

**DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS, ASSESSMENTS,  
CHARGES, SERVITUDES, LIENS, RESERVATIONS  
AND EASEMENTS**

**FOR**

**VENTANA RANCH WEST**



Mary Herrera

Bern. Co. RSTN

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Page: 1 of 46

11/23/2004 11:25A

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**TABLE OF CONTENTS**

<b>ARTICLE I</b>	<b>DEFINITIONS</b> .....	2
<b>ARTICLE II</b>	<b>PROPERTY SUBJECT TO THE VENTANA RANCH WEST DECLARATION</b>	
2.1	General Declaration Creating Ventana Ranch West.....	8
2.2	Association Bound.....	8
<b>ARTICLE III</b>	<b>EASEMENTS AND RIGHTS OF ENJOYMENT IN COMMON AREAS</b>	
3.1	Easements of Enjoyment .....	8
3.2	Delegation of Use.....	9
<b>ARTICLE IV</b>	<b>LAND USE CLASSIFICATIONS, PERMITTED USES AND RESTRICTIONS</b>	
4.1	Land Use Classifications .....	10
4.2	Single Family Covenants, Conditions, Restrictions and Easements Applicable to Lots and Tracts Within Residential Land Use Classifications .....	11
4.3	Covenants, Conditions, Restrictions and Easements Applicable to Lots Within Single Family Residential Land Use Classifications .....	19
4.4	Covenants, Conditions, Restrictions and Easements Applicable to Multi-Family and Non-Residential Land Use Classifications .....	20
<b>ARTICLE V</b>	<b>ORGANIZATION OF ASSOCIATION</b>	
5.1	Formation of Association.....	20
5.2	Board of Directors and Officers .....	20
5.3	The Ventana Ranch West Rules.....	20
5.4	Personal Liability .....	20
5.5	Sub-Association .....	20
<b>ARTICLE VI</b>	<b>MEMBERSHIPS AND VOTING</b>	
6.1	Owners of Lots and Tracts .....	21
6.2	Declarant.....	21
6.3	Voting .....	22
6.4	Right to Vote.....	22
6.5	Membership Rights .....	22
6.6	Transfer of Class I Membership .....	22



Mary Herrera

Bern. Co. RSTN

R 99.00

2004162726

8176224

Page: 2 of 46

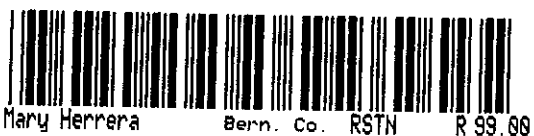
11/23/2004 11:25A

Bk-A87 Pg-2272

6.7	Suspension of Voting Rights .....	22
<b>ARTICLE VII COVENANT FOR ASSESSMENT AND CREATION OF LIEN</b>		
7.1	Creation of Lien and Personal Obligation of Assessments and Maintenance Charges .....	23
7.2	Annual Assessments .....	23
7.3	Determination of Annual Assessment Payment .....	24
7.4	Special Assessments for Capital Improvements and Extraordinary Expenses .....	25
7.5	Penalty Assessments .....	25
7.6	Notice and Quorum of Any Action Authorized Under Section 7.4 .....	25
7.7	Establishment of Annual Assessment Period .....	25
7.8	Rules Regarding Billing and Collection Procedures .....	25
7.9	Collection Costs and Interest on Delinquent Assessments .....	26
7.10	Evidence of Payment of Assessments .....	26
7.11	Property Exempted from the Annual and Special Assessments and Assessment Lien .....	27
7.12	Transfer Fee .....	27
7.13	Disclosure of Special Levy .....	27
<b>ARTICLE VIII ENFORCEMENT OF PAYMENT OF ANNUAL, SPECIAL AND PENALTY ASSESSMENTS AND OF ASSESSMENT LIEN</b>		
8.1	Association as Enforcing Body .....	27
8.2	Association's Remedies to Enforce Payment of Assessments .....	27
8.3	Subordination of Assessment Lien to First Mortgage or Deed of Trust; Priority of Lien .....	28
8.4	Costs to be Borne by Member in Connection with Enforcement of Payment of Annual and Special Assessments .....	28
<b>ARTICLE IX USE OF FUNDS; BORROWING POWER</b>		
9.1	Purposes For Which Association's Funds May Be Used .....	28
9.2	Borrowing Power .....	29
9.3	Association's Rights in Spending Funds From Year to Year .....	29
9.4	Administration of Special Use Fees .....	29
9.5	Insurance .....	29
<b>ARTICLE X MAINTENANCE</b>		
10.1	Common Areas and Public Right of Way .....	29
10.2	Improper Maintenance and Use of Lots and Tracts .....	31

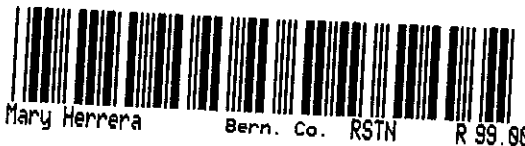


<b>ARTICLE XI</b>	<b>DESIGN REVIEW COMMITTEE</b>	
11.1	Establishment.....	31
11.2	Appeal .....	32
11.3	Fee .....	32
11.4	Appointment of Design Review Committee Members .....	32
11.5	Non-Liability for Approval of Plans .....	32
<b>ARTICLE XII</b>	<b>RIGHTS AND POWERS OF ASSOCIATION</b>	
12.1	Association's Rights and Powers as Set Forth in Articles and Bylaws .....	33
12.2	Association's Rights of Enforcement of Provisions of This and Other Instruments.....	33
12.3	Contracts with Others for Performance of Association's Duties .....	33
12.4	Change of Use of Association Land and Procedure Therefor .....	34
<b>ARTICLE XIII</b>	<b>ANNEXATION OF ADDITIONAL PROPERTY</b>	
13.1	Annexation Without Approval .....	34
13.2	Supplemental Declarations .....	34
<b>ARTICLE XIV</b>	<b>WATER, SEWER AND COMMUNITY WATCH</b>	
14.1	Water and Sewer Services.....	35
14.2	Community Watch .....	35
<b>ARTICLE XV</b>	<b>TERM; AMENDMENTS; TERMINATION</b>	
15.1	Term; Method of Termination .....	35
15.2	Amendments .....	36
15.3	Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending Institutions .....	36
<b>ARTICLE XVI</b>	<b>GENERAL PROVISIONS</b>	
16.1	Interpretation of the Declaration .....	36
16.2	Severability.....	37
16.3	Rule Against Perpetuities .....	37
16.4	Change of Circumstances .....	37
16.5	Rules and Regulations .....	37
16.6	Declarant's Disclaimer of Representations.....	37
16.7	References to the Covenants in Deeds.....	37
16.8	Successors and Assigns of Declarant.....	37
16.9	Gender and Number.....	38
16.10	Captions and Titles.....	38
16.11	Notices .....	38
16.12	Conveyance or Encumbrances of Association Land .....	38
16.13	Attorney's Fees .....	38



16.14 Remedies Cumulative .....38  
16.15 Responsibilities of Successors in Interest to  
Owner's Violations.....38

Mary Herrera  
Bern. Co. RSTN R 99.00  
2004162726  
8176224  
Page: 5 of 46  
11/23/2004 11:25A  
Bk-A87 Pg-2272



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R 99.00

2004162726

6176224

Page: 6 of 46

11/23/2004 11:25A

Bk-A07 Pg-2272

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,  
ASSESSMENTS, CHARGES, SERVITUDES, LIENS,  
RESERVATIONS AND EASEMENTS  
FOR  
VENTANA RANCH WEST**

THIS DECLARATION of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and easements (hereinafter termed the "Declaration") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2004 by VENTANA WEST LLC , a New Mexico limited liability company (hereinafter sometimes termed "Declarant").

**W I T N E S S E T H:**

WHEREAS, Declarant is the developer of approximately Two Hundred Ninety Nine (299) acres of land in Albuquerque, Bernalillo County, New Mexico, known as Ventana Ranch West; and

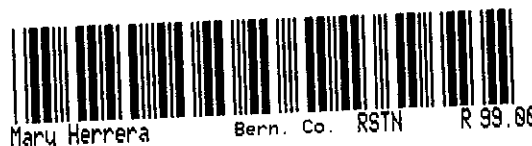
WHEREAS, Declarant is the owner in fee of that portion of Ventana Ranch West legally described on Exhibit "A" attached hereto and incorporated herein by this reference (hereinafter referred to as the "Covered Property"); and

WHEREAS, Declarant may, without obligation, annex additional property to the Covered Property, to become a part thereof and subject to this Declaration (hereinafter collectively referred to as the "Additional Property"); and

WHEREAS, Declarant desires to develop, in stages, the Covered Property and those portions of the Additional Property which may from time to time be annexed pursuant to this Declaration and become part of the Covered Property, into planned residential communities; and

WHEREAS, as part of the various stages of development of the aforesaid lands, Declarant intends, without obligation, to Record various subdivision plats; to dedicate portions of Ventana Ranch West to the public for streets, roadways, drainage, flood control, and general public use; and to Record various subdivisions covering portions of Ventana Ranch West, which will designate the purposes for which such portions of Ventana Ranch West may be used and may set forth additional covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements applicable to such portions of Ventana Ranch West; and

WHEREAS, Declarant desires to form a non-profit corporation for the social and recreational purposes of benefiting Ventana Ranch West, the Owners and the Residents (as said terms are defined hereinbelow), which non-profit corporation (hereinafter termed the "Association") will (1) acquire, construct, operate, manage and maintain a variety of Common Areas upon Ventana Ranch West; (2) establish, levy, collect and disburse the Assessments and other charges imposed hereunder: and (3)



2004162726  
6178224  
Page: 7 of 46  
11/23/2004 11:25A  
Bk-A87 Pg-2272

as the agent and representative of the Members of the Association and Residents of Ventana Ranch West, administer and enforce all provisions hereof and enforce use and other restrictions imposed on various parts of Ventana Ranch West; and

WHEREAS, Declarant is preparing the necessary documents for the incorporation and organization of the Association and may, without obligation, seek approval thereof by the Federal Housing Administration (hereinafter termed "FHA"), the Veterans Administration (hereinafter termed "VA") and by any other governmental agencies or financial institutions whose approval Declarant deems necessary or desirable; and

WHEREAS, the Declarant therefor wishes to subject all of the Covered Property to the "Declaration" hereinafter set forth; and

WHEREAS, in order to cause the Declaration to run with the Covered Property and to be binding upon the Covered Property and the Owners thereof from and after the date of the Recording of this Declaration, Declarant hereby makes all conveyances of the Covered Property, whether or not so provided therein, subject to the Declaration herein set forth; and by accepting Deeds, leases, easements or other grants or conveyances to any portion of the covered Property, the Owners and other transferees for themselves and their heirs, executors, administrators, trustees, personal representatives, successors or assigns, agree that they shall be personally bound by all of the Declaration (including but not limited to the obligation to pay Assessments) hereinafter set forth except to the extent such persons are specifically excepted herefrom.

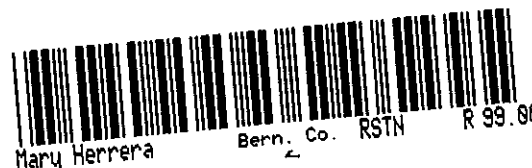
NOW, THEREFORE, DECLARANT hereby declares, covenants and agrees as follows:

## ARTICLE I DEFINITIONS

The following words, phrases or terms used in this Declaration shall have the following meanings:

1.1 "Additional Property" shall mean real property situated in the City of Albuquerque, County of Bernalillo, State of New Mexico, and the Improvements located thereon, which is contiguous to any real property previously subjected to this Declaration which is owned and/or controlled by the Declarant. For purposes of this Section, property shall be contiguous if only separated by a public street or road. All or part of the Additional Property may be added to the Covered Property in one or more additional phases by Supplemental Declaration pursuant to the provisions of Article XIII hereof.

1.2 "Annual Assessment" shall mean the charge levied and assessed each year against each Lot and Tract pursuant to Article VII, Section 7.2 hereof



2004162726  
6178224  
Page: 8 of 46  
11/23/2004 11:25A  
Bk-A87 Pg-2272



1.3 "Apartment Development" shall mean a Tract which is limited by Tract Declaration to residential use and surrounding area which are intended, as shown by the site plan therefor approved by the City of Albuquerque and the Design Review Committee or otherwise, as one integrated apartment operation under the same ownership.

1.4 "Articles" shall mean the Articles of Incorporation of the Association as they same may from time to time be amended or supplemented.

1.5 "Assessable Property" shall mean any Lot or Tract, except such part or parts thereof as may from time to time constitute Exempt Property.

1.6 "Assessment" shall mean an Annual Assessment, Special Assessment, and/or Penalty Assessment.

1.7 "Assessment Lien" shall mean the lien created and imposed by Article VII, Section 7.1 hereof.

1.8 "Assessment Period" shall mean the time period set forth in Article VII, Section 7.6.

1.9 "Association" shall mean the New Mexico non-profit corporation to be organized by Declarant to administer and enforce the Declaration and to exercise the rights, powers and duties set forth in this Declaration, its predecessors or successors, whether incorporated or unincorporated, and assigns. Declarant hereby reserves the exclusive right to cause such Association to be incorporated and intends to name the Association "The Ventana Ranch West Community Association", and hereby reserves the right to use any similar name if, for any legal or other reason, "The Ventana Ranch West Community Association" cannot or should not be used.

1.10 "Association Land" shall mean such part or parts of the Covered Property, together with the buildings, structures and Improvements thereon, and other real property which the Association may at any time own in fee or in which the Association may at any time have a leasehold interest, for as long as the Association is the owner of the fee or leasehold interest.

1.11 "Board" shall mean the Board of Directors of the Association.

1.12 "Bylaws" shall mean the Bylaws of the Association as the same may from time to time be amended or supplemented.

1.13 "City" shall mean the City of Albuquerque, New Mexico.

1.14 "Cluster Residential Development" shall mean Lots with Dwelling Units intended for Single Family occupancy, including, but not limited to, types of residential housing arrangements known as single family detached, duplexes, townhouses, clustered housing, zero-lot line housing and similar arrangements, together with related



2004162726  
6176224  
Page: 9 of 46  
11/23/2004 11:25A  
Bk-A87 Pg-2272

areas intended for the use and enjoyment of the Owners and Residents of the Lots in the Cluster Development.

1.15 "Common Area and Common Areas" shall mean (a) all Association Land and the Improvements thereon; (b) all land within the Covered Property which the Declarant, by this Declaration or other Recorded instrument, makes available for use by Members of the Association and evidences its intent to convey to the Association at a later date; (c) all land within the covered Property which the Declarant indicates on a Recorded subdivision plat or Tract is to be used for landscaping, water retainage, drainage, and/or flood control for the benefit of Ventana Ranch West and/or the general public and is to be dedicated to the public for the City of Albuquerque upon the expiration of a fixed period of time, but only until such land is so dedicated; and/or (d) all land within Ventana Ranch West which is owned privately or by a governmental agency for which the Association has accepted responsibility for maintenance, and for which the Association benefits by limited use, full use, or aesthetic consistency, for the benefit of the Members.

1.16 "County" shall mean and refer to the County of Bernalillo, State of New Mexico.

1.17 "Covered Property" shall mean the real property situated in the City of Albuquerque, Bernalillo County, New Mexico described on Exhibit A attached hereto, and the Improvements to be completed thereon, and any part of the Additional Property added pursuant to Article XIII hereof.

1.18 "Declarant" shall mean Ventana West LLC, a New Mexico limited liability company, and the successors and assigns of Declarant's rights and powers hereunder.

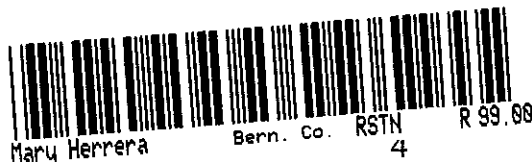
1.19 "Declaration" shall mean this Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations, and Easements, as amended or supplemented from time to time.

1.20 "Deed" shall mean a deed or other instrument conveying the fee simple title in a "Lot" or "Tract".

1.21 "Design Review Committee Guidelines" shall mean the architectural guidelines and standards promulgated by the Design Review Committee as provided in Article XI, Section 11.1 hereof.

1.22. "Design Review Committee" shall mean the committee of the Association to be created and appointed pursuant to Article XI hereof.

1.23 "Developer" means a person or entity who is engaged in residential or commercial real estate development and who purchases one or more Lots or Tracts from the Declarant for the purpose of constructing Improvements thereon for sale or lease.



2004162726  
6176224  
Page: 10 of 46  
11/23/2004 11:25A  
BK-R87 Pg-2272

1.24 "Development" shall mean and refer to the real property described on Exhibit A and any part of the Additional Property added pursuant to Article XIII hereof.

1.25 "Development Plan" shall mean the Ventana Ranch West Development Plan as the same may be amended from time to time.

1.26 "Dwelling Unit" shall mean any building or portion of a building situated upon a Lot or Tract designed and intended for use and occupancy as a residence by a Single Family.

1.27 "Exempt Property" shall mean the following parts of Ventana Ranch West:

- (1) All land and improvements owned by or dedicated to and accepted by the United States, the State of New Mexico, Bernalillo County, the City of Albuquerque, AMAFCA or any political subdivision is the owner thereof or for so long as said dedication remains effective;
- (2) All Association Land, for as long as the Association is the owner thereof.

1.28 "General Commercial Development" shall mean a Tract limited by a Tract Declaration to be used for various retail or other commercial purposes within the restrictions created by the Declaration.

1.29 "Improvement" shall mean, but not be limited to buildings, sheds, utility buildings, roads, driveways, dams, channels, basins, parking areas, fences, walls, retaining walls, poles, basketball goals, antennas, dish antennas, excavations, rocks, hedges, plantings, planted trees and shrubs, and all other structures or landscaping Improvements of every type and kind.

1.30 "Land Use Classification" shall mean the classification to be established by the Declarant pursuant to Article IV, Section 4.1, which designates the type of Improvements which may be constructed on a Lot, Tract or Association Land and the purposes for which such Improvements and surrounding land may be utilized.

1.31 "Lessee" shall mean the Lessee under a Lease, including an assignee of a Lease but excluding any person who has assigned all of his interest in a Lease.

1.32 "Lot" shall mean any (a) area of real property within the covered Property designated as a Lot on any recorded subdivision plat Recorded and approved by the Declarant or Board and (b) any Condominium Unit within the covered Property.

1.33 "Maintenance Charges" shall mean any and all costs assessed pursuant to Article X hereof.

1.34 "Member" shall mean any person or entity holding a Membership in the Association pursuant to this Declaration.



1.35 "Membership" shall mean a Membership in the Association and the corresponding rights, privileges and responsibilities of the Owners and Declarant pursuant to Article VI hereof.

1.36 "Notice" shall mean actual or constructive notice of any fact. Notice with respect to receipt of any document shall mean delivery of the document in person, by posting in accordance with New Mexico law or regular or certified mail. If delivery is by regular or certified mail, the document shall be deemed to have been delivered seventy-two (72) hours after a copy of the document has been deposited in the United States Mail.

1.37 "Owner" shall mean the person or persons, including Grantor, holding the beneficial ownership of the fee (including the purchaser under a contract of sale of real property within the Subdivision) and shall not include persons holding only a security interest or a lessee or tenant.

1.38 "Party Wall" shall mean a wall or fence constructed on or immediately adjacent to the common boundary of Lots or Tracts or the common boundary of Common Areas and a Lot or Tract.

1.39 "Penalty Assessments" shall mean assessments imposed for violation of the Declaration, Articles of Incorporation, Bylaws, Design Review Committee Guidelines or Ventana Ranch West Rules, pursuant to the procedures established from time to time by the Board. Such assessments shall be punitive in nature and may be imposed without regard to whether or not monies have been expended by the Association as a result of such violation.

1.40 "Recording" shall mean placing an instrument of public record in the office of the County Recorder of Bernalillo County, New Mexico, and "Recorded" shall mean having been so placed on public record.

1.41 "Rental Apartments" shall mean four (4) or more Dwelling Units with a building under single ownership, each of which is designed and utilized, otherwise than as a hotel or on some other transient basis, for rental or leased residential purposes to non-owners on a non-cooperative basis. This term is intended to include rented or leased apartments in the typically regarded sense as of the date hereof, and it is not intended to include usual or atypical arrangements or any arrangements whereby the apartment occupant is, directly or indirectly, an owner or beneficiary of ownership in his apartment or whereby he occupies his apartment pursuant to some form of reciprocal use agreement, irrespective of whether any such arrangements may otherwise fall within the aforesaid definition.

1.42 "Resident" shall mean each natural person residing in a Dwelling Unit.



1.43 "Single Family" shall mean a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not all so related, who maintain a common household in a Dwelling Unit.

1.44 "Single Family Residential Development" shall mean a Tract limited by a Tract Declaration for use of a development of Single Family detached housing, each intended for use by a Single Family.

1.45 "Special Assessments" shall mean any assessment levied and assessed pursuant to Article VII, Section 7.4 hereof.

1.46 "Special Use Fees" shall mean special fees authorized by this Declaration which an Owner, Resident or any other person is obligated to pay the Association over, above and in addition to any Assessments imposed or payable hereunder. Special Use Fees may include club house fees, swimming pool fees or similar user based fees.

1.47 "Sub-Association" shall mean an owners association created within Ventana Ranch West other than the Ventana Ranch West Community Association and subject to the Ventana Ranch West Declaration. Each owner who is a member of a Sub-Association shall also hold membership in the Ventana Ranch West Community Association.

1.48 "Supplemental Declaration" shall mean a written instrument Recorded pursuant to Article XIII.

1.49 "Tenant" shall mean any person who occupies property located on the Covered Property under any type of rental or letting arrangement but is not included in the definition of a Lessee.

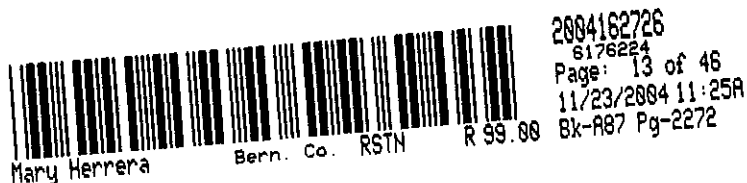
1.50 "Tract" shall mean an area of real property within the Covered Property which (i) is not included within the boundaries of any Recorded subdivision plat; (ii) is subject to subdividing; and (iii) is not Association Land.

1.51 "Utility Company" shall mean New Mexico Utilities, Inc. and its successors and assigns who provide water and sewer service.

1.52 "Ventana Ranch West or Ventana West" shall mean the Covered Property.

1.53 "Ventana Ranch West Rules" shall mean the rules for Ventana Ranch West adopted by the board pursuant to Article V, Section 5.3 hereof.

1.54 "Water and Sewer Service" shall mean the water and sanitary service which is mandatory for all Owners which is provided by the Utility Company.



ARTICLE II  
PROPERTY SUBJECT TO THE VENTANA RANCH WEST DECLARATION

Section 2.1. General Declaration Creating Ventana Ranch West. Declarant intends to develop Ventana Ranch West and to sell and convey Lots and Tracts. As portions of Ventana Ranch West are developed, Declarant intends, with respect to particular property, to record one (1) or more subdivisions covering Lots and Tracts and designating Common Areas which will incorporate this Declaration and which will establish such additional covenants, conditions, and restrictions as may be appropriate for that property. Declarant hereby declares that all of the real property within Ventana Ranch West is, and shall be, held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration and any Recorded Plats applicable thereto, as amended or modified from time to time; provided, however, property which is not part of a Lot or Tract and which is dedicated or conveyed to the public or a governmental entity for public purposes shall not be subject to this Declaration and the covenants herein contained while owned by the public or the governmental entity, although restrictions imposed in this Declaration upon the Owners, Lessees and Residents concerning the use and maintenance of such public areas shall at all times apply to the Owners, Lessees and Residents. This Declaration is declared and agreed to be in furtherance of a general plan for the subdivision, improvement and sale of Ventana Ranch West and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of Ventana Ranch West and every part thereof. All of this Declaration shall run with the Covered Property and with all Lots, Tracts and Association Land for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, all Owners, Lessees and Residents and their successors in interest. Nothing in this Declaration shall be construed to prevent the Declarant from modifying the Development Plan as to any portion of Ventana Ranch West owned by the Declarant or from dedicating or conveying portions of Ventana Ranch West owned by the Declarant, including streets or roadways, for uses other than as a Lot, Tract or Association Land. As long as the Declarant owns any Lot or Tract, Declarant approval is also required for any amendment to a Tract subdivision.

Section 2.2. Association Bound. Upon issuance of a Certificate of Incorporation by the New Mexico Corporation Commission to the Association, the Covenants shall be binding upon and shall benefit the Association.

ARTICLE III  
EASEMENTS AND RIGHTS OF ENJOYMENT IN COMMON AREAS

Section 3.1. Easements of Enjoyment. Every Owner and Tenant and other Member of the Association shall have a right and easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Lot and Tract, subject to the following provisions:



- (a) The right of the Association to charge reasonable admission and other Special Use Fees for use of any recreational or other facility situated upon the Common Areas. Fees shall be uniform among Members.
- (b) The right of the Association to suspend the voting rights and right to use of the recreational facilities and other Common Areas by any Member (i) for any period during which any Assessment against his Lot or Tract remains delinquent; (ii) for a period not to exceed 60 days for any infraction of this Declaration, or the Ventana Ranch West Rules, and (iii) for successive suspension periods if any such infraction is not corrected during any prior suspension period. The Member's obligation to continue to pay all fees and Assessments shall continue even though voting rights and the right to use of the recreation facilities and other Common Areas has been suspended.
- (c) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or private or public utility company for such purposes and subject to such conditions as may be agreed to by the Association. Unless otherwise required by zoning stipulations or agreements with the City of Albuquerque effective prior to the date hereof or specified on a Recorded subdivision plat, no such dedication or transfer shall be effective unless approved by the Owners representing at least 75% of the votes entitled to be cast by each class of Membership, except that the Board shall have authority to transfer to such public agencies, authorities or utility companies easements and rights-of-way which are intended to benefit Ventana Ranch West and which do not have any substantial adverse affect on the enjoyment of the Common Areas by the Members.
- (d) The right of the Association to regulate the use of the Common Areas through the Ventana Ranch West Rules and to prohibit access to those Common Areas, such as landscaped rights-of-way, not intended for use by the Members. The Ventana Ranch West Rules shall be intended, in the absolute discretion of the Board, to enhance the preservation of the Common Areas for the safety and convenience of the users thereof, or otherwise shall serve to promote the best interests of the Owners and Residents.

Section 3.2. Delegation of Use. Any Member may, in accordance with the Ventana Ranch West Rules and the limitations therein contained and this Declaration (a) delegate this right of enjoyment in the Common Areas and facilities to the members of his family, his lessees, or his guests or invitees; or (b) designate another person to exercise all of his rights (but not liabilities or voting rights), which other person shall, during the period of such designation, have the sole right to delegate rights of enjoyment pursuant to subsection (a) of this Section.



2004162726  
 8176224  
 Page: 15 of 46  
 11/23/2004 11:25A  
 Bk-R87 Pg-2272

ARTICLE IV  
LAND USE CLASSIFICATIONS, PERMITTED USES AND RESTRICTIONS

Section 4.1. Land Use Classifications. As portions of Ventana Ranch West are readied for development, the Land Use Classifications, restrictions, easements, rights-of-way, and other matters, including new or different uses and restrictions therefor and including any number of subclassifications thereof for any special uses, shall be fixed by Declarant in a Declaration which may be Recorded for that portion of Ventana Ranch West. Any such Declaration shall be construed as a supplement to this Declaration and fully a part hereof for all purposes to the same extent as if all of the provisions thereof were set forth in this Declaration. Contemplated Land Use Classifications include, but are not limited to, the following Land Use Classifications:

- (a) Single Family Residential Use.
- (b) Apartment Development Use, which may be converted to Condominium Development Use upon approval by the board.
- (c) Condominium Development Use, which may be converted to Apartment Development Use upon approval by the Board.
- (d) Association use, which may include Common Areas.
- (e) Cluster Residential Use, which shall consist of Lots with Dwelling Units intended for Single Family occupancy and may include those types of residential housing arrangements known as single family detached duplexes, townhouses, clustered housing, zero-lot line housing and similar arrangements, together with related areas intended for the use and enjoyment of the Owners and Residents of the Lots in the cluster development.
- (f) Community Center Use.
- (g) School.
- (h) Church.
- (i) Public/Private Recreation.
- (j) General Public Use.

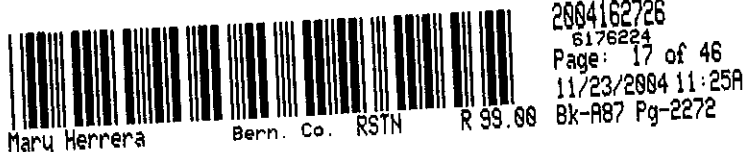
Unless otherwise specifically provided in this Declaration, the definitions and characteristics of such Land Use Classifications, and specific permitted and prohibited uses in such classifications, shall be determined in the City of Albuquerque approved zoning action.





Section 4.2. Single Family Covenants, Conditions, Restrictions and Easements Applicable to Lots and Tracts Within Residential Land Use Classifications. The following covenants, conditions, restrictions and reservations of easements and rights shall apply to all single family residential Lots and Tracts, and the Owners, Lessees and Residents thereof.

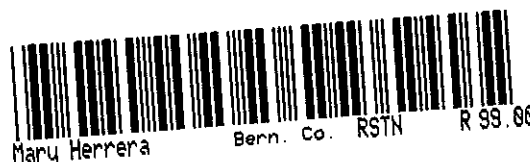
- (a) Animals. No animals, livestock, horses, insects or poultry of any kind shall be kept, raised, or bred in the Subdivision. Dogs, cats and other household pets in reasonable numbers may be kept, providing they are not kept, raised or bred for commercial or hobby breeding purposes. Such household pets, except cats, must be restrained on a leash or otherwise under the direct control of an individual when in Ventana Ranch West. All City and County animal and animal control ordinances shall be complied with.
- (b) Antennas. No exterior antenna, or satellite dishes with a diameter in excess of twenty-four (24) inches, of any sort shall be installed or maintained on any Lot.
- (c) Architectural Control. No excavation or grading work shall be performed on any Lot without the prior written approval of the Design Review Committee. No Improvement shall be constructed or installed on any Lot without the prior written approval of the Design Review Committee. No addition, alteration, repair, change or other work which in any way alters the exterior appearance, including but without limitation, the exterior color scheme, of any part of a Lot, or any Improvements located thereon, from their appearance on the date this Declaration is Recorded shall be made or done without the prior written approval of the Design Review Committee. Any Owner desiring approval of the Design Review Committee for the construction, installation, addition, alteration, repair, change or replacement of any Improvement shall submit to the Design Review Committee a written request for approval specifying in detail the nature and extent of the addition, alteration, repair, change or other work which the Owner desires to perform. The Design Review Committee may from time to time adopt submittal requirements including without limitation a standard form of application as may be necessary for the Committee to perform its duties hereunder. Any Owner requesting the approval of the Design Review committee shall also submit to the Design Review Committee any additional information, plans and specifications which the Design Review Committee may request. The approval by the Design Review Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this Section shall not be deemed a waiver of the Design Review Committee's right to withhold approval of any similar construction, installation, addition, alteration, repair, change or other work subsequently submitted for approval.



Upon receipt of approval from the Design Review Committee for any construction, installation, addition, alteration, repair, change or other work, the Owner who had requested such approval shall proceed to perform, construct or make the addition, alteration, repair, change or other work approved by the Design Review Committee as soon as practicable and shall diligently pursue such work so that it is completed within sixty (60) days of issuance of such approval or such additional period of time as may be approved by the Committee at the time of issuance or any extension of such time period subsequently granted by the Committee. Any change, deletion or addition to the plans and specifications approved by the Design Review Committee must be approved in writing by the Design Review Committee.

The Design Review Committee shall have the right to charge a fee for reviewing requests for approval of any construction, installation, alteration, addition, repair, change or other work pursuant to this Section, which fee shall be payable at the time the application for approval is submitted to the Design Review Committee. The amount of such fees shall be based upon the reasonable costs of the Design Review Committee to perform its design and review duties and may include the fees and costs of any architect, engineer or other consultant employed by the committee to assist the Committee in performing such duties.

- (d) Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot or Tract unless they are erected, placed and maintained exclusively within a fenced service yard or otherwise concealed.
- (e) Common Area/Easement Area. The Common Area and the beneficial interest in the Easement Areas shall be reserved by the Association for the benefit of all Owners pursuant to this Declaration to enhance the value and desirability of the Subdivision for watering, planting, cutting, removing and otherwise caring for the landscaping and for installing, maintaining and repairing signs identifying the Subdivision and utility lines necessary for the maintenance of the Landscaping. The Common Area and the beneficial interest in the Easement Areas shall be improved and maintained subject to the provisions of Section 4.2, paragraph (e), Section 10.2, and the provisions of this Declaration. Any dispute as to responsibility for improvement and maintenance of Common Area and Easement Area shall be resolved by the Board.
- (f) Declarant's Use for Sales and Leasing Purposes. Notwithstanding any other provision of this Declaration, Declarant shall have the right and an easement to maintain sales or leasing offices, management offices and models throughout the Covered Property and to maintain one (1) or more advertising signs on the Common Area while the Declarant is selling Lots, Tracts and other property in the Covered Property. Declarant reserves



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Page: 18 of 46  
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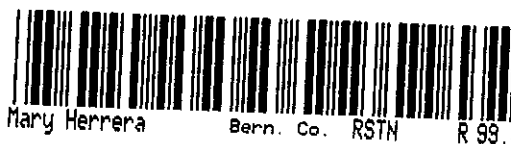
the right to place models, management offices and sales and leasing offices on any Lots, Tracts or other property owned by Declarant and on any portion of the common Area in such number, of such size and in such locations as Declarant deems appropriate so long as Declarant is marketing Lots, parcels or other property, Declarant shall have the right to restrict the use of the parking spaces on the Common Area. Such right shall include reserving such spaces for use by prospective purchasers, Declarant's employees and others engaged in sales, leasing, maintenance, construction or management activities.

- (g) Diseases and Insects. No Owner shall permit any thing or condition to exist upon any Lot or Tract which shall induce, breed or harbor infectious plant diseases or noxious insects.
- (h) Encroachment Easements. Should minor variations between lot lines as shown on the Plat and actual physical lot boundaries (such as walls, including interior party walls, and fences) occur, either due to original construction, reconstruction, repair or due to the settling, shifting or movement of structures, a valid easement shall exist for the encroaching Improvements for so long as the encroachments exists.
- (i) Health, Safety and Welfare. In the event additional uses, activities, and facilities are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Owners, Lessees and Residents, the Board may make rules restricting or regulating their presence on Ventana Ranch West as part of Ventana Ranch West Rules or may direct the Design Review Committee to make rules governing their presence on Lots or Tracts as part of the Design Review Committee Guidelines.
- (j) Incidental Uses. The Board may approve uses of property within a Land Use Classification which are incidental to the full enjoyment by the Owners of the property within that Land Use Classification. Such approval may be subject to such regulations, limitations and restrictions, including termination of the use, as the Board may wish to impose, in its sole discretion, for the benefit of Ventana Ranch West as a whole. By way of example and not limitation, the uses which the Board may permit are private roadways and streets within an area having a Land Use Classification of Cluster Residential use or Condominium Development Use, recreation facilities intended primarily for the benefit of all or certain Owners and Residents within areas having a Land Use Classification of Cluster Residential use or Condominium Development Use, and recreational facilities intended for usage by the Residents or Owners of more than a single Lot or Tract within any area classified for residential use.
- (k) Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon, or adjacent to, any Lot or Tract



except (i) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures, or other Improvements; (ii) that which the Declarant or the Association may require for the operation and maintenance of Ventana Ranch West; or (iii) that used in connection with any business permitted under a Tract Declaration.

- (l) Maintenance of Lawns and Plantings. Each Owner of a Lot or Tract shall keep all shrubs, trees, hedges, grass and plantings of every kind located on (i) his Lot or Tract (including setback areas and Common Areas), (ii) planted public right-of-way areas between sidewalks (or bikepaths) and the street curb in front of his property, if any, (iii) any other public right-of-way or easement area which abuts the Owner's Lot or Tract and which is located between the boundary line of his Lot or parcel and the paved area of any street, sidewalk, bikepath or similar area, and (iv) any non-street public right-of-way or easement area adjacent to his Lot or Tract, neatly trimmed, and shall keep all such areas properly cultivated and maintained and free of trash, weeds and other unsightly material. Minimum water use xeriscape landscaping will be used to the maximum extent possible.
- (m) Manufactured Homes. No manufactured homes or similar pre-constructed homes shall be constructed or placed in Ventana Ranch West.
- (n) Mineral Exploration. No Lot or Tract shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind, except for grading and excavation work in connection with the construction of Improvements which have been approved in writing by the Design Review Committee or which are being constructed by, or on behalf of, the Declarant.
- (o) Model Homes. The provisions of this Declaration and of Tract Declarations which prohibit non-residential use of Lots and Tracts and regulate parking of vehicles shall not prohibit the construction and maintenance of model homes and sales offices by builders or developers engaged in the construction, sale or leasing of Dwelling Units on Ventana Ranch West and parking incidental to the visiting of such model homes or sales offices so long as the location of such model homes are approved by the Declarant, and the construction, operation and maintenance of such model homes and sales offices otherwise comply with all of the provisions of this Declaration. The Declarant may also permit Lots and other areas to be used for parking in connection with the showing of model homes or the visiting of sales offices so long as such parking and parking areas are in compliance with the ordinances of the City or other applicable governmental agencies. Any homes constructed as model homes shall cease to be used as model homes at any time the Owner or



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Page: 20 of 46

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builder thereof is not actively engaged in the construction and sale of Single Family residences located in Ventana Ranch West, and no model home or sales office shall be used as a model home or sales office for the sale of lots and/or homes not located on Ventana Ranch West.

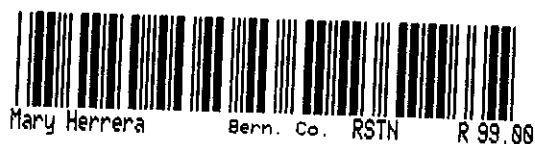
- (p) Motor Vehicles. No automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed or repaired upon any Lot, Tract or street in Ventana Ranch West, and no inoperable vehicle, including but not limited to vehicles with flat tires may be stored or parked on any such Lot, Tract or street, so as to be visible from a neighboring Property or to be visible from Common Areas or streets; provided, however, that the provisions of this Section shall not apply to (i) emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any Improvement approved in writing by the Design Review Committee; (ii) any automobile repair business which may be permitted in any General Commercial Land Use Classification.
- (q) Nuisances; Construction Activities. No rubbish, debris, petroleum products or similar product, of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or Tract, and no obnoxious or offensive activity shall be carried on nor shall anything be done or placed which may become a nuisance, or cause unreasonable embarrassment, disturbance or annoyance to other Owners in the enjoyment of their Lot or Tract or in their enjoyment of the Common Area. Without limiting the generality of any of the foregoing provisions, no horns, whistles, firecrackers, bells or other sound devices, except security devices shall be used or placed on any such property without prior approval of the Board. Normal construction activities and parking in connection with the building of Improvements on a Lot or Tract shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots and Tracts shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in the vicinity of the construction site. The Board, in its sole discretion, shall have the right to determine the existence of any such nuisance.
- (r) Overhead Encroachments. No tree, shrub, or planting of any kind on any Lot or Tract shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way or other area from ground level to a height of eight (8) feet without the prior written approval of the Design Review Committee.
- (s) Parking. Cars, pickups, passenger vans and other similar personal use vehicles of all Owners, Lessees and Residents, are encouraged to be kept in garages, carports, and residential driveways of the Owner. Parking in front and side yards is prohibited. Screening of mobile homes,



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Page: 21 of 46  
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motor homes, recreation vehicles, and other similar vehicles shall be in accordance with subsection (ee) herein.

- (t) Party Walls. Except as hereinafter provided, the rights and duties of Owners with respect to Party Walls between Lots and Tracts shall be as follows: (i) the Owners of contiguous Lots or Tracts who have a Party Wall shall both equally have the right to use such wall or fence, provided that such use by one (1) Owner does not interfere with the use and enjoyment of same by the other Owner; (ii) in the event that any Party Wall is damaged or destroyed through the act of an Owner or any of his Tenants, Lessees, agents, guests, or members of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the Party Wall without cost to the Owner of the adjoining Lot or Tract any dispute over an Owner's liability for such damage shall be resolved as provided in Subsection (v) below, but any liability imposed on an Owner hereunder shall not prevent the Owner from seeking reimbursement and indemnity therefor from the persons causing such damage; (iii) in the event any Party Wall is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining Owner, his Tenants, Lessees, agents, guests or family, it shall be the obligation of all Owners whose Lots or Tracts adjoin such Party Wall to rebuild and repair such wall or fence at their joint expense, such expense to be allocated among the Owners in accordance with the frontage of their Lots or Tracts on the Party Wall; (iv) notwithstanding anything to the contrary herein contained, there shall be no modification of any Party Wall without the prior consent of all Owners of any interest therein, whether by way of easement or in fee; (v) in the event of a dispute between Owners with respect to the construction, repair or rebuilding of a Party Wall, or with respect to the sharing of the cost thereof, such adjoining Owners shall submit the dispute to the Board, the decision of which shall be binding. Anything in the foregoing to the contrary notwithstanding; in the case of Party Walls between Common Areas and Lots or Tracts, the Association shall be responsible for all maintenance thereof, subject to the provisions of Article X, except that each Owner of a Lot or Tract shall be responsible for painting and maintenance of the portion of the Party Wall facing his Lot or Tract or the portion thereof which is not a portion of the Common Area. The provisions of this Subsection (p) shall not apply to any Party Wall which separates the interiors of two (2) Dwelling Units and the rights of the Owners of such Dwelling Units with respect to Party Walls shall be governed by plats and covenants, conditions and restrictions to be Recorded by the developer of the Dwelling Units.
- (u) Perimeter Walls. Perimeter walls shall be constructed by the Declarant. The Association shall be responsible for the exterior maintenance, repair, replacement, graffiti removal and upkeep. Lot owners shall be obligated to maintain the structural integrity of the perimeter walls and cannot alter



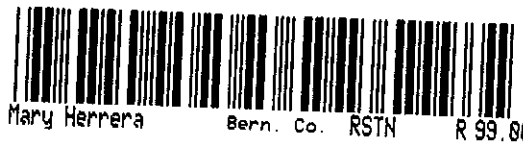
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Page: 22 of 46  
11/23/2004 11:25A  
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the walls in any manner without the written approval of the Design Review Committee.

- (v) Repair of Building. No building or structure on any Lot or Tract shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any building or structure is damaged or destroyed, then, subject to the approvals required by Subsection (a) above, such building or structure shall be immediately repaired or rebuilt or shall be demolished.
- (w) Restriction on Further Subdivision, Property Restrictions and Rezoning. No Lot shall be further subdivided or separated into smaller Lots by any Owner other than the Declarant, and no portion less than all of any such Lot, shall be conveyed or transferred by any Owner other than Declarant, without the prior written approval of the Board. This provision shall not, in any way, limit Declarant from sub-dividing or separating into Lots any property at any time owned by Declarant. No portion of a Lot but for the entire Lot, together with the Improvements thereon, may be rented, and then only to a Single Family. No further covenants, conditions, restrictions or easements shall be Recorded by any Owner, Lessee, or other person other than the Declarant against any Lot without the provisions thereof having been first approved in writing by the Board and having been endorsed on such Recorded covenants, conditions, restrictions and easements, and any covenants, conditions, restrictions or easements Recorded without such approval being endorsed thereon shall be null and void.
- (x) Right of Entry. During reasonable hours and upon reasonable notice to the Owner or other occupant of a Lot or Tract, any member of the Design Review Committee, any member of the Board, or any authorized representative of any of them, shall have the right and license to enter upon and inspect any Lot or Tract, and the Improvements thereon, except for the interior portions of any completed Dwelling Unit for the purpose of ascertaining whether or not the provisions of this Declaration, the Design Review Committee Guidelines, or the Ventana Ranch West Rules have been or are being complied with and such persons shall not be deemed guilty of trespass by reason of such entry.
- (y) Rooftop Decks. No rooftop decks shall be allowed unless as an integral part of the original construction approved by the Design Review Committee.
- (z) Sheds. Construction or installation of any storage shed, utility shed or any other building or similar structure shall require prior approval of the Design Review Committee.



- (aa) Signs. (1) No signs whatsoever (including, but not limited to, commercial, political and similar signs) shall be erected or maintained on any Lot or Tract except: (i) signs required by legal proceedings; (ii) no more than two (2) identification signs for individual residences, each with a face area of seventy-two (72) square inches or less; (iii) not more than one (1) "For Sale" or "For Lease" sign per Lot) with a face area of six (6) square feet; (iv) promotional and advertising signs of builders on any Lot or Tract approved from time to time by Declarant as to number, size, color, design, message content, location and type; and (v) such other signs (including, but not limited to, construction job identification signs, builder identification signs, and subdivision, shopping center, apartment and business identification signs) which are in conformance with the requirements of the City or other governmental agencies and which have been approved in writing by the Design Review Committee as to size, color, design, message content and location. (2) Project name and subdivision name signs shall be approved by the Declarant and shall be maintained by the Association. The Design Review Committee shall have the authority to alter the sign face area limitations from time to time.
- (bb) Temporary Occupancy and Temporary Buildings. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings, construction trailers or structures used during the construction of a dwelling or other structure on any property shall be removed immediately after the completion of construction.
- (cc) Towing of Vehicles. The Board shall have the right but not the obligation to have any truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer or similar equipment or vehicle or any automobile, motorcycle, motorbike, or other motor vehicle which is parked, kept, maintained, constructed, reconstructed or repaired in violation of this Declaration towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment is owned by an Owner, any amounts payable to the Association shall be secured by the Assessment Lien, and the Association may enforce collection of suit amounts in the same manner provided for in this Declaration for the collection of Assessment.
- (dd) Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot or Tract, except in covered containers of a type, size and style which are required by the City of Albuquerque or approved in writing by the Design Review Committee. All rubbish, trash, or garbage shall be removed from the Lots and Tracts and shall not be allowed to accumulate



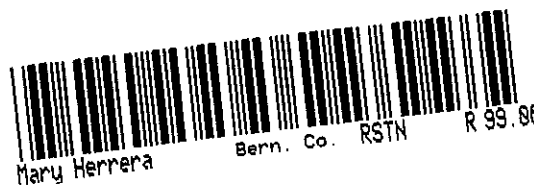


thereon. No incinerators shall be kept or maintained on any Lot or Tract. Lots and Tracts shall be kept in a neat and tidy condition during construction periods and trash and debris shall be placed in appropriate containers.

- (ee) Trucks, Trailers, Campers and Boats. Except as provided otherwise by this Section, no mobile home, motor home, recreational vehicle, motorcycles, campers, trailers, boat, boat trailer, camper, camper shell, detached camper, hang glider, ultra light, all terrain vehicle, snowmobile, ultra light, or similar facility vehicle, or recreational equipment shall be kept, placed, or maintained within Ventana Ranch West at any time, unless enclosed within a garage or within the side or rear yard so as to, at the discretion of the Design Review Committee, be screened from any street, or the ground floor of neighboring homes. Unless enclosed within a garage, all outside storage of said vehicles, equipment or facilities must be specifically approved by the Design Review Committee. The provisions of this subsection shall not apply to (i) temporary construction trailers, shelters or facilities maintained during, and used exclusively in connection with, the construction of any work or improvement permitted by this Declaration (ii) a recreational vehicle parked in the driveway or the street for a period not to exceed forty-eight (48) hours, and (iii) a guest's use of a recreational vehicle for a period not to exceed seven (7) days.

Section 4.3. Covenants, Conditions, Restrictions and Easements Applicable to Lots Within Single Family Residential Land Use Classifications. The following covenants, conditions, restrictions and reservations of easements and rights shall apply only to Lots and the Owners and Residents thereof restricted by a Plat to Single Family Residential use, or Cluster Residential Use.

- (a) Residential Use. All Dwelling Units shall be used, improved and devoted exclusively to residential use by a Single Family. No trade or business may be conducted on any Lot or in or from any Dwelling Unit, except that an Owner or other Resident of a Dwelling Unit may conduct a business activity within a Dwelling Unit so long as the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling Unit, and is in compliance with all laws, including licensing and zoning laws.
- (b) Tenants. The entire Dwelling Unit on a Lot may be let to a Single Family Lessee from time to time by the Owner, subject to the provisions of this Declaration and the Ventana Ranch West Rules, and the Design Review Committee Guidelines. Tenants shall be bound by the terms of this Declaration, the Ventana Ranch West Rules, and the Design Review Committee Guidelines. Owners shall continue to have financial liability for the acts or omissions of their Tenants.



2004162726  
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Page: 25 of 46  
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Section 4.4. Covenants, Conditions, Restrictions and Easements Applicable to Multi-Family and Non-Residential Land Use Classifications. It is the intent of the Declarant to adopt separate Covenants, Conditions, Restrictions and Design Review Committee Guidelines for these land uses.

## ARTICLE V ORGANIZATION OF ASSOCIATION

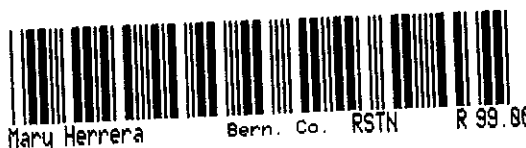
Section 5.1. Formation of Association. The Association shall be a nonprofit New Mexico corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

Section 5.2. Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws as the same may be amended from time to time. The Board may also appoint various committees and appoint a manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the manager or any other employee of the Association. Unless this Declaration specifically requires a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board.

Section 5.3. The Ventana Ranch West Rules. The Board may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations pertaining to: (i) the management, operation and use of the common Areas including, but not limited to, any recreational facilities situated upon the common Areas; (ii) minimum standards for any maintenance of Lots and Tracts; or (iii) the health, safety or welfare of the Owners and Residents. In the event of any conflict or inconsistency between the provisions of this Declaration and the Ventana Ranch West Rules, the provisions of this Declaration shall prevail. The Ventana Ranch West Rules shall be enforceable in the same manner and to the same extent as the covenants, conditions and restrictions set forth in this Declaration.

Section 5.4. Personal Liability. No member of the Board or of any committee of the Association, no officer of the Association, and no other employee or representative of the Association shall be personally liable to any Member, or to any other person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, any representative or employee of the Association, or any committee, committee member or officer of the Association; provided, however, the limitations set forth in this section 5 shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

Section 5.5. Sub-Association. In the event any homeowners or similar association is to be formed by the developer (other than the Declarant) of a Tract or



2004162726  
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Page: 26 of 46  
11/23/2004 11:25A  
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subdivision on Ventana Ranch West, the covenants, conditions and restrictions, the articles of incorporation and bylaws or other governing documents for such association shall not be effective unless the contents thereof have been approved by the Board and the governing documents specify that such association and the rights of its members are subject and subordinate to the provisions of this Declaration, the provisions of the Articles and Bylaws of the Association, and the provisions of the Ventana Ranch West Rules, and the Design Review Committee Guidelines.

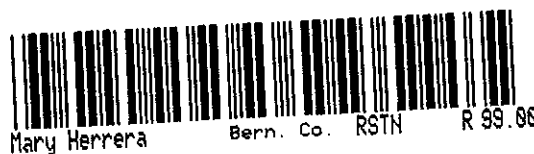
## ARTICLE VI MEMBERSHIPS AND VOTING

Section 6.1. Owners of Lots and Tracts. Every Owner (including the Declarant) of a Lot or Tract which is Assessable Property shall be a Member of the Association. For the purposes of this Section, Lots and Tracts owned by the Declarant shall be considered Assessable Property even though said Lots and Tracts are not subject to Assessment so long as there is a Class II Membership in the Association. Each such Owner (including the Declarant) shall have the following number of Memberships:

- (a) One Membership for each residential Lot owned by the Member. No Owner, whether one or more persons, shall have more than one (1) Membership per residential Lot owned. In the event the Owner of a residential Lot is more than one person or entity, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership, including the right to vote, may be exercised by a Member or the Member's spouse, but in no event shall more than one (1) vote for each Membership applicable to a particular Residential Unit be cast for each Residential Unit;
- (b) In the case of the Owner of a Tract zoned for Single Family Use but not yet subdivided, one Membership for each Dwelling Unit based upon a density of five (5) Dwelling Units per net acre. Upon subdivision of the Tract or a portion of the Tract into Lots, one Membership per Lot owned as described above.
- (c) In the case of ownership of a Lot or Tract restricted by a zoning to a Land Use Classification other than Single Family Residential Use, Cluster Residential Development Use or Apartment Development Use, the number of Memberships and Assessments shall be as determined by Declarant.

Each such Membership shall be appurtenant to and may not be separated from ownership of the Lot to which the Membership is attributable.

Section 6.2. Declarant. The Declarant shall be a member of the Association for so long as it owns any Lot or Tract or any part of the Covered Property or any property covered by the Development Plan which has not been annexed and subjected to this Declaration.



2004162726  
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Page: 27 of 46  
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Section 6.3. Voting. The Association shall have two classes of voting Memberships:

Class I. Class I Members shall be all Owners with the exception of the Declarant. Class I Members shall be entitled to one vote for each Membership or as set forth in Section 6.1(c).

Class II. The Class II Member shall be the Declarant who shall be entitled to one (1) vote for each Membership.

Section 6.4. Right to Vote. No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each such Membership must be cast as a unit. In the event that a Membership is owned by more than one person or entity and such owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Membership, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other owners of the same Membership unless objection thereto is made at the time the vote is cast. In the event more than one vote is cast for a particular Membership, none of said votes shall be counted and all said votes shall be deemed void.

Section 6.5. Membership Rights. Each member shall have the rights, duties and obligations set forth in this Declaration and such other rights, duties and obligations as are set forth in the Articles and Bylaws, Ventana Ranch West Rules and Design Review Committee Guidelines as the same may be amended from time to time.

Section 6.6. Transfer of Class I Membership. The rights and obligations of the owner of a Class I Membership in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership to an Owner's Lot or Tract, as applicable, and then only to the transferee of ownership to the Lot or Tract. A transfer of ownership to a Lot or Tract may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage or deed of record, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of New Mexico. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot or parcel shall operate to transfer the Membership(s) appurtenant to said Lot or Tract to the new Owner thereof.

Section 6.7. Suspension of Voting Rights. Any Member who fails to pay the Annual Assessments, Special Assessments or Penalty Assessments provided herein within thirty (30) days of the due date thereof, shall have all voting rights as provided herein suspended until such amounts plus any accrued interest, attorney's fees and/or collection costs are paid in full. In addition, the Board may suspend an Owner's voting



rights for violations of the Declaration, Design Review Committee Guidelines, or the Ventana Ranch West Rules.

## ARTICLE VII COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

Section 7.1. Creation of Lien and Personal Obligation of Assessments and Maintenance Charges. The Declarant, for each Lot and Tract established within Ventana Ranch West, hereby covenants and agrees, and each owner by acceptance of a Deed therefor (whether or not it shall be so expressed in such Deed) is deemed to covenant and agree, to pay to the Association the following assessments and charges: (1) Annual Assessments established by this Article VII, (2) Special Assessments for capital improvements or other extraordinary expenses or costs established by this Article VII, and (3) Penalty Assessments as set forth by this Article VII, all such Assessments to be established and collected as hereinafter provided. The Annual Assessments, Special Assessments Penalty Assessments, together with interest, incidental and taxable costs, and reasonable attorney's fees, and all other sums which may become due and payable to the Association by an Owner shall be a charge on the Lot or Tract and shall be a continuing servitude and lien upon the Lot or Tract against which each such Assessment is made. The Annual and Special Assessments against each Lot or Tract shall be based on the number of Memberships appurtenant to the Lot or Tract (including, without limitation, Memberships attributable to Dwelling Units, Condominium Units and/or Rental Apartments located on such Lot or Tract). Each such Annual, Special and Penalty Assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of the Lot or Tract at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them. However, such exemption does not apply to the obligation of the successor in title of the Owner to correct any violation of the Declaration, the Ventana Ranch West Rules, or the Design Review Committee Guidelines by the Owner pursuant to Article XI; however, the transfer of title shall not extinguish any Assessment Lien except a transfer pursuant to foreclosure of a superior lien in which the Assessment Lien has been extinguished by such foreclosure.

Section 7.2. Annual Assessments. Within thirty (30) days prior to the commencement of the Association's fiscal year, the Board shall estimate the costs and expenses to be incurred by the Association during the fiscal year in performing its functions (including a reasonable provision for contingencies and replacements) and shall subtract from such estimate an amount equal to other projected revenues and surplus balances not needed for reserves and contingencies. The sum or net estimate shall be assessed on a monthly, quarterly or annual basis to all non-exempt Owners in shares proportionate to their voting rights as set forth more fully herein.

- (a) Supplement Assessments. If at any time, and from time to time during any fiscal year, the Annual Assessment proves or appears likely to be inadequate, for any reason, including nonpayment of any Owner's share, the Board may levy a further assessment in the amount of such actual or



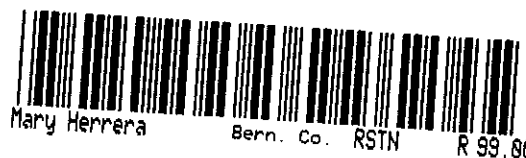
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Page: 29 of 48  
11/23/2004 11:25A  
Bk-A87 Pg-2272

estimated inadequacy, which shall be assessed to Owners divided as provided herein.

- (b) Following the termination of Class II Memberships, the Board may also levy in any fiscal year an assessment for paying or returning in whole or in part the cost of acquisition, construction, reconstruction, repair or replacement of a capital improvement to the Common Area or to retire a debt of the Association for amounts in excess of \$20,000.00. Consent of a majority of the quorum of Members entitled to vote shall be required for such capital improvements following termination of the Class II Membership. Prior to termination of the Class II Membership, the Declarant shall have sole and absolute discretion concerning supplemental assessments.

Section 7.3. Determination of Annual Assessment Payment. The Annual Assessment shall be determined as set forth above. Until January 1 of the year following the recording of the first subdivision, the Annual Assessment against each Owner shall be a maximum of eighteen dollars per month (\$18.00/month). Commencing on the year immediately following the recording of the first subdivision and continuing each succeeding year thereafter for as long as a Class II Membership exists, the Annual Assessment may be increased January 1 of each year by the Board up to a maximum of ten percent (10%) per annum. For as long as a Class II Membership exists, the short fall between the amount of Annual Assessments due and payable by the Class I Members and the total budgeted amount of the Annual Assessment necessary for the operation of the Association, shall be paid by the Declarant.

- (a) Payment of Assessment Amounts. The amount of any Annual Assessment payable by each Owner shall be in accordance with the voting rights described in Article VI as modified herein. All Assessments shall be payable in full when assessed. Assessments shall not be prorated for portions of a month or Assessment Period based upon the sale or transfer of ownership by a party other than the Declarant. The Annual Assessment for any Tract which has not been developed or subdivided shall be based upon a density of five (5) Dwelling Units per net acre. Assessments shall accrue from the date of sale of all or a portion of a Tract. The Owner shall be charged fifty percent (50%) of the Annual Assessment amount otherwise chargeable during the first twelve (12) months following sale of all or a portion of a Tract by the Declarant and seventy-five percent (75%) of the Annual Assessment amount otherwise chargeable during the second twelve (12) months following sale of all or a portion of the Tract by the Declarant provided the Tract is not otherwise subdivided. Beginning on the twenty-fifth (25th) month following the sale of all or a portion of a Tract by the Declarant, the Annual Assessment amount shall be in accordance with the voting rights described in Article VI. Upon division of a Tract into Lots, the Annual Assessment and



Memberships shall be based upon actual density and not based upon five (5) Dwelling Units per net acre.

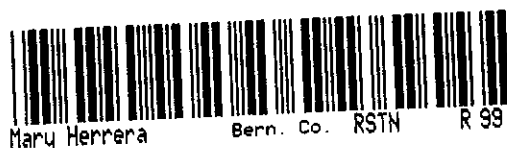
Section 7.4. Special Assessments for Capital Improvements and Extraordinary Expenses. In addition to the Annual Assessments authorized above, the Association may levy, in any Assessment Period, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, or for the purpose of defraying other extraordinary expenses. For as long as a Class II Membership exists, the Class II Member shall make all determinations concerning Special Assessments. Thereafter, Special Assessments shall be by a majority vote of a quorum of Class I Members entitled to vote in person or by proxy. The provisions of this Section are not intended to preclude or limit the assessment, collection or use of Annual Assessments for the aforesaid purposes.

Section 7.5. Penalty Assessments. Penalty Assessments may be imposed for violation of the Declaration, Articles of Incorporation, Bylaws, Ventana Ranch West Rules or the Design Review Committee Guidelines or procedures, pursuant to the notice provisions and procedures established by the Board.

Section 7.6. Notice and Quorum for Any Action Authorized Under Section 7.4. Written notice of any meeting called for the purpose of taking any action authorized under Section 7.4 of this Article shall be sent to all Members no less than ten (10) days in advance of the meeting at the addresses of such Members on the records of the Association. For as long as a Class II Membership exists, the presence in person or by proxy, of the Class II Member shall constitute a quorum. Thereafter, the presence of Class I Members or of proxies entitled to cast fifty percent (50%) of all the votes (exclusive of suspended voting rights) shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement.

Section 7.7. Establishment of Annual Assessment Period. The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the calendar year, except that the first Assessment Period shall commence upon the filing of the first subdivision and terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period by giving notice thereof to the Members of the Association.

Section 7.8. Rules Regarding Billing and Collection Procedures. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making the Assessments provided herein and for the billing and collection of the Annual, Special and Penalty Assessments provided that said procedures are not inconsistent with the provisions hereof. The failure of the Association to send a bill to a Member shall not relieve any member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed or otherwise enforced until the Member has been given not less than thirty (30) days written notice prior to such foreclosure or enforcement, at the address of the Member



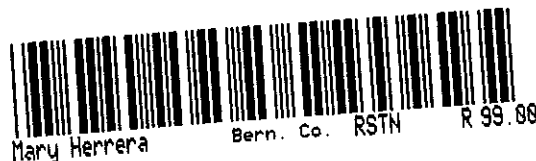
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Page: 31 of 46  
11/23/2004 11:25A  
Bk-887 Pg-2272

on the records of the Association, that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Membership changes during an Assessment Period; successor Owners of Lots or Tracts shall be given credit for prepayments, on a prorated basis, made by prior Owners. In case the owner of a Membership becomes liable for payment of an increased sum during the Assessment Period, he shall notify the Association but his failure to notify the Association shall not relieve him of the liability for such amounts. The amount of the Annual Assessment against Members who become such during an Assessment Period upon the Recording of a subdivision shall be prorated and such new Members shall be liable for a proportionate share of any previously levied Special Assessment if such Assessments are paid in installments. Members must notify Association of a change of mailing address when applicable.

Notice of any past due Assessment or of any lien may, at the Association's discretion, be given to any Mortgagee, and each Owner shall, upon demand, provide the Association with the name, address and telephone number of such Mortgagee.

Section 7.9. Collection Costs and Interest on Delinquent Assessments. Any Assessment or installment thereof not paid when due shall be deemed delinquent and shall bear interest from thirty (30) days after the due date until paid at a rate of eighteen percent (18%) per annum and the Member shall be liable for all taxable and incidental costs, including attorney's fees, which may be incurred by the Association in collecting the same. Late fees may also be established by the Board to be adjusted from time to time. The Board may also record a Notice of Delinquent Assessment against any Lot or Tract as to which any such amount is delinquent and constitutes a lien and may establish a fixed fee to reimburse the Association for the Association's cost in Recording such Notice, processing the delinquency and Recording a notice of payment, which fixed fee shall be treated as a collection cost of the Association secured by the Assessment Lien.

Section 7.10. Evidence of Payment of Assessments. Upon receipt of a written request by a Member or any other person, the Association, within a reasonable period of time thereafter, shall issue to such member or other person a written certificate stating (a) that all Annual, Special and Penalty Assessments (including interest, costs and attorney's fees, if any, as provided in Section 7.8 above) have been paid with respect to any specified Lot or Tract as of the date of such certificates, or (b) if all Annual, Special and Penalty Assessments have not been paid, the amount of such Annual, Special and Penalty Assessments (including interest, costs and attorney's fees, if any) due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matter therein stated as against any bona fide purchaser of, or lender on, the Lot or Tract in question.



2004162726  
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Page: 32 of 46  
11/23/2004 11:25A  
Bk-A87 Pg-2272



Section 7.11. Property Exempted from the Annual and Special Assessments and Assessment Lien. Exempt Property shall be exempted from the assessment of the Annual and Special Assessments; provided, however, that in the event any change of ownership of Exempt Property results in all or any part thereof becoming Assessable Property in any year, the Assessments shall be prorated to the date of change in ownership.

Section 7.12. Transfer Fee. Each person or entity other than a Developer who purchases a Lot or Tract shall pay to the Association immediately upon becoming the Owner of the Lot or Tract a transfer fee in such amount as is established from time to time by the Board. The Association may also record documents in the records of Bernalillo County to place purchasers on notice of assessment amounts, utilities and other amounts which may be due to the Association, Utility Company or others in conjunction with the sale of any Tract or Lot in Ventana Ranch West.

Section 7.13. Disclosure of Special Levy. Each owner of real property in Ventana Ranch West shall, in any contract for the sale and purchase of such property to a third party, include notice to the purchaser that the real property is subject to special levies imposed by the Ventana West Public Improvement District. The notice shall include reference to the Notice of Imposition of Special Levy recorded in the Records of Bernalillo County on June 2, 2004 as Document #2004076094.

ARTICLE VIII  
ENFORCEMENT OF PAYMENT OF ANNUAL, SPECIAL AND PENALTY  
ASSESSMENTS AND OF ASSESSMENT LIEN

Section 8.1. Association as Enforcing Body. The Association, as the agent and representative of the Members, shall have the right to enforce the provisions of this Declaration. However, if the Association shall fail or refuse to enforce this Declaration or any provision hereof for an unreasonable period of time after written request to do so, then any Member may enforce the provisions of this Declaration by any appropriate action, whether at law or in equity.

Section 8.2. Associations' Remedies to Enforce Payment of Assessments. If any Member fails to pay the Assessments when due, the Association may enforce the payment of the Assessments by taking either or both of the following actions, concurrently or separately (and, by exercising either of the remedies hereinafter set forth, the Association does not prejudice or waive its rights to exercise the other remedy);

- (a) Bring an action at law and recover judgment against the Member personally obligated to pay the Annual, Special and Penalty Assessments;
- (b) Foreclose the Assessment Lien against the Lot or Tract in accordance with the then prevailing New Mexico law relating to the foreclosure of realty mortgages (including the right to recover any deficiency) and the Lot



or Tract may be redeemed after foreclosure sale as provided by law. The Association shall have the right to bid at any foreclosure sale.

Section 8.3. Subordination of Assessment Lien to First Mortgage or Deed of Trust; Priority of Lien. The Assessment Lien provided for herein shall be subordinate to any first mortgage lien held by, or first deed of trust of which the beneficiary is, a lender who has lent funds with the Lot or Tract as security, or help by the lender's successors and assigns, and shall also be subject to subordinate to liens for taxes and other public charges which by applicable law are expressly made superior. Except as above provided, the Assessment Lien shall be superior to any and all charges, liens or encumbrances which in any manner may arise or be imposed upon each Lot or Tract after the date this Declaration is Recorded. Sale or transfer of any lot or Tract shall not affect the Assessment Lien; provided, however, that if the sale or transfer is pursuant to foreclosure of a mortgage or deed of trust to which the Assessment Lien is subordinate, or pursuant to any sale or proceeding in lieu thereof, the purchaser at the mortgage foreclosure or deed of trust sale, or any grantee taking by deed in lieu of foreclosure, shall take the Lot or Tract free of the Assessment Lien for all Assessments that have accrued up to the date of issuance of a sheriff's or trustee's deed or deed in lieu of trustee's deed or deed in lieu of foreclosure, the Assessment Lien immediately shall become and remain superior to any and all other charges, liens or encumbrances (except liens for taxes or other public charges which by applicable law are expressly made superior), and such mortgage or deed of trust foreclosure sale purchaser or grantee shall take subject to all Assessments and the Assessment Lien therefor accruing subsequent to the date of issuance of a sheriff's or trustee's deed or deed given in lieu of foreclosure.

Section 8.4. Costs to be Borne by Member in Connection with Enforcement of Payment of Annual and Special Assessments. In any action taken pursuant to Section 8.2 of this Article, the Member shall be personally liable for, and the Assessment Lien shall be deemed to secure the amount of, the Assessments together with interest and the Association's incidental and taxable costs including collection costs and attorney's fees. The Assessment Lien shall also secure payment of any other sums which may become payable to the Association by an Owner pursuant to this Declaration.

## ARTICLE IX USE OF FUNDS; BORROWING POWER

Section 9.1. Purpose For Which Association's Funds May Be Used. The Association shall apply all funds and property collected and received by it (including the Annual, Special and Penalty Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of Ventana Ranch West and the Members and Residents by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without Ventana Ranch West which may be necessary, desirable or beneficial to the general common interests of Ventana Ranch West, the



Members and the Residents. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit: social interaction among Members and Residents, maintenance of landscaping on Common Areas, public right of way, drainage areas within Ventana Ranch West, recreation, liability insurance, communications, education, transportation, health, utilities, public services, safety and indemnification of officers and directors of the Association. The Association also may expend its funds for any purposes for which any municipality may expend its funds under the laws of the State of New Mexico or such municipality's charter.

Section 9.2. Borrowing Power. The Association may borrow money in such amounts, at such rates, upon such terms and security, and for such periods of time as is necessary or appropriate.

Section 9.3. Association's Rights in Spending Funds From Year to Year. The Association shall not be obligated to spend in any year all the sums received by it in such year (whether by way of Annual or Special Assessments, fees or otherwise), and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

Section 9.4. Administration of Special Use Fees. The Association is authorized to bill for, sue for, collect, administer and disburse all Special Use Fees and the payment thereof shall be secured by the Assessment Lien; provided, however, that all Special Use Fees collected shall, if imposed in connection with a particular improvement, be separately accounted for as to each separate improvement pertaining to which they are collected and shall be expended on the particular improvement to which they pertain.

Section 9.5. Insurance. The Association shall maintain insurance against liability incurred as a result of death or injury to persons or damage to property on the Common Areas with minimum bodily injury limits of \$1,000,00.00 per occurrence and minimum property damage liability limits of \$500,000.00 per occurrence or a combined single limit of \$1,000,000.00 per occurrence. The Association may, but shall not be required to, purchase director and officers liability insurance, errors and omissions insurance or similar insurance policies in amounts and types determined by the Board.

## ARTICLE X MAINTENANCE

Section 10.1. Common Areas and Public Right of Way. The Association, or its duly delegated representatives, shall maintain and otherwise manage all Common Areas, including, but not limited to, the landscaping, walkways, paths, parking areas, drives, recreational facilities and the roofs, interiors and exteriors of the buildings and structures located upon the Common Areas; provided however, the Association shall



not be responsible for providing or maintaining the landscaping, structures or other Improvements on any Common Areas which are part of Lots or Tracts unless (i) such landscaping, structures or other Improvements are available for use by all Owners and Residents or are within easements intended for the general benefit of Ventana Ranch West and (ii) the Association assumes in writing the responsibility for such maintenance or such responsibility is set forth in a Recorded instrument as hereinafter provided. The Association shall not maintain areas which (i) the City of Albuquerque or other governmental entity is maintaining or (ii) are to be maintained by the Owners of a Lot or Tract pursuant to Article IV, Section 4.2(d) of this Declaration unless the Association elects to maintain such areas and as to which the Association has not previously made such an election to maintain. Specific areas to be maintained by the Association may be identified on subdivision plats Recorded or approved by the Declarant, in Tract Declarations and in Deeds from the Declarant to a transferee of a Lot or Tract. Failure to so identify such specific areas to be maintained by the Association shall not affect the Association's rights and responsibilities.

The Board shall use a standard of reasonable care in providing for the repair management and maintenance of the Common Area so that the Ventana Ranch West development will reflect a high pride of ownership. In this connection the Association may, in the discretion of the Board:

- (a) Reconstruct, repair, remove, replace or refinish any Improvement or portion thereof upon Association Land;
- (b) Construct, reconstruct, remove, repair, replace or refinish any road improvement or surface upon any portion of the Common Area used as a road, street, walk, driveway, parking area, except that no permanent improvements shall be made by the Association on any Common Area that is not Association Land and the Association shall provide only maintenance on Common Areas which are not Association Land;
- (c) Replace injured and diseased trees and other vegetation in any Common Area, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;
- (d) Place and maintain upon any Common Area such signs as the board may deem appropriate for the proper identification, use and regulation thereof;
- (e) Do all such other and further acts which the Board deems necessary to preserve and protect the Common Area and the beauty thereof, in accordance with the general purposes specified in this Declaration.

The Board shall be the sole judge as to the appropriate maintenance of all Common Areas and other properties maintained by the Association.



Section 10.2. Improper Maintenance and Use of Lots and Tracts. In the event any portion of any Lot or Tract is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots and Tracts or other areas of Ventana Ranch West which are substantially affected thereby or related thereto, or in the event any portion of a Lot or Tract is being used in a manner which violates this Declaration, the Ventana Ranch West Rules, or the Design Review Committee Guidelines or in the event the Owner or Lessee of any Lot or Tract is failing to perform any of its obligations under this Declaration within respect to the maintenance, repair or replacement of the Improvements located on such Lot or Tract, the Board may by resolution make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give written Notice thereof to the Owner and make demand that corrective action be taken within fourteen (14) calendar days of the date of the Notice. If at the expiration of the said fourteen (14) day period the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken, including but not limited to the hiring of an attorney to take action on behalf of the Board, whether by information pre-suit action or by formal legal proceedings. The costs of any action taken by the Board as set forth herein, including but not limited to incidental and taxable costs, attorney's fees, and any fines assessed against said Owner or his family, guests, invitees, licensees, employees or Designees shall be added to and become a part of the Assessment to which the offending Owner and the Owner's Lot or Tract is subject and shall be secured by the Assessment Lien.

## ARTICLE XI DESIGN REVIEW COMMITTEE

Section 11.1. Establishment. The Declarant shall establish a Design Review Committee to perform the functions of the Design Review Committee set forth in this Declaration and shall adopt the procedural rules and regulations for the performance of such duties by the Design Review Committee, including procedures for the preparation, submission and determination of the application for any approvals required by this Declaration or any Tract Declaration ("Design Review Committee Guidelines"). The Design Review Committee shall consist of such number of regular members and alternate members as the Declarant may designate and such members shall be appointed by the Declarant. The appointees need not be architects, Owners, or Residents and do not need to possess any special qualifications of any type except such as the Declarant may, in its discretion, require. The Design Review Committee shall hold regular meetings, a quorum for which shall consist of a majority of the regular members shall be necessary for any decision of the Design Review Committee. An alternate member, approved by the Declarant, may participate at any meeting at which there is not a quorum of regular members present, may constitute a quorum by his (their) presence and shall have all of the authority of a regular member while so participating. The Design Review Committee Guidelines shall interpret and implement this Declaration by setting forth the procedures for Design Review Committee review and the standards for development within Ventana Ranch West, including, but not limited to, architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials, signage, wall design and similar matters related to



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Page: 37 of 46

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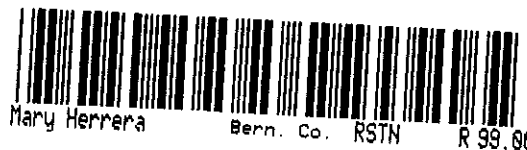
Improvements. The Design Review Committee Guidelines may also include provisions requiring the establishment of landscaping on Lots and Tracts pursuant to specific timetables. Subject to the provisions of Section 11.2 of this Article, the decision of the Design Review Committee shall be final on all matters submitted to it pursuant to this Declaration.

Section 11.2. Appeal. Any Owner or other Resident aggrieved by a decision of the Design Review Committee shall appeal the decision to the Board in accordance with procedures to be established by the Board. No legal action may be taken without first appealing the decision to the Board. Such procedures include the requirement that the appellant has modified the requested action or has new information which would in the Board's opinion warrant a reconsideration. If the Board fails to allow an appeal or if the Board, after appeal, again rules in a manner aggrieving the appellant, the decision of the Board is final. In the event the decision of the Design Review Committee is overruled by the Board on any issue or question, the prior decision of the Design Review Committee shall be deemed modified to the extent specified by the Board and, for purposes of this Declaration, such decision, as so modified, shall thereafter be deemed the decision of the Design Review Committee. In this regard, the Board shall have the authority to modify or overrule the decision of the Design Review Committee on any matter presented to it.

Section 11.3. Fee. The Design Review Committee may establish a reasonable processing fee to defer the costs of the Association in considering any requests for approvals submitted to it, which fee shall be paid at the time the request for approval is submitted. The Design Review Committee may employ an architect and other design professionals and the fees for such services shall be included in review fees.

Section 11.4. Appointment of Design Review Committee Members. Design Review Committee members are appointed by the Declarant and may be replaced at the discretion of the Declarant. Declarant's right to appoint Design Review Committee members shall cease and the Board shall be vested with that right and all other rights of the Declarant pertaining to the Design Review Committee on the date on which the Class II Membership is extinguished, at such time Declarant no longer owns any property at Ventana Ranch West, or when such right is expressly relinquished by Declarant to the Board in writing, whichever condition occurs first.

Section 11.5. Non-Liability for Approval of Plans. Plans and specifications shall be approved by the Design Review Committee as to style, exterior design, appearance and location, but the Design Review Committee takes no responsibility for engineering design or for compliance with zoning and building ordinances, and by approving any member thereof, the Association, any Member, the Board, nor the Declarant assumes any liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications. Neither the Design Review Committee, any member thereof, the Association, the Board nor the Declarant shall be liable to any Owner or other person for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to



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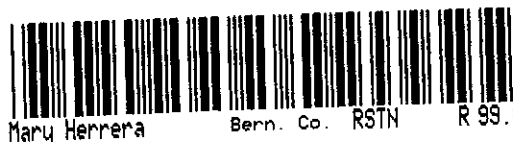
approved plans, drawings and specifications, or (c) the development, or manner of development, of any property within Ventana Ranch West. Approval of plans and specifications by the Design Review Committee is not, and shall not be deemed to be, a representation or warranty, whether express or implied, that said plans or specifications comply with applicable governmental ordinances or regulations including, without limitations, zoning ordinances and building does, and industry standards for design or construction.

## ARTICLE XII RIGHTS AND POWERS OF ASSOCIATION

Section 12.1. Association's Rights and Powers as Set Forth in Articles and Bylaws. In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in its Articles and Bylaws or as provided by New Mexico common law or statute. Such rights and powers, subject to the approval thereof by any agencies or institutions deemed necessary by Declarant, may encompass any and all things which a natural person could do or which now or hereafter may be authorized by law, provided such Articles and Bylaws are not inconsistent with the provisions of this Declaration. After incorporation of the Association, a copy of the Articles and Bylaws of the Association shall be available for inspection at the office of the Association during reasonable business hours. In addition to all other rights and remedies granted to the Association by this Declaration, the Association shall have the power to impose reasonable fines against an Owner for any violation of this Declaration or the Ventana Ranch West Rules by the Owner, a Lessee or Tenant of the Owner or by any Resident or occupant of the Owner's Lot or Tract.

Section 12.2. Association's Rights of Enforcement of Provisions of This and Other Instruments. The Association, as the agent and representative of the Owners, shall have the right to enforce the covenants set forth in this Declaration and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, deed, declaration or other instrument which (a) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (b) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association or by Declarant.

Section 12.3. Contracts with Others for Performance of Association's Duties. Subject to the restrictions and limitations contained herein, the Association may enter into contracts and transactions with others, including Declarant and its affiliated companies, and such contracts or transactions shall not be invalidated or in any way affected by the fact that one or more directors or officers of the Association or members of any committee are employed by or otherwise connected with Declarant or its affiliates, provided that the fact of such interest shall be disclosed or known to the other directors acting upon such contract or transaction, and provided further that the transaction or contract is fair and reasonable. Any such director, officer or committee member may be counted in determining the existence of a quorum at any meeting of the Board or committee of which he is a member which shall authorize any contract or



2004162726  
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Page: 39 of 46  
11/23/2004 11:25A  
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transaction described above or grant or deny any approval sought by the Declarant, its affiliated companies or any competitor thereof and may vote thereat to authorize any such contract, transaction or approval with like force and effect as if he were not so interested.

Section 12.4. Change of Use of Association Land and Procedure Therefor.

Upon (a) adoption of a resolution by the Board stating that in the Board's opinion the then present use of a designated part of the Common Areas is no longer in the best interests of the Owners and Residents and (b) the approval of such resolution by a majority of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for such purpose, the Board shall have the power and right to change the use thereof (and in connection therewith, construct, reconstruct, alter or change the buildings, structures and other Improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided such new use (i) shall be for the benefit of the Owners and Residents, and (ii) shall be consistent with any deed restrictions (or zoning regulations).

ARTICLE XIII  
ANNEXATION OF ADDITIONAL PROPERTY

Section 13.1. Annexation Without Approval.

All or any part of the Additional Property may be annexed to the Covered Property and become subject to this Declaration and subject to the jurisdiction of the Association without the approval, assent or vote of the Association or its Members, by the execution and Recording of a Supplemental Declaration by Declarant or its successors and assigns. The Supplemental Declaration shall (i) describe the Additional Property being annexed; (ii) incorporate the Declaration by reference, (iii) be executed by the Declarant, and (iv) be recorded in the records of Bernalillo County. The Recording of said Supplemental Declaration shall constitute and effectuate the annexation of said portion of the Additional Property described therein, making said real property subject to this Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter said property shall be part of the Covered Property and all of the Owners of Lots or Tracts in said property shall automatically be Members of the Association. Although Declarant or its successors and assigns shall have the ability to so annex all or any portion of the Additional Property, neither Declarant nor its successors and assigns shall be obligated to annex all or any portion of such Additional Property and such Additional Property shall not become subject to this Declaration unless and until a Supplemental Declaration shall have been so executed and Recorded.

Section 13.2. Supplemental Declarations.

Any Supplemental Declaration may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the Additional Property so annexed and as are not inconsistent with the plan of this Declaration. In no event, however, shall any such Supplemental Declaration, revoke or modify the covenants established by this Declaration within the existing Covered Property.



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Page: 46 of 46

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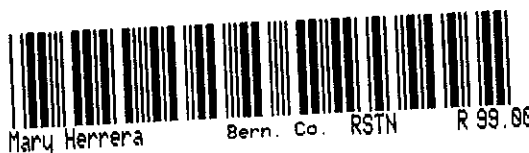
ARTICLE XIV  
WATER, SEWER AND COMMUNITY WATCH

Section 14.1. Water and Sewer Services. Water and Sewer Service is provided by the Utility Company. All Owners must subscribe to the Water and Sewer Service so long as the Utility Company provides such services on a non-discriminatory basis in comparison to its other customers. No Owner may drill a well on any lot or procure Water and Sewer Services from other providers unless such services are ultimately provided by a governmental authority. Each Owner shall be responsible for payment of any hookup fees, line extension fees, impact fees or other fees associated with such services.

Section 14.2. Community Watch. The Association may, but shall not be obligated to, maintain or support certain community watch activities within Ventana Ranch West. THESE ACTIVITIES SHALL NOT CONSTITUTE SECURITY SERVICES AND NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTIES, NOR SHALL ANY OF THEM BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE THEM ADEQUATE SECURITY OR OF INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM, PATROL OR OTHER SECURITY SYSTEM CAN NOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND COVENANTS TO INFORM ITS TENANTS THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES, DECLARANT, AND ANY SUCCESSOR DECLARANT ARE NOT INSURERS AND THAT EACH PERSON USING THE PROPERTIES ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO UNITS AND TO THE CONTENTS OF UNITS RESULTING FROM ACTS OF THIRD PARTIES.

ARTICLE XV  
TERM; AMENDMENTS; TERMINATION

Section 15.1. Term; Method of Termination. This Declaration shall be effective upon the date of Recording hereof and, as amended from time to time, shall continue in full force and effect until January 1, 2025. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by a quorum of the then Members casting two-thirds (2/3) of the total votes cast at an election held for such purpose in person or by proxy within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension. The Declaration may likewise be terminated at any time if two-thirds (2/3) of the quorum of the votes cast by each class of Members shall be cast in favor of termination at an election held for such purpose. If the necessary votes and consents are obtained, the Board shall cause to



2004162726  
6176224  
Page: 41 of 46  
11/23/2004 11:25A  
Bk-A87 Pg-2272

be Recorded with the County Recorder of Bernalillo County, New Mexico, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged.

Thereupon this Declaration and the covenants contained herein shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

Section 15.2. Amendments. This Declaration may be amended by Recording with the County Recorder Recorded of Bernalillo County, New Mexico, a Certificate of Amendment, duly signed and acknowledged. The Certificate of Amendment shall set forth in full the amendment adopted. For as long as Class II Membership exists, the Declarant may amend this Declaration. After the Class II Membership no longer exists, an amendment shall require an affirmative vote of two-thirds (2/3) of a quorum of Members called to vote in person or by proxy for such amendment. A Plat or Zoning designation may be amended with (i) the approval of the Board; and (ii) the approval of the Declarant as long as the Declarant owns any property in Ventana Ranch West. Notwithstanding the foregoing to the contrary, (i) all amendments must be approved by the Board, and (ii) all amendments to the Article VIII, Section 8.3 affecting lienholder priority must be approved by the holders of any and all first mortgages and deeds of trust affected thereby.

Section 15.3. Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending Institutions. Anything in this Article to the contrary notwithstanding, Declarant so long as the Declarant owns any Lot or Tract, and thereafter, the Board, may amend all or any part of this Declaration to such an extent and which such language as may be requested by the Federal Housing Administration ("FHA") or the Veterans Administration ("VA") and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s) or Tract(s) or portions thereof. Any such amendment shall be effected by the Recording, by Declarant, if made by the Declarant, or by the Board if made by the Board, of a Certificate of Amendment, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. The Recording of such a Certificate shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Certificate, when Recorded, shall be binding upon all of the Covered Property and all persons having an interest therein.

## ARTICLE XVI GENERAL PROVISIONS

Section 16.1. Interpretation of the Declaration. The Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. The Association's construction or interpretation of the provisions hereof



2004162726

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Page: 42 of 46

11/23/2004 11:25A

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shall be final, conclusive and binding as to all persons and property benefited or bound by the Declaration and provisions hereof.

Section 16.2. Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

Section 16.3. Rule Against Perpetuities. If any interest purported to be created by this Declaration is challenged under the Rule Against Perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest; the "lives in being" for computing the period of perpetuities shall be (a) those which would be used in determining the validity of the challenged interest, plus (b) those of the issue of the Board who are living at the time the period of perpetuities starts to run on the challenged interest.

Section 16.4. Change of Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

Section 16.5. Rules and Regulations. In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Association shall have the right to adopt rules and regulations with respect to all other aspects of the Association's rights, activities and duties, provided said rules and regulations are not inconsistent with the provisions of this Declaration.

Section 16.6. Declarant's Disclaimer of Representations. Anything to the contrary in this Declaration notwithstanding, and except as otherwise may be expressly set forth on a recorded plat or other instrument recorded in the office of the County Recorder of Bernalillo County, New Mexico, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of Ventana Ranch West can or will be carried out, or that any land now owned or hereafter acquired by it is or will be subjected to this Declaration, or that any such land (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such land is once used for a particular use, such use will continue in effect.

Section 16.7. References to the Covenants in Deeds. Deeds to and instruments affecting any Lot or Tract or any part of the covered Property may contain the covenants herein set forth by reference to this Declaration; but regardless of whether any such reference is made in Deed or instrument, each and all of the covenants shall be binding upon the grantee-Owner or other person claiming through any instrument and his heirs, executors, administrators, successors and assigns.

Section 16.8. Successors and Assigns of Declarant. Any reference in this Declaration to Declarant shall include any successors or assignees of Declarant's rights and powers hereunder.

Section 16.9. Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

Section 16.10. Captions and Titles. All captions, titles or headings of the Articles and Sections in the Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

Section 16.11. Notices. If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, this Declaration or resolution of the Board to be given to any Owner or Resident then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within the City of Albuquerque or Ventana Ranch West. This Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

Section 16.12. Conveyance or Encumbrances of Association Land. The Association Land shall not be mortgaged, transferred, dedicated or encumbered without the prior written consent or affirmative vote of the Class II Membership and the affirmative vote or written consent of the Owners representing at least two-thirds (2/3) of the votes in Class I Membership.

Section 16.13. Attorney's Fees. In addition to any other remedies set forth in the Declaration regarding costs and attorney's fees, in the event the Association employs an attorney to enforce any lien granted to it under the terms of this Declaration or to collect any Assessments or other amounts due from an Owner or to enforce compliance with or recover damages for any violation or noncompliance with the Declaration, Articles, Bylaws, Ventana Ranch West Rules, or Design Review Committee Guidelines, the offending Owner or other person or entity shall pay to the Association, upon demand, all attorney fees and court costs incurred by the Association, whether or not suit is filed, which fees and costs shall be secured by the Assessment Lien.

Section 16.14. Remedies Cumulative. Each remedy afforded the Association herein is cumulative and not exclusive.

Section 16.15. Responsibility of Successors in Interest to Owner's Violations. Successors in title of an Owner to a Lot or Tract are obligated to correct any violation of the Declaration, the Ventana Ranch West Rules, or the Design Review Committee Guidelines by any preceding Owner of the Lot or Tract.

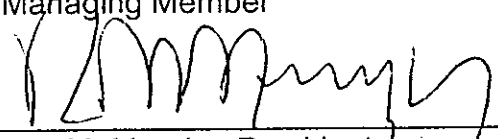


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Page: 44 of 46  
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IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed.

VENTANA WEST LLC, a New Mexico limited liability company


By Sandia Properties Ltd. Co.,  
its Managing Member

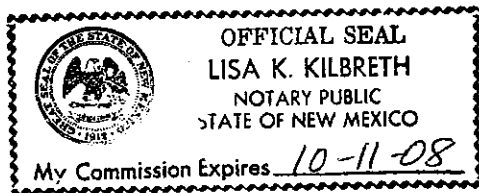
By   
Robert M. Murphy, President

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

The foregoing Declaration was acknowledged before me this 19th day of November, 2004 by ROBERT M. MURPHY, President of Sandia Properties Ltd. Co., as the Managing Member of Ventana West LLC, a New Mexico limited liability company.

My commission expires \_\_\_\_\_

  
NOTARY PUBLIC



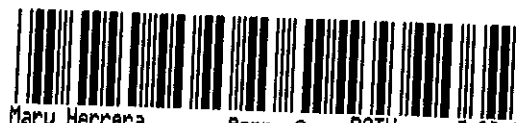
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2004162726  
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Page: 45 of 46  
11/23/2004 11:25A  
Bk-A87 Pg-2272

**Exhibit "A"**

**Legal Description**

All of Tracts 1A, 1B, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of the Bulk Land Plat for Ventana Ranch West recorded in Bernalillo County, Albuquerque, New Mexico Real Estate records on March 11, 2004, Book 2004-C, Page 84.



Mary Herrera

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2004162726

6176224

Page: 46 of 46

11/23/2004 11:25A

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