt and enforce rules and regulations pertaining to the management, operation, and use of the Community Common Area and any facilities and improvements thereon and any other subject within the jurisdiction of EPCSA.

(1) **Drainage.** The Board of Directors shall annually, upon a random sample basis, select, inspect and test French Drains of Living Units within the Property. If any defects in said selected French Drains are observed by qualified agent or employees of the Board of Directors, the Board of Directors shall cause the same to be corrected by the Owner of the affected Living Unit by a Restoration Assessment as provided in Section 5(b). In addition, the Board of Directors shall, at least annually, cause the erosion control and drainage structures to be inspected by qualified agents or employees of the Board and shall cause any necessary repairs to said structures to be made in a timely fashion.

3.6 Architectural Review Board (ARB).

(a) **Composition.** The ARB shall be comprised of no more than one member from each Neighborhood Association, except as otherwise provided in Subsection (b). In no event shall the ARB be comprised of fewer than three (3) members. Only an Owner of property within a duly organized and active Neighborhood Association is eligible for membership on the ARB. All members shall serve staggered three-year terms, as determined by the Board of Directors.

(b) **Selection of Members.** At its option, each duly organized and active Neighborhood Association may nominate one representative to the ARB. Each nomination will be submitted to the Board of EPCSA for approval. If fewer than three (3) of the Neighborhood Associations nominate representatives to the ARB, the Board shall nominate and approve members of the ARB sufficient to maintain the minimum membership. Any members nominated to the ARB by the Board of Directors must be eligible for membership on the ARB.

(c) **Vacancies.** Appointments to fill vacancies in unexpired terms shall be made in the same manner as the original appointment.

(d) **Duties.** The ARB shall regulate the external design, appearance, location and completion time for all improvements to the Property, and, in furtherance thereof, the Board shall:

(1) Review and approve, conditionally approve, or disapprove all plans and specifications for improvements to any portion of the Property, in accordance with Section 3.7.

(2) Adopt standards and regulations to be included in the Architectural Guidelines, which may include a reasonable architectural review fee, subject to the approval of the Board of Directors.

(3) Periodically inspect the Property for compliance with the Architectural Guidelines and approved plans and specification.

(4) Adopt procedures for the exercise of its duties and enter them in the Book of Resolutions.

(5) Maintain complete and accurate records of all actions taken.

3.7 Architectural Review of Improvement Plans.

(a) **Purpose of Architectural Regulations.** The purpose of the Architectural Guidelines and the review procedure is to insure proper development and use of the Property and to enhance and protect its value, in accordance with a general plan for development of a planned residential community, to insure construction of improvements of proper design and materials which enhance the economic and aesthetic value of the Property, and to insure architectural compatibility among structures and a harmonious relationship between structures and the natural vegetation and topography, for the benefit of all Owners.

(b) **Architectural Guidelines.** The Architectural Guidelines guide Owners, developers, contractors, and Merchant Builders and their agents in preparing improvement plans and specifications for submission to the ARB. The Architectural Guidelines may be amended and additional standards may be added, from time to time, by the ARB, subject to the approval of the Board of Directors. The Architectural Guidelines are intended to supplement this Amended Declaration and to facilitate the approval of improvements which achieve the high level of quality intended by this Amended Declaration.

(c) **Review Procedure.** No improvements shall be erected or placed on any portion of the Property, and no alterations or additions to any such improvements shall be made, until complete plans and specifications have been submitted to and approved in writing by the ARB. If the Property is located within a Neighborhood having its own duly constituted Architectural Review Board, the plans and specifications shall be first submitted to that Architectural Review Board for written recommendations as to approval or disapproval, prior to submittal to the ARB. The recommendations by the Association's Architectural Review Board will be given preferential consideration by the ARB. The ARB will make the review decision and will promptly inform the Applicant in writing, and such decision will be final subject to the appeal provisions set forth in subpart 3.7 (e) below.

(d) **Standards for Review.** In reviewing plans and specifications, the ARB shall consider, among other things, the following: building mass and height; architectural details and treatment, including building colors and finishes; conformity and harmony of building and landscape design with neighboring structures and with topography; visual or aesthetic impact; adequacy of parking, drainage and irrigation facilities; and conformity with the purpose and intent of this Amended Declaration, the Master Development Plan, as amended from time to time, and the Architectural Guidelines.

(e) **Decision of the ARB.** Within the time period set by the ARB and identified in the Architectural Guidelines, the ARB shall review and approve, conditionally approve or disapprove the plans and specifications. All decisions of the ARB may be appealed to the Board of Directors, which will make final and binding determination in the event of such an appeal.

(f) **No Liability for Approval Errors.** The Board of Directors, the ARB and their delegated agents shall not be liable for any damage, loss or prejudice suffered or claimed by any person on account of: (1) the approval, conditional approval or disapproval of any plans or specifications, whether or not defective; (2) the construction or performance of any work or improvement, whether or not pursuant to approved plans or specifications; or (3) the development of any portion of the Property; provided, however, that such parties have acted in good faith on the basis of such information as may be possessed by them.

ARTICLE 4 COMMUNITY COMMON AREAS

4.1 Permitted Uses of Community Common Areas. The Community Common Areas shall be used by Owners, who are Members in good standing, and their licensees, invitees and tenants, only for uses permitted by the Master Development Plan, this Amended Declaration and any applicable Supplementary Declarations, as amended from time to time, and subject to the rules and regulations of the Board of Directors.

4.2 Owner's Easement of Use. Every Owner shall have a right and easement of enjoyment in and to the Community Common Areas, subject to the provisions of this Declaration which shall be appurtenant to and shall pass with the title to his respective Lot, Living Unit or Parcel. Any Owner may permit members of his family and/or the tenants in possession of his respective Lot or Living Unit to use the Community Common Areas and any facilities situated thereon. In no event shall an Owner sell or otherwise sever or separate any interest he may have in the Community Common Areas from his ownership interest in his respective Lot, or Living Unit, . Provided, however, the easement granted herein shall be subject to the following limitations and conditions:

(a) The right of EPCSA to maintain recreational facilities on portions of the Community Common Areas and to charge reasonable admission and other fees for the use of such recreational facilities.

(b) The right of EPCSA to suspend the right of an Owner (and his licensees, invitees and tenants) to use the Community 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 EPCSA or by any Neighborhood Association against his or her Lot or Living Unit remains unpaid, or for a period not to exceed thirty (30) days for any infraction of the Governing Documents, as amended from time to time.

(c) The right of EPCSA to limit the use of one or more portions of the Community Common Areas solely to Owners of Lots or Living Units in one or more specific Neighborhoods provided that the Owners with rights of use are assessed for the costs of maintaining such portions. The primary responsibility for maintaining such portions may be assigned to one or more Neighborhood Associations.

(d) The right of EPCSA to limit or permit the use of Community Common Areas by non-Members, as EPCSA deems appropriate, and the right of EPCSA to limit the number of guests of Owners using Community Common Area facilities.

(e) The right of EPCSA to dedicate or transfer all or any part of the Community Common Areas to any person or entity, including, but not limited to, a Neighborhood Association or any public agency or authority or utility, for such purposes and subject to such conditions as EPCSA may deem proper; provided, however, that EPCSA shall notify all Federal Mortgage Agencies holding first mortgages or first Deeds of Trust on Lots or Living Units, in writing, at least thirty (30) days prior to the effective date of the proposed transfer or dedication. If all said Federal Mortgage Agencies do not disapprove of the proposed transfer or dedication, in writing, filed with EPCSA at least ten (10) days prior to the effective date of the proposed transfer or dedication, the proposed transfer and dedication shall become effective.

(f) The right of EPCSA to grant easements over the Community Common Areas for such purposes and subject to such conditions as EPCSA may deem proper.

(g) The right of EPCSA to establish and enforce rules and regulations affecting use of the Community Common Areas in furtherance of this Amended Declaration and the Master Development Plan.

(h) The rights of Owners, as stated in Section 4.5, to encroachment easements over the Community Common Areas.

(i) The right of EPCSA to limit and restrict the use of the Community Common Areas and portions thereof as deemed necessary by the Board of Directors for health, safety, welfare, privacy, maintenance and/or security purposes.

(j) The right of Merchant Builders, subject to the consent of EPCSA and obtaining all necessary governmental approvals and permits, to place signs on the Community Common Areas for purposes of marketing Lots or Living Units within the Property.

(k) The right of EPCSA, provided all necessary governmental approvals and permits are obtained, to locate upon the Community Common Areas such signs as it deems necessary and appropriate in order to serve the health, safety and welfare of the Owners and/or to facilitate the maintenance and preserve the condition of the Community Common Area or any other part of the Property.

4.3 Alteration or Improvement of Community Common Areas. No work which in any way alters any Community Common Area from its natural or existing stateshall be performed except by or with approval of EPCSA. In addition to the other rights with respect to the Community Common Areas granted to EPCSA hereto, EPCSA may place and maintain upon the Community Common Areas such signs as the Board of Directors may deem necessary for the identification of real property and roads, the regulation of traffic and parking, the regulation and use of the Community Common Areas, and/or for the health, welfare and safety of the Owners, and their invitees and licensees.

4.4 Liability of Owners for Damage to Community Common Areas. Each Owner shall be liable to EPCSA for all damage to the Community Common Areas or improvements or facilities situated thereon caused by such Owner, his invitees, licensees or tenants; provided, however, that such Owner shall not be responsible for that portion of said damage, if any, covered by insurance the proceeds of which are paid to EPCSA.

4.5. Easements and Encroachments over Community Common Areas. The ownership and access rights of EPCSA and the Owners to the Community Common Areas shall be subject to the following easements and encroachment rights:

(a) **Utilities.** Each Owner of a Lot or Living Unit 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 therefor, to enter upon the Community Common Areas and/or to have utility companies enter upon the Community Common Areas where such connections, lines or facilities or any portion thereof may lie, to repair, replace and generally maintain the same. Whenever utility connections, lines or facilities installed within the Property serve more than one Lot or Living Unit, the Owner of each Lot or Living Unit served thereby shall be entitled to the full use and enjoyment of the portions thereof which service his or her Lot or Living Unit. Easements reserved by the Declarant for the benefit of the Property have been granted and transferred to EPCSA or the Neighborhood Associations as shown on the recorded Development Plan and Final Subdivision Plats.

(b) **Encroachments.** Each Owner of a Lot or Living Unit within the Property adjacent to any Community Common Area or Areas shall have a non-exclusive easement over said Community Common Area or Areas for the use and maintenance of encroachments thereon due to settlement or shifting of buildings or other improvements, original construction error or any other similar causes, so long as said encroachments shall exist. However, no such easement for encroachment shall exist if the encroachment occurred due to the willful conduct of the Owner of the Lot or Living Unit.

ARTICLE 5

COMMUNITY ASSESSMENTS

5.1 Agreement to Pay Assessments; Creation of Lien and Obligation. By acceptance of a deed for his or her respective Lot or Living Unit, each Owner hereby covenants and agrees to pay to EPCSA, Community Assessments to be established and collected as provided in this Article 5. A lien shall attach against each assessed Lot or Living Unit for any other Community Assessment ten (10) days after such other Community Assessment is fixed by EPCSA. All of the Community Assessments, together with interest at ten percent (10%) per annum, costs and reasonable attorneys' fees shall be both: (a) a charge on the land and a continuing lien on the Lot or Living Unit against which each such Community Assessment is made; and (b) the personal obligation of the Owner of such Lot or Living Unit at the time the Community Assessment became due and payable. If more than one person or entity is the Owner of a Lot or Living Unit, the personal obligation to pay each such assessment shall be joint and several.

5.2 No Waiver by Non-Use. No Owner may exempt himself from payment of Community Assessments by waiver of the use or enjoyment of all or any portion of the Community Common Areas or facilities thereon or by waiver of the use or enjoyment of, or by abandonment of, his Lot or Living Unit.

5.3 Purpose of Assessments. The Community Assessments shall be used exclusively for the following purposes: (a) to promote the recreation, health, safety and welfare of the Members; (b) to meet the Community Expenses, including, but not limited to the improvement, maintenance and operation of the Community Common Areas and any facilities or improvements located thereon, thereby preserving and enhancing the value of the Property as a whole for the benefit of all Owners thereof; and (c) to accomplish the purposes, perform the duties and exercise the powers of the Community Association as provided herein.

5.4 Subordination of Lien. The lien for Community Assessments shall be subordinate to the liens of first mortgages or first deeds of trust on the assessed Lots or Living Units.

5.5 Method of Allocating Assessments. Except as otherwise provided for Restoration Assessments and Local Assessments, Community Assessments shall be levied upon all Lots or Living Units within the Property on the basis of three classes of Assessable Units. All Community Assessments shall be made at a uniform rate within each Class, as follows:

(a) **Class I.** All Living Units which are being or have been occupied as a residence shall be assessed at one hundred percent (100%) of the General or Special Assessment rate.

(b) **Class II.** All Living Units or Lots for which a building permit has been issued by the City of Santa Fe, but which have never been occupied, shall be assessed at twenty-five percent (25%) of the General or Special Assessment rate, commencing ten (10) days after issuance of said permit.

(c) **Class III.** All Lots which are not otherwise assessable under the Class I and Class II provisions shall be assessed at ten percent (10%) of the General or Special Assessment rate for each Living Unit.

5.6 General Assessments. The General Assessment shall be an annual assessment fixed and levied by the Board of Directors in an amount based upon the estimated Community Expenses, payable in installments as determined by the Board.

(a) **Method of Determining Assessment.** Prior to the beginning of each fiscal year, the Board of Directors shall prepare a budget of the total estimated operating expenses of EPCSA for said fiscal year. The budget shall estimate all Community Expenses, based upon the actual services to be undertaken by EPCSA, and projected operating costs for the Community Common Areas and all improvements and facilities located thereon. The budget shall include reserves for major repairs and replacements and a reserve for unpaid Community Assessments. Prior to the beginning of each fiscal year, by a vote of two-thirds of its Members, the Board of Directors shall fix the annual General Assessment at a rate sufficient to meet the estimated Community Expenses, subject to the restrictions on the annual General Assessment provided herein. In the event the Board of Directors fails to fix a General Assessment for any fiscal year, then the assessment fixed for the preceding fiscal year shall automatically be continued until such time as the Board acts.

Each fiscal year, the Board of Directors may increase the annual General Assessment rate for each Living Unit or Lot by no more than twenty-five percent (25%) of the general assessment in effect for the immediately preceding fiscal year. The rate may be increased above the amount which can be set by the Board with the assent of two-thirds of the votes of a Quorum of Owners.

5.7 General Assessments by Neighborhood Associations. Additional General Assessments may be levied against the Assessable Units within specific Neighborhoods by the appropriate Neighborhood Association. The purposes and methods for determining such assessments shall be specified by a Supplementary Declaration recorded for such portion of the Property.

5.8 Special Assessments.

(a) **Capital Improvement Assessment.** EPCSA may levy in any fiscal year a Special Assessment against Assessable Units, applicable to that year and payable over not more than the next three (3) years, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon a Community Common Area, including fixtures and personal property related thereto, or upon

public lands within the Property, provided that any such assessment shall have the assent of two-thirds of the votes of a Quorum of Owners. Special Assessments for Capital Improvements on Neighborhood Common Areas, or on Community Common Areas which will primarily benefit, be paid for, and be maintained by the Owners within a specific Neighborhood, shall be assessed only against the Owners of such Neighborhood and shall require only the approval of two-thirds of the votes of a Quorum of Owners within such Neighborhood .

(b) **Restoration Assessments.** The Community Association may levy a Restoration Assessment upon any Lot or Living Unit if the Owner fails to maintain such Lot or Living Unit as provided in Section 6.22, or fails to provide such maintenance funds as may be required by any Supplementary Declaration applicable to such Lot or Living Unit. Restoration Assessments shall be limited to the amount necessary to meet the cost of restoration or the deficiency in required funds and the cost of collection thereof.

(c) **Local Special Assessments.** If the Board of Directors determines that a particular Community Expense or Community Common Area or facility or improvement thereon disproportionately benefits less than all of the Members, the Board may levy assessments therefor against the Assessable Units within one or more Neighborhoods so benefited. Alternatively, the Board of Directors may delegate the responsibility for meeting the expense or maintaining the Community Common Area or facility or improvement thereon to one or more Neighborhood Associations, which shall thereafter have the power and duty to levy assessments therefor. If any Neighborhood Association fails to perform a duty delegated by EPCSA or fails to maintain the Common Areas within such Neighborhood in accordance with this Amended Declaration and any applicable Supplementary Declaration, EPCSA shall have the right to perform such duty or maintenance and to levy an assessment against the Assessable Units within such Neighborhood for purposes of defraying the costs thereof.

5.9 [Open].

5.10 Effect of Non-Payment of Assessments; Remedies of Community Association. Any Community Assessment which is not paid when due shall be delinquent and shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum. In the event of a default or defaults in payment of any Community Assessment, and in addition to any other remedies herein or by law provided, EPCSA may enforce each such obligation as follows:

(a) **Lawsuit.** EPCSA may commence a suit or suits at law to enforce such obligation. Any judgment rendered in any such action shall include a sum for reasonable attorneys' fees and costs.

(b) **Notice of Claim of Lien.** Within thirty (30) days after the delinquency of any Community Assessment, EPCSA shall give a notice to the defaulting Owner which shall identify the assessment, the date of the delinquency, the amount of the delinquency, and the interest charge for such delinquency, and make a demand for payment thereof. If such delinquency and interest is not paid within ten (10) days after the effective date of delivery of such notice, EPCSA may elect to file a Notice of Claim of Lien against the Lot or Living Unit of such delinquent Owner. Such Notice of Claim of Lien shall state: (1) the name of the delinquent Owner(s); (2) a description of the Lot or Living Unit against which the claim of lien is made; (3) the amount claimed to be due and owing; (4) that a claim of lien is made by EPCSA pursuant to the provisions of this Amended Declaration; and, (5) that a lien is claimed against said described Lot or Living Unit in an amount equal to the amount of the stated delinquency, plus interest and attorneys' fees, together with the amount of any further delinquencies incurred by such Owner. Any such Notice of Claim of Lien shall be signed and acknowledged by an authorized officer of EPCSA and shall be recorded in the Office of the Santa Fe County, New Mexico Clerk. Each delinquency shall constitute a separate basis for a claim of lien.

(c) **Foreclosure of Lien.** Any such claim of lien for delinquent Community Assessments may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a mortgage or deed of trust under a power of sale. Any such sale provided for above shall be conducted in accordance with the provisions of applicable New Mexico Law, or in any other manner permitted by law. In the event such foreclosure is by an action in court, reasonable attorneys' fees and costs and expenses shall be allowed. In the event the foreclosure is conducted as in the case of a mortgage or deed of trust under power of sale, any authorized officer of EPCSA shall be entitled to actual expenses and such fees as may be allowed by law or as may be prevailing at the time the sale is conducted. EPCSA, through its duly authorized agent, shall have the power to bid on the Lot or Living Unit at the sale and to acquire and hold, lease, mortgage and convey the same.

(d) **Curing of Lien.** Upon the timely curing of any default for which a Notice of Claim of Lien was filed by EPCSA, officers of EPCSA are hereby authorized to record an appropriate release of such Notice, upon payment by the defaulting Owner of a reasonable fee, to be determined by EPCSA, to cover the cost of preparing and filing or recording such release.

(e) **Additional Rights and Remedies.** The Community Assessment liens and the rights to foreclosure and sale hereunder shall be in addition to and not in substitution of all other rights and remedies which EPCSA and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid Community Assessments as provided in Section 5.10(a).

(f) **Delegation and Waiver of Owners.** Each Owner hereby vests in and irrevocably delegates to the Board of Directors or its duly authorized representatives the right and power to bring all actions at law or equity and lien foreclosures, whether judicially or by the power of sale or otherwise, against any Owner for the collection of delinquent Community Assessments as provided herein, and hereby expressly waives any objection to the enforcement of their obligation to pay Community Assessments in accordance with the provisions of this Amended Declaration.

5.11 **Exempt Property.** The Board of Directors may exempt, from time to time, certain portions of the Property from any and all assessments, including, but not limited to, Common Areas or publicly owned property.

5.12 **Rights of First Mortgagees and First Trust Deed Holders.** Each holder of a first mortgage lien or first Deed of Trust lien on a Lot or Living Unit who comes into possession of such Lot or Living Unit by virtue of foreclosure of such mortgage or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, takes such Lot or Living Unit free of any claims for unpaid assessments and charges against the Lot or Living Unit which accrued prior to the time such holder comes into possession, except for claims for a share of such assessments or charges resulting from a reallocation of such assessment among all Lots or Living Units within the Property, including the mortgaged Lot or Living Unit.

ARTICLE 6 USE RESTRICTIONS

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

6.1 **Insurance; Hazards and Waste.** Nothing shall be done or kept on the Property which will increase any 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 or her Lot or Living Unit or on any Common Area which will result in the cancellation of insurance on any Lot, Living Unit or Common Area, or which would be in violation of any law or ordinance. No waste shall be committed anywhere on the Property.

6.2 **No Obstructions.** There shall be no obstruction of any Common Areas except as permitted by the EPCSA's Board of Directors. Nothing shall be placed or stored in any Community Common Area except as allowed by the express permission of the EPCSA Board of Directors.

6.3 **Nuisances.** No noxious or unreasonably offensive activities shall be carried on, nor shall anything be done or placed on the Property which shall or will become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to the Owners. Owners or Occupants who use a Lot, Living Unit or the Property in any manner which unreasonably embarrasses, disturbs or annoys any other Owner or Occupant shall be deemed to carry on a nuisance, including activities in the nature of loud or excessive noise, parties and traffic or activities which violate any City ordinance or state or federal law. Upon written demand by the Board, Owners and Occupants must cease and desist from any activity constituting a nuisance. In the event the Board is required to commence any legal proceeding to abate a nuisance, the Owner will be liable for payment of EPCSA's reasonable attorneys' fees and costs."

6.4 **Rubbish.** No portion of the Property or any lands adjacent to the Property shall be used or maintained by any Owner or any Occupant of any Lot or Living Unit 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 Property 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).

6.5 **Fires.** There shall be no exterior fires on any Common Area or open space areas, except barbecue fires, contained within receptacles, as approved by EPCSA, or as otherwise permitted by the Board of Directors.

6.6 **Signs.** No sign of any kind shall be placed or displayed in the Property without the prior consent of the Board of Directors, 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 a Merchant Builder, identification signs regarding location, financing or construction.

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

(d) Such identification signs as may be deemed appropriate by the Board of Directors to designate facilities or areas within the Property.

(e) Merchant Builders may place such signs on any Common Areas or private streets to facilitate the marketing of Lots or Living Units within the Estancia Primera Community as the Board of Directors deems appropriate.

(f) Real Estate 'For Sale' signs. One (1) real estate 'For Sale' sign may be placed on any Lot or Living Unit. Real Estate marketing directional signs shall not be allowed on the Property except during an 'Open House', after which time, on the same day, the directional signs shall be removed. The size and location of any such signs shall be subject to the approval of the Board of Directors if the size exceeds two feet by three feet.

6.7 **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 Property, nor shall oil wells, tanks, tunnels, or mineral excavations or shafts be permitted within or upon the Property. 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 Property.

6.8 **Recreational Vehicles.** No housetrailers, motor homes, campers, recreational vehicles, boats, or trailers shall be kept or stored within the Property except within the garage of the residence and, then, only if such storage does not cause automobiles and other motor vehicles to be parked in the street. Motorhomes, campers, recreational vehicles, boats or trailers may be temporarily located within the Property for the purpose of unloading passengers, materials and supplies, provided that such location does not exceed twenty four (24) hours in any seven (7) day period and further provided that such motorhome, camper, recreational vehicle, boat or trailer shall not be occupied as a sleeping accommodation during the period approved.

6.9 **Vehicles.** No vehicle of any type, motorized or otherwise, shall be operated on any Common Area except as authorized by EPCSA. No automobile or other motor vehicles shall be parked in any Common Area or in any public or private street within the Property except in designated parking areas and no portion of any Lot or Living Unit 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 Property for purposes of accomplishing repairs thereto or the reconstruction thereof, except as permitted by resolution of the Board of Directors.

6.10 **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 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 on the Property. 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 Property (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 Property. Owners of animals failing to comply are subject to enforcement action by the Board of Directors.

6.11 **Non-Residential Uses.** 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 of the City of Santa Fe, shall be permitted as long as said home occupations are approved by the Board of Directors. However, nothing in this Section shall be construed to restrict the ability of Merchant Builders to develop and market Lots within the Property.

6.12 **No Rezoning or Subdivision.** No Lot or Living Unit within the Property shall be further subdivided without the express written consent of all Owners. No Lot, Living Unit, or Parcel within the Property 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. Consolidation of Lots shall not affect the obligation of any Lot Owner to pay assessments imposed by EPCSA or any Neighborhood Association unless agreed to in writing by all affected property owners.

6.13 **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 Property.

6.14 **Occupancy of Unfinished Structures Prohibited.** No residence situated within the Property shall in any manner be occupied or lived in while in the course of original construction. No structure anywhere in the Property, other than a residence, shall ever be lived in or used for dwelling purposes, including, but not limited to, tents, shacks, trailers, campers, motor homes, mobile homes, out-buildings, and garages. However, nothing in this Section shall be construed to prevent the erection, placement or maintenance by Merchant Builders of units of trailers, offices or buildings in connection with the conduct of its business, or the development and sale of any Neighborhood, Lot or Living Unit within the Property.

6.15 **Roofs.** All structures constructed in residential areas of the Property shall have roofs approved by the ARB.

6.16 **Antennas and Cable Television.** No Owner (other than Declarant) shall construct or otherwise maintain upon or within any portion of the Property any external or internal radio or television antenna, saucer, or other reception device or equipment, except as otherwise permitted by the ARB. No Owner shall install any equipment or apparatus upon his Lot or Living Unit which in any way interferes or otherwise impedes the normal reception of radio and/or television transmission signals upon or to other Lots or Living Units within the Property. No Owner or Neighborhood Association shall subscribe to or otherwise be connected to any cable or master television system unless the franchisee thereof has been previously approved by the Board of Directors.

6.17 **Window Opening.** No window opening in a Living Unit visible from a public street, private street, 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 ARB.

6.18 **Height of Shrubs, Hedges, Trees and Landscaping.** No shrub, hedge, tree or other landscaping which interferes with the view, solar access and/or privacy of any Lot or Living Unit (except as reasonably determined by the ARB) shall be planted, permitted or maintained on any Lot or Living Unit or upon any Common Area. If the Owner of a Lot or Living Unit or any Neighborhood Association (as to a Common Area maintained by it) allows a shrub, hedge, tree or other landscaping on their respective property to violate the provisions of this Section, then the ARB shall have the right (but not the obligation) upon ten (10) days' prior notice to the offending Owner or Neighborhood Association, to: (a) enter upon the offending Lot or Living Unit or Common Area, (b) cut back or otherwise trim the offending shrub, hedge, tree or landscaping so that the same complies with said height limitation; and (c) assess the Owner(s) (as to the offending Lot or Living Unit) or the Neighborhood Association (as to the offending Common Area) for the cost of such activities.

6.19 **Guest Houses.** There shall be no guest houses within the Property, except where the Lot is in excess of .75 acres in size, or where the Lot is contiguous to Fort Marcy Park. Guest houses will be subject to all other provisions of this Amended Declaration.

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

6.21 **Renting.** No unit may be rented or leased for an initial period of less than 1 month. The renting of Living Units as a business by Owners shall only be allowed with the permission of the Board of Directors. Any Owner who rents more than two (2) Living Units within the Property or is otherwise actively engaged in the business of renting real estate is required to obtain permission of the Board of Directors. All rentals of Living Units are subject to the requirement that the Property be used solely for single-family residential purposes.

6.22 **Standard of Maintenance.** All Lots and Living Units, whether improved or otherwise, shall be maintained by their Owner or Owners substantially in the original condition of delivery of said Lot or Living Unit, except for improvements, alterations and additions approved by the ARB pursuant to Section 3.

6.23 **Sheds.** No shed or other such building shall be permitted on any Lot or Living Unit after construction of the Living Unit is completed.

6.24 **Garage Doors.** All garage doors shall be kept closed except when in actual use.

6.25 [Open]

6.26 **Fences.** There shall be no fences within thirty-five (35) feet of a structure within the Property except for privacy barriers. All fences must be approved prior to construction by the ARB.

6.27 **Lawns.** There shall be no lawns in excess of eight hundred (800) square feet. All lawns must be of native grasses that are low water consuming.

6.28 **Gardens.** Non-commercial gardens not to exceed one thousand (1,000) square feet may be allowed subject to the prior written approval of the ARB.

6.29 **Miscellaneous.** No uses are permitted that are or would be inconsistent with the single-family residential character of the Estancia Primera Community.

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

6.31 **Height of Building.** No building within the Property shall be in excess of condition 7.A.3 of the conditions of Santa Fe City Ordinance 1981-3.

6.32 **Windmills.** No windmills of any kind shall be allowed within the Property.

6.33 **Waiver.** The ARB 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 Amended Declaration.

6.34 [Open]

**ARTICLE 7
EASEMENTS**

7.1 [Open].

7.2 [Open].

7.3 **Easement to Inspect.** EPCSA and its duly authorized agents are granted the right to enter Lots Living Units or Community Common Areas to ascertain the extent of compliance with the Governing Documents and to correct defaults if necessary. Prior notice of said inspection shall be given to the Occupant, if any, except in cases of emergency.

7.4 **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 Property to carry out and enforce their official duties.

ARTICLE 8 RIGHT OF INSTITUTIONAL LENDERS AND PUBLIC AGENCIES

8.1 **Interests Subject to Lenders' Rights.** It is anticipated that part or all of the Lots or Living Units may be financed or the loans therefor insured or guaranteed for the Owners through special agencies, such as the Federal Mortgage Agencies and others. The interest of the Community Association, all Neighborhood Associations 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 Property, as amended from time to time. Notwithstanding prior acquisition of title to any portion of the Property by EPCSA, by any Neighborhood Association or by any Owner, amendments to this Amended Declaration shall be binding upon all Owners, EPCSA, and all Neighborhood Associations.

8.2 [Open]

8.3 [Open]

8.4 **Filing with EPCSA.** Institutional Lenders holding first mortgages or deeds of trust on Lots or Living Units within the Property shall file copies of said instruments with EPCSA immediately after taking a Lot or Living Unit within the Property as security for a debt on same.

ARTICLE 9 TERM, AMENDMENTS, DECLARANT'S RIGHTS

9.1 **Term of Declaration.** The covenants, conditions and restrictions of this Amended Declaration shall run with and bind the Property and every part thereof, and shall inure to the benefit of and shall be enforceable by EPCSA or any Owner, his or her respective legal representatives, heirs, successors and assigns, for a term of fifty-five (55) years from January 8, 1982, the date the Declaration was first recorded, after which time they shall be automatically extended for successive periods of ten (10) years each, unless an instrument in writing, signed by at least seventy-five percent (75%) of the Owners, has been recorded within the year preceding the beginning or any such ten-year period agreeing to terminate or revise this Amended Declaration.

9.2 **Amendment Procedure.**

(a) **Amendments.** Subject to Section 9.3, this Declaration may be amended only by the affirmative vote or written assent of at least fifty-one percent (51%) of the Members. Any such amendment shall not be in violation of the Master Development Plan or the Estancia Primera PRC Ordinance.

(b) **Recordation.** All amendments shall be recorded in the Clerk's Office, Santa Fe County, New Mexico.

9.3 **Limitation on Amendments.** By the acceptance of a deed for their respective Lot, Living Unit or Parcel, each Owner acknowledges and agrees, on his or her behalf and his or her respective successors-in-interest, personal representatives, and assigns, that: (1) the Declaration and this Amended Declaration were created and recorded, in part, to protect and otherwise enhance the value of the Property; and (2) in order to ensure such protection and enhancement in value, no provision or condition of this Amended Declaration which either directly or indirectly affects the use and/or operation of the Property, including, but not limited to, those provisions and conditions relating to the operation and management of the Community or other Common Areas, the use by any

Owner or his licensees and invitees of any part of the Property, and/or the operation of EPCSA, shall be amended or otherwise modified without the consent of the Owners, as provided in Section 9.2 (a) above.

**ARTICLE 10
GENERAL PROVISIONS**

10.1 **Invalidity of any Provision.** Should any provision or condition of this Amended Declaration be declared invalid or in conflict with any law of the jurisdiction wherein the Property is situated, the validity of all other provisions and conditions hereof shall remain unaffected and in full force and effect.

10.2 **Owner's Compliance.** Each Owner or Occupant of a Lot or Living Unit shall comply with the provisions of the Founding Documents and decisions, resolutions, rules and regulations of EPCSA or its duly authorized representatives, and failure to comply with any such provision, decision, resolution, rule or regulation shall constitute the basis for an action to recover sums due for damages, or for injunctive relief. All agreements and determinations lawfully made by EPCSA in accordance with the voting procedures established in this Amended Declaration shall be binding on all Owners, EPCSA and all Neighborhood Associations and their successors and assigns.

10.3 **Notices.** Except as may otherwise be provided by specific provisions herein, any notice permitted or required by this Amended Declaration shall be in writing and delivered either personally or by mail. If intended for an Owner, mailed notice shall be directed to the Owner: (a) at the address of such Owner's Lot or Living Unit (if improved), or (b) to the last known address of the Owner. If no address is known, notice shall be directed to the real property owned by the Owner. Mailing address may be changed at any time upon written notification to the Board of Directors. Notices shall be deemed received on the date of personal delivery or seventy-two (72) hours after deposited in the United States mail, postage-prepaid, certified or registered mail, properly addressed as provided herein.

10.4 **Indemnity.** EPCSA shall indemnify and hold harmless the Board of Directors and each member thereof from and against all obligations, liabilities, damages, losses and costs (including, without limitation, reasonable attorneys' fees and costs) arising, directly or indirectly, from any claims, demands or actions of any kind taken against the Board of Directors or any of the members thereof in connection with this Amended Declaration or any of the acts or actions which the Board of Directors may undertake pursuant to this Amended Declaration.

10.5 **Interpretation.** This Declaration shall be liberally construed in favor of the party seeking to enforce the provisions hereof to effectuate the purpose of protecting and enhancing the value, marketability, and desirability of the Property by providing a common plan for the development thereof.

Amended this 11th day of October, 2005 pursuant to Article 9.2 above.

Attest:

ESTANCIA PRIMERA COMMUNITY
SERVICES ASSOCIATION

By: _____
Secretary

By: _____
President

ACKNOWLEDGMENT

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

I, _____, a Notary Public in and for the County and State aforesaid, do hereby certify that _____, whose name is subscribed to the foregoing instrument as President of Estancia Primera Community Services Association, appeared before me this day in person and acknowledged that he executed said instrument as his free voluntary act and deed of said corporation for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this _____ day of _____, 2005

NOTARY PUBLIC

My Commission Expires:

EXHIBIT "A"

Tracts J, R, S and T of Estancia Primera all as more particularly shown on Sheet 2 of 3 Sheets of "Estancia Primera, Phase I-A" prepared by Smith & Williamson Surveying Service, dated 7/14/81, Scale 1" = 100 feet and bearing Project No. 2010 and recorded in the Office of the Santa Fe County Clerk on October 21, 1981 as Document No. 486,756, as same affects the property the subject of this Declaration.