

PATENT

P.L.
Docket No. 184
New Mexico

(RECORD OF PATENTS.)
4-401-tyr

48213

THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

WHEREAS, In accordance with the provisions of the Act of Congress approved March 3, 1891, entitled "An Act to establish a court of private land claims and to provide for the settlement of private land claims in certain States and Territories," the claim of the heirs, legal representatives, successors in interest, and assigns of Diego Montoya and Elena Gallegos, his vendee, has been duly established to private land grant known as the Elena Gallegos, or Ranchos de Albuquerque Grant, situated in Townships eleven north of Ranges two, three, four, and five east of the New Mexico Meridian, in the county of Bernalillo, New Mexico, containing thirty-five thousand eighty-four and seventy-eight hundredths acres, being more particularly bounded and described as follows to wit:

On the west, beginning at a point on the east bank of the Río Grande River, where the north boundary line of the Town of Albuquer Grant intersects the same,
thence north along the said east bank of the said Rio Grande River to a point opposite the southeast corner of the "Alameda" grant, as now established;
thence easterly along the south boundary of the said "Alameda" grant, to the southeast corner of the same;
thence northeasterly along the ancient bed of the Rio Grande River, it being the eastern boundary of the "Alameda" grant to a point at or near an ancient Indian ruin about four hundred yard--south of the southern boundary of the Pueblo of Sandia Grant as it is now established;
thence as nearly east as is possible without conflicting with the south boundary of the said Pueblo of Sandia Grant to the summit of the Sandia Range of Mountains;
thence southerly along the summit of said Sandia Range of Mountains to a point due east of and opposite to the place beginning;
thence due west to the place of beginning, according to the plat and survey of the said grant approved by the court of private land claims August 29, 1899, copies of which are on file in the office of the Surveyor General for the Territory of New Mexico, and in the General Land Office;

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, has given and granted, and by these presents does give and grant, unto the said heirs, legal representatives, successors in interest, and assigns of the said Diego Montoya and Elena Gallegos, his vendee, and to their heirs, the lands above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature thereto belonging, unto the said heirs, legal representatives, successors in interest, and assigns of the said Diego Montoya and Elena Gallegos, his vendee, and to their heirs and assigns forever. Provided, that this grant shall not confer any right or title to any gold, silver, or quicksilver mines or minerals of the same, but all such mines and minerals shall remain the property of the United States with the right of working the same; and the said grant is made subject to all the limitations and terms of the said Act of Congress of March 3, 1891.

IN TESTIMONY WHEREOF, I, Theodore Roosevelt, President of the United States of America, have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed.

GIVEN under my hand, at the City of Washington, the twenty-fifth day of February, in the year of our Lord one thousand nine hundred and nine, and of the Independence of the United States the one hundred and thirty-third.

By the President: Theodore Roosevelt.

By M. W. Young, Secretary.

(SEAL)
1106303

H. W. Sanford
Recorder of the General Land Office.

(U. S. GEN. LAND OFFICE SEAL)

DEPARTMENT OF THE INTERIOR
GENERAL LAND OFFICE
Washington, D. C. SEP 25 1923

I hereby certify that this photograph is a true copy of the patent recorded which is in my custody in this office.

John O'Connell
Acting Recorder.

Filed for record October 27, 1923
Recorded in Book 80, Page 353
Records of Bernalillo County, New Mexico

ATC ME Courtesy recording no
title liability

**DECLARATION OF
RESTRICTIVE AND PROTECTIVE COVENANTS
FOR
LA CUEVA ESTATES**

LA CUEVA ESTATES, LLC, a New Mexico limited liability company ("Declarant") is the owner of the following described real property located in the County of Bernalillo, State of New Mexico, to-wit:

Lots 1-P1 through 13-P1, LA CUEVA ESTATES, Albuquerque, Bernalillo County, as the name are shown and designed on the plat thereof filed in the Office of the County Clerk of Bernalillo County, New Mexico, New Mexico, on the 10th day of April, 2006, in Book 2006C, Page 115, as Document No. 2006050090.

All of such real estate is referred to as the "Subdivision", and shall include all property subsequently made subject to this Declaration.

Declarant hereby establishes a general plan for the development, improvement, ownership, use and sale of the Lots (as hereinafter defined) in the Subdivision and does hereby establish the manner, provisions, conditions, restrictions and covenants upon and subject to which the Lots shall be used, improved, occupied, owned, sold and conveyed. The provisions, conditions, restrictions and covenants in this Declaration shall run with the land, all of which shall be binding upon and inure to the benefit of the Declarant and future Owners (as hereinafter defined) of the Lots, and of any interest or interests in the Lots, all of which provisions, conditions, restrictions and covenants are, and each of them is, hereby impressed and imposed upon each and every Lot as a servitude in favor of each and every other Lot.

1. Definitions. The following words when used in this Declaration shall have the following meanings:

(a) "ACC" shall mean the architectural control committee created by this Declaration.

(b) "Common Areas" shall mean the Monument Signs, Common Landscaping, the Drainage Easement and Improvements related thereto.

(c) "Common Landscaping" shall mean the landscaping surrounding the Monument Signs on the southeast corner of Lot 1-P1 and the southwest corner of Lot 13-P1, and the landscaping within the Drainage Easement on Lot 6-P1.

(d) "Declaration" shall mean this declaration of covenants, conditions, reservations, restrictions and easements, and any amendment or modification thereto.



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(e) "Drainage Easement" shall mean the drainage easement on the western portion of Lot 6-P1, including the Common Landscaping and sidewalk.

(f) "Dwelling" shall mean any building or a portion of a building situated on a Lot designed and intended for use by occupancy as a single family residence.

(g) "Improvements" shall include, without limitation, buildings, out-buildings (including sheds and storage buildings), roads, driveways, parking areas, fences, gates, retaining walls, stairs, decks, windbreaks, poles, antennas, signs, utility or communication installations (whether above or underground), and any structure and excavation of any type or kind.

(h) "Lot(s)" shall mean any one of the parcels numbered 1-P1 through 13-P1 within the Subdivision.

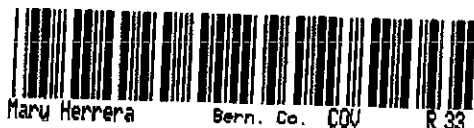
(i) "Monument Signs" shall mean the two (2) Subdivision signs on Lots 1-P1 and 13-P1.

(j) "Owner" shall mean the persons or entities, including Declarant, holding legal title or beneficial ownership of the fee, including the purchaser of a Lot under an installment sales contract of a Lot, or a lessee of a Lot pursuant to a leasehold agreement of a term of twenty (20) years or greater. Owner shall not include a seller of a Lot under an installment sales contract or the lessor of a Lot pursuant to a leasehold agreement with a term of twenty (20) years or greater.

(k) "Party Walls" shall mean the walls constructed on Lot lines between Lots.

(l) "Plat" shall mean the plat of the Subdivision filed on the 10th day of April, 2006, in Book 2006C, Page 115, as Document No. 2006050090, records of Bernalillo County, New Mexico, and all amendments and revisions thereto.

2. Land Use and Building Type. No Lot, or portion of a Lot, shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any Lot for use other than one Dwelling with a private garage attached to the Dwelling, for not less than two (2) automobiles. All Dwellings shall have exterior front facades of two (2) different finishes or colors (e.g. stucco and stone or two (2) colors of stucco), however, brick may only be used for accent. Masonite, vinyl siding and T-111 textured plywood are prohibited as exterior finishes. The exterior colors of Dwellings are limited to earth tones approved by the ACC, and garage doors must be painted or stained to compliment adjoining wall surfaces. No asphalt shingles are permitted on any Dwelling or accessory building. Metal roofs may only be a small detail on any Dwelling and no Northern New Mexico style Dwellings will be permitted. Unshielded high intensity exterior lighting is prohibited. There shall also be permitted, upon approval of the ACC, but not required, one (1) detached accessory building for storage of garden tools, garden and household furnishings, not to exceed 100 square feet and not to exceed eight (8) feet in height. The accessory building must be located inside required property line setbacks



and not be visible from the public roads. The exterior of any accessory building shall be roofed and finished to match the exterior color and texture of the Dwelling.

Driveways must be earth tone and of concrete (plain or stamped), cobblestone or similar materials. Gray concrete and asphalt driveways are prohibited.

3. Architectural Control Committee. Declarant hereby appoints Keith Naylor as the ACC ("Naylor"). Naylor shall serve until another member(s) of the ACC is appointed by Declarant or its successors, provided however at such time as Declarant has sold the last Lot to a third-party purchaser, other than Naylor or a developer, a majority of the Owners of the Lots shall appoint three (3) members of the ACC, who shall serve for one (1) year terms.

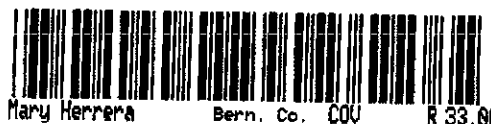
BEFORE ANYONE SHALL COMMENCE THE CONSTRUCTION, RECONSTRUCTION OR ALTERATION OF ANY IMPROVEMENTS ON ANY LOT, THERE SHALL BE SUBMITTED TO THE ACC PLANS AND SPECIFICATIONS AS FOLLOWS:

- A. Plans and specifications shall clearly show the nature of the work or installation proposed and location on the Lot, which shall include elevations and sufficient description of materials, textures, etc., as shall enable the ACC to determine whether the construction, reconstruction or alteration of Improvements will harmonize with the architectural style of the Subdivision and the external design of existing structures within the Subdivision; and
- B. No Improvements of any kind, or alteration, painting, or texturing thereof, shall be permitted, or ever be, erected, constructed, installed, placed or maintained on a Lot, unless and until the final plans, specifications and elevations shall have written approval of the ACC.

The ACC shall have the right and power to disapprove any plans, specifications or details submitted to it, if the ACC finds that the plans and specifications are not in accordance with all provisions of this Declaration, or if the design, materials or color scheme submitted are not in harmony with other Improvements constructed within the Subdivision or if the plans and specifications are incomplete.

Neither the members of the ACC, either in their individual or in their collective capacities, nor the Declarant, shall be responsible, or have any liability, whatsoever for any defect in any plans, specifications or other data submitted to, approved by or revised by the ACC, or in any work done or Improvements made pursuant to such plans and specifications.

The ACC shall approve or disapprove the plans and specifications within thirty (30) days after receipt of the plans and specifications. If the ACC fails to approve or disapprove the plans and specifications within thirty (30) days after receipt, then such approval shall not be required;



provided, that no structure, building or other Improvement shall be installed, erected, painted, textured, altered or modified which violates any part of this Declaration.

4. No Further Subdivision of a Lot. No Lot may be further subdivided without the consent of the Declarant.

5. Compliance with the Grading Plan and Development Plan. All Improvements constructed on each Lot shall comply with the City of Albuquerque approved "Grading and Drainage Plan" and "Development Plan" for the Subdivision. No Lot may be landscaped or re-graded in such a manner as to cause the drainage characteristics of the Lot to differ significantly from the Grading and Drainage Plan. In no case may the drainage from one Lot drain on to any other Lot, except as allowed by the Grading and Drainage Plan. All plans and specifications submitted to the ACC must contain sufficient information to enable the ACC to determine compliance with the Grading and Drainage Plan and the Development Plan. However, the ACC shall not be liable to the Owner or any other person for approval of plans, which are contrary to the Grading and Drainage Plan or the Development Plan.

It is the responsibility of the Owner that all Improvements built on each Lot are in compliance with the soils report for the Subdivision, a copy of which is available at the office of Declarant. If the Improvement is a building which is to be built on any portion of a Lot outside the prepared pad, the Improvement must be built on controlled fill dirt.

6. Minimum Area of Dwelling; Height Restrictions. The total enclosed living area of any Dwelling, exclusive of open porches, garage and any accessory building shall not be less than 2,000 square feet. Dwellings shall not exceed a height of twenty-six feet (26') above finished curb height at the front of the Lot.

7. Setbacks; Driveways. No Dwelling shall be located outside the "Building Envelopes" established in the portion of the Development Plan as shown on Exhibit "A" which is attached hereto and incorporated herein by reference. The driveway on Lot 9-P1 shall be located on the west side of the Lot.

8. Landscaping. The builder constructing any Dwelling shall install the front-yard landscaping within ninety (90) days of substantial completion of said Dwelling. The Owner shall ensure the front yard landscaping is maintained in good condition at all times.

9. Tolerance. A four-inch (4") tolerance for mechanical variances in construction is hereby automatically allowed for buildings and other Improvement setback requirements imposed by this Declaration.

10. Completion of Work. Once construction, reconstruction or alteration of new Improvements shall commence, all such construction, reconstruction or alteration shall be finished and completed in all respects in accordance with the ACC approved plans and specifications within twelve (12) months after said commencement. All construction,



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reconstruction or alteration activities shall be accomplished in such a manner as shall not create unreasonable, unsightly, noisy or objectionable conditions.

11. Nuisances. No noxious or offensive activity shall be carried on, or permitted upon any Lot. Nothing shall be done, placed or stored on any Lot which may be or may become an annoyance or nuisance to the Owner(s) of other Lot(s), or which will occasion any noise or odor which will or might disturb the peace, comfort or serenity of the occupants of Dwellings on other Lot(s). Owners of vacant Lots shall be responsible for keeping, and shall keep, their Lots clear of weeds, trash and other detracting impediments. No trash or garbage shall be burned on any Lot. Garbage and other waste materials shall be placed in the covered containers provided by the City of Albuquerque and shall not be placed out for collection more than 24 hours prior to scheduled collection times. These containers shall be concealed from the street on non-garbage collection days.

A wire receptacle shall be provided by the builder in the construction area and all debris easily displaced by wind shall be placed in the receptacle. The receptacle shall be emptied when full. All Lots shall be maintained in a neat, orderly condition at all times.

12. Temporary Buildings. No Improvement of a temporary character, such as a shack, barn, basement, trailer, tent, garage or other outbuilding, mobile home, or motor home, shall be used on any Lot at any time as a Dwelling, either temporarily or permanently. No Dwelling placed or erected on a Lot shall be occupied in any manner at any time prior to its being fully completed; provided, however, that this provision shall not prevent the occupancy and use of Improvements on a Lot for residential purposes while additions, modifications, or alterations are being made to a completed Dwelling pursuant to plans and specifications duly approved by the ACC.

Notwithstanding anything to the contrary, any Lot may be used for a sales office, model home complex, or storage and construction yard during the initial construction of a Dwelling and the sales period. All such temporary uses must have the prior approval of the ACC, which shall establish the requirements for such uses.

13. Equipment. No satellite dish, radio, television or other antennas shall be erected upon a Lot unless the antenna(s) can be concealed from view behind a parapet or inside the roof structure or attic, or unless approved by the ACC. Where external air conditioners or evaporative coolers are installed, whether ground or roof mounted, they shall be so installed that they will not be visible from the front or side public roads. No clotheslines shall be placed outside any Dwelling.

14. Parking and Storage of Vehicles, Etc., Within the Subdivision. No camper, recreational vehicle, trailer, mobile home, boat, commercial type vehicle, van, motorcycle, dune buggy, bus, inoperable vehicle or tractor shall be stored or parked on any Lot continuously for a period of more than twenty-four (24) hours, unless enclosed within a garage.



15. No Improvement to Obstruct Vision of Vehicle Operator. No Improvement, including walls, fences, hedges or other obstructions shall be erected, placed, altered or permitted to remain upon any Lot which would obstruct or reduce the vision of an operator of any type of vehicle or obstruct the entrance to the Subdivision and said Improvements shall also comply with the City of Albuquerque's ordinances or guidelines for the clear sight triangle.

16. Party Walls. The rights and duties of the Owners with respect to Party Walls are as follows:

- A. If a Party Wall is constructed without contribution to the cost thereof from adjoining Owners, the Owner constructing the Party Wall shall be reimbursed by the Owner of the adjoining Lot for one-half (1/2) the cost of the Party Wall. The Owner constructing the Party Wall shall provide at least two (2) written bids to the Owner of the adjoining Lot ("Bid Notice"), and if the Owner of the adjoining Lot does not object in writing to the first Owner within fifteen (15) days after receipt of the Bid Notice, the first Owner may construct the Party Wall and the adjoining Owner shall be liable for one-half (1/2) of the low bid amount. If the adjoining Owner does object within fifteen (15) days after receipt of the Bid Notice ("Bid Objection"), the Bid Objection shall include a bid from an unrelated bonafide third party for the cost of constructing the same Party Wall. In such event the first Owner may proceed with constructing the Party Wall, however, reimbursement from the adjoining Owner shall be limited to one-half (1/2) of the lowest of the qualifying bids. The adjoining Owner shall remit reimbursement to the first Owner after completion of the Party Wall within thirty (30) days of billing therefor and thereafter any unpaid amount shall bear interest at 1 1/2% per month until paid in full. If an Owner does not pay its share of the cost of the Party Wall, the obligation shall constitute a lien upon said Owner's Lot and the Owner constructing the Party Wall may file evidence of said lien in the real estate records of Bernalillo County, New Mexico and the lien shall be subject to foreclosure in the same manner as mortgages.
- B. If any Party Wall is damaged or destroyed through the act of an Owner or any of his/her guests, tenants, licensees, agents or family members, such Owner shall immediately proceed to rebuild and repair the wall to as good a condition as formerly existed without cost to the adjoining Lot Owner.
- C. If any Party Wall is damaged or destroyed by some cause (including ordinary wear and tear and deterioration from lapse of time), other than the act of one of the Owners, his/her guests, tenants, licensees, agents or family members, then both adjoining Lot Owners shall proceed forthwith to rebuild or repair the wall to as good a condition as existed prior to the damage or destruction at their joint and equal expense.



- D. Any and all resurfacing or repainting of a Party Wall shall be done in a color to match the original.

17. Privacy Walls & Gates.

- A. Walls for purposes of visual screening or privacy may be constructed within the rear and side yard set back lines, provided the style, color and materials are the same as the perimeter walls. Side, front and rear yard walls shall have a maximum height of seventy-two (72) inches.
- B. All front walls completing court yards that face the public roads shall be constructed to match the Dwelling and be either stone, stucco or a combination.
- C. No barbed wire, welded wire, welded pipe, chain link or wood slat fences shall be permitted on any Lot. During the construction of the Dwellings, temporary privacy fences will be permitted between adjoining Lots, until such adjoining Dwellings are completed. All temporary fences must be uniform, provide privacy and be a minimum of five feet (5') in height.

18. Casualty. If any Improvement on any Lot is destroyed, wholly or in part, by fire or other casualty, the Improvement so damaged or destroyed shall be promptly and properly rebuilt or repaired in conformity with the provisions of this Declaration; or, in the alternative, all remaining portions of the Improvement, including all foundations and all debris, shall be removed from the Lot. If the Owner of the Lot elects to clear the Lot, the razing and clearing work shall be completed within one hundred twenty (120) days after the casualty.

19. Animals and Pets. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that domestic dogs and cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial breeding purpose.

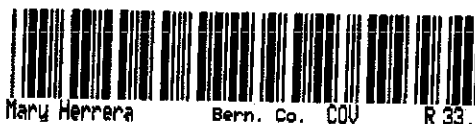
20. Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying, or mining operations or exploration of any kind shall be permitted upon any Lot. No oil wells, tanks, tunnels, minerals excavation shafts or other such equipment or activities shall be permitted upon any Lot.

21. Easements and Rights-of-Way

- A. Utility Easements and Rights-of-Way. All areas of the Lots reserved for the installation, removal, repair and maintenance of utilities are reserved and designated as utility easements on the Plat.



- B. Easements and Rights-of-Ways Include Right of Ingress and Egress. All easements and rights-of-ways of whatever type which are shown and designated on the Plat shall include the right of ingress to and egress from such easements and rights-of-way over, upon, or under such easements, for the purpose of installing, removing, repairing and maintaining utilities, trimming or removing of interfering trees or shrubs, and any other purpose for which such easements and rights-of-way may be used.
- C. No Construction or Obstacle on Any Type of Easement or Right-of-Way. No Dwelling, obstacle, or other type of Improvement shall be erected, placed, altered, or permitted to remain upon any portion of a Lot which is the subject of any type of easement or right-of-way which would in any way interfere with the use of such easement or right-of-way; nor shall any trees, shrubs, hedges, or other landscaping be planted or permitted to remain in place, or to remain untrimmed, which would interfere with the use of any easement or right-of-way.
- D. Perimeter Walls. The perimeter walls shall be constructed by the Declarant or its successors, and shall be maintained by each Owner of a Lot on which the perimeter wall exists. If an Owner fails to maintain its portion of the perimeter wall, one (1) or more of the remaining Lot Owners may provide written notice to the defaulting Owner and if the perimeter wall is not repaired within fifteen (15) days after the receipt of the notice, any other Owner may undertake repairs and shall have an easement therefor. In such event, the defaulting Owner shall pay interest at eighteen percent (18%) per annum on the cost of said repairs, an administrative charge of Five Hundred Dollars (\$500.00) and the delinquent amount shall be a lien upon the delinquent Owner's Lot.
- E. Common Landscaping. The Common Landscaping shall be constructed by Declarant or its successors, of drought resistant plants and rock, and shall be maintained by each Owner of a Lot on which the Common Landscaping exists. If an Owner fails to maintain its portion of the Common Landscaping, one (1) or more of the remaining Lot Owners may provide written notice to the defaulting Owner and if the Common Landscaping is not repaired within fifteen (15) days after the receipt of the notice, any other Owner may undertake repairs and shall have an easement therefor. In such event, the defaulting Owner shall pay interest at eighteen percent (18%) per annum on the cost of said repairs, an administrative charge of Five Hundred Dollars (\$500.00) and the delinquent amount shall be a lien upon the delinquent Owner's Lot.



F. Monument Signs. The Owner of each Lot upon which the Monument Signs exist shall be responsible for maintaining the Monument Sign on said Owner's Lot.

G. Reimbursement for Common Landscaping, Monument Signs and Drainage Easement Sidewalk. The costs for maintaining the Common Landscaping, Monument Signs and the sidewalk within the Drainage Easement shall be borne equally by all of the Owners and shall be due within thirty (30) days of the billing therefor by the Owner incurring said expense. If the expense will exceed One Hundred Thirty Dollars (\$130.00) for an individual item, the Owner of the Lot proposing to do the maintenance shall first obtain the consent of a majority of the Owners of the Lots before incurring said expense.

22. Billboards, Poster-Boards, and Advertising. The construction and/or maintenance of billboards, poster-boards, and advertising structures of any kind on any part of any Lot is prohibited, except that real estate agents and/or the Owner of a Lot may display one (1) temporary "For Sale" sign or one (1) "Open House" sign on any Lot. The sum of the length and width of such signs shall not exceed sixty inches (60"). Declarant and the initial builder of the Improvements on each Lot shall be exempt from the requirements of this Paragraph 22.

23. Liens. If any amount to be reimbursed to an Owner or Owners is not paid within thirty (30) days after it is due, then such amount shall become delinquent and shall, together with interest thereon, and the cost of collection thereof, as provided herein, become a continuing lien on the Lot which shall bind such Lot in the hands of the then Owner of that Lot, and any subsequent Owner. The personal obligation of the then Owner to pay such amount, however, shall remain its personal obligation for the statutory period and shall not pass to its successors in title until expressly assumed by them. If such amount is not paid within thirty (30) days after the delinquency date, a reasonable late charge may be assessed at the discretion of the ACC and such amount shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum until paid. The ACC may bring an action at law against the Owner personally obligated to pay the same or an action to foreclose the lien against the Lot, and in the event a judgment is obtained, such judgment shall include interest on such amount as above provided, reasonable attorney's fees to be fixed by the court, together with the costs of the action. The lien for the assessments shall be subordinate to the lien of any first mortgage placed upon the Lot in good faith and for value; however, such subordination applies only to such amounts due before the sale or transfer of the Lot pursuant to a decree of foreclosure, or any transfer in lieu of foreclosure. The sale or transfer of a Lot does not relieve the Lot from the liability for, or the lien of such amounts thereafter becoming due.

24. No Business or Commercial Enterprise Permitted. No business, whether or not for profit, and no commercial enterprise of whatever kind, except from time to time as may be permitted by the City of Albuquerque Comprehensive Zoning Ordinance for the Subdivision, shall be undertaken or carried on, upon, or from any Lot, except only the original sales and



subsequent sales of the Lots and the Dwellings constructed and to be constructed thereon. No stores, shops, businesses, commercial, or industrial buildings, or other such structures of whatever type shall be erected, placed, altered, or permitted to remain upon any Lot, except only in connection with the original development and sales of the Lots and construction and sales of the Dwellings, such as model homes or a show home, or a sales office.

Home offices shall be allowed in occupied Dwellings under the following guidelines:

- A. There shall be no signs and/or advertising of the home office;
- B. The garage shall remain a garage and shall not be converted to an office; and
- C. There shall be a maximum of one customer and the Owner of the Lot conducting business at any one time from the home office.

25. Enforcement of Covenants. The violation or breach of any provision, condition, restriction or covenant in this Declaration, after notice of such violation or breach has been presented to an Owner, shall give each other Owner, Declarant and the ACC the right to prosecute at law or in equity, the person or persons who have violated or are attempting to violate any provision, condition, restriction or covenant in this Declaration, to enjoin or prevent them from doing so, to cause the violations to be remedied or to recover damages for the violation. Any one of the above-listed persons or entities may so enforce this Declaration and the cooperation of any other person or entity is not required.

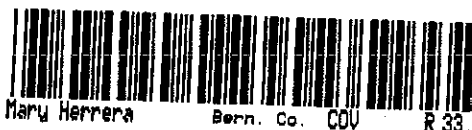
The result of every action or omission whereby any provision, condition, restriction or covenant in this Declaration is violated in whole or in part, is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or equity against an Owner, either public or private, shall be applicable against every such action or omission.

The failure of Declarant, the ACC or any Owner to enforce any provision, condition, restriction or covenant in this Declaration shall not be deemed to be a waiver of the right to do so thereafter nor of the right to enforce any other provision, condition, restriction or covenant in this Declaration.

The prevailing party or parties in any judicial proceedings to enforce this Declaration shall be entitled to reasonable attorney's fees and court costs from the non-prevailing party.

All questions of interpretation or construction of the terms of this Declaration shall be resolved by the ACC.

26. Severability. If any one or more of the provisions, conditions, covenants and restrictions in this Declaration are held by any court of competent jurisdiction to be null and



void, all remaining provisions, conditions, covenants and restrictions shall continue unimpaired and in full force and effect.

27. Assignment of Declarant's Rights. The Declarant shall have the right to assign, transfer and convey all of Declarant's rights to a third party or parties acquiring the remaining undeveloped Lots owned by Declarant in the Subdivision. Said assignee(s) or successor(s) shall have the same rights as Declarant hereunder.

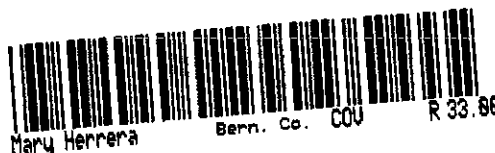
28. Duration of These Covenants. The provisions, conditions, covenants and restrictions in this Declaration shall run with the land and continue in full force and effect for a period of thirty (30) years from the date of the filing of this Declaration in the office of the County Clerk of Bernalillo County, New Mexico, at which time they shall be automatically extended for a period of ten (10) years and thereafter for successive ten (10) year periods, unless before the commencement of any extension period the then Owners of the fee simple estate of seventy-five percent (75%) or more of the Lots by written instrument, duly executed and recorded, shall declare a termination of this Declaration. Any such termination shall become effective upon the date upon which otherwise the automatic extension would take effect.

29. Amendment. At any time after the date of the filing this Declaration, the Owners of not less than seventy-five percent (75%) of the Lots may release one or more of the Lots from, or may modify, change or amend all or any portion of the provisions, conditions, covenants or restrictions contained in this Declaration by executing and acknowledging an appropriate agreement or agreements in writing for such purposes and filing the same for record in the office of the County Clerk of Bernalillo County, New Mexico.

LA CUEVA ESTATES, LLC,
a New Mexico limited liability company

By: Keith Naylor
NAYLOR DEVELOPMENT COMPANY, LLC
A New Mexico limited liability company,
Managing Member of La Cueva Estates, LLC
By: Keith Naylor, Managing Member of
Naylor Development Company, LLC

Dated: May 17, 2006



ACKNOWLEDGMENT

STATE OF NEW MEXICO)
)
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on May 17th, 2006, by KEITH NAYLOR, Managing Member of NAYLOR DEVELOPMENT COMPANY, a New Mexico limited liability company, Manager Member of LA CUEVA ESTATES, LLC, a New Mexico limited liability company.

MY COMMISSION EXPIRES:


NOTARY PUBLIC



OFFICIAL SEAL
MARGARET L. EIFERT
NOTARY PUBLIC - STATE OF NEW MEXICO
My Commission Expires: 7/18/06



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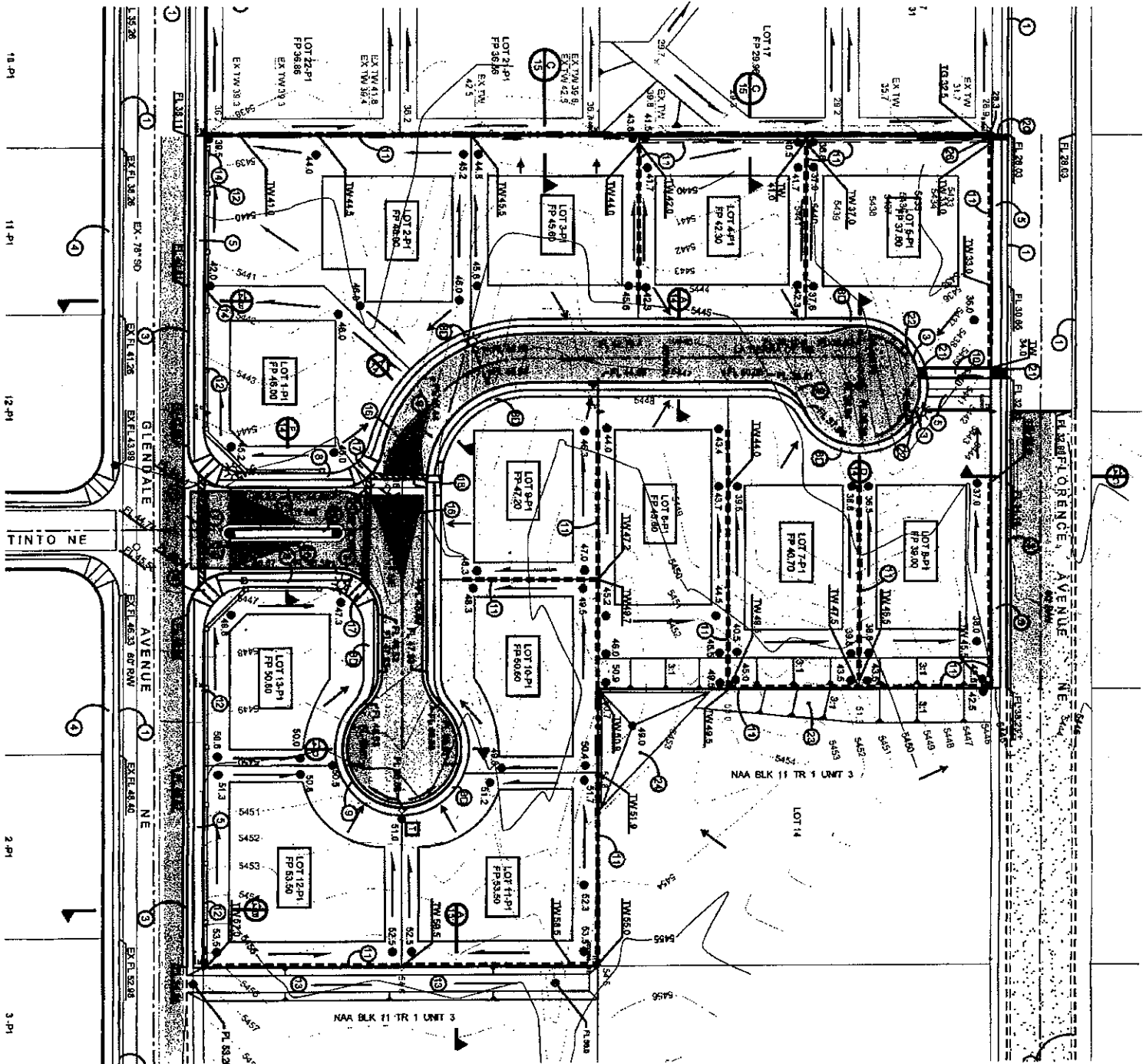
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Page: 12 of 13

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EXHIBIT "A"



RETURN TO 6224001304
LANDMETER ALBUQUERQUE TITLE

**FIRST AMENDMENT TO DECLARATION
OF RESTRICTIVE AND PROTECTIVE COVENANTS
FOR LA CUEVA ESTATES**

THIS AMENDMENT is entered into effective the 2nd day of February, 2007, by the undersigned who are the owners of all of the following described real property, to wit:

Lots 1-P1 through 13-P1, LA CUEVA ESTATES, Albuquerque, Bernalillo County, as the same are shown and designed on the plat thereof filed in the Office of the County Clerk of Bernalillo County, New Mexico, on the 10th day of April, 2006, in Book 2006C, Page 115, as Document No. 2006050090.

("Subdivision"); and

WHEREAS, LA CUEVA ESTATES, LLC, a New Mexico limited liability company ("Declarant") filed a Declaration of Restrictive and Protective Covenants for La Cueva Estates ("Declaration") on May 18, 2006, in Book A117, Page 2435, as Document No. 2006072647, records of Bernalillo County, New Mexico; and

WHEREAS, the undersigned desire to amend the Declaration.

NOW THEREFORE:

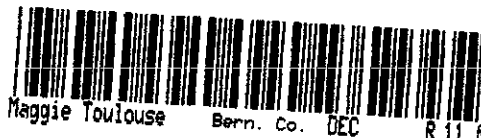
1. Except as otherwise defined herein, capitalized terms shall have the definitions set forth in the Declaration.

2. The last subparagraph of Paragraph 2 of the Declaration is hereby amended to substitute the following:

"Driveways must be concrete (plain or stamped), cobblestone or similar materials. Asphalt driveways are prohibited."

3. Except as herein modified and amended, the remaining terms and provisions of the Declaration shall remain in full force and effect.

4. This Amendment shall be binding upon the undersigned, their successors and assigns in all respects.



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No. of Lots: 13
Nearest Major Streets
Glendale and Bawston

FIGURE 19
SIDEWALK DEFERRAL AGREEMENT
PROJECT NO. 754981

THIS AGREEMENT is made this 20th day of January, 2006, by and between the City of Albuquerque, New Mexico ("City"), a municipal corporation, whose address is P.O. Box 1293 (One Civic Plaza), Albuquerque, New Mexico 87103 and LA CUEVA ESTATES, LLC ("Developer"), whose address is 5410 SAN FRANCISCO NE, APO, NM 87109 and whose telephone number is 505-833-2333, a (state the type of business entity, for instance, "New Mexico corporation," "general partnership," "joint venture," "individual," etc. :) New Mexico Limited Liability Corporation made in Albuquerque, New Mexico, and is entered into as of the date of final execution of this Agreement.

WHEREAS, the Developer is developing certain lands within the City of Albuquerque, County of Bernalillo, State of New Mexico, known as (existing legal description) (the "Subdivision"); and

WHEREAS, the Developer has submitted and the City has approved Developer's development plans and (state "preliminary" or "final":) PRELIMINARY plat, to be identified as (state name of plat:) LA CUEVA ESTATES; and

WHEREAS, Developer has requested and the City has determined that it is acceptable for the Developer to defer construction of the sidewalks within the Subdivision until after construction of other required infrastructure; and

WHEREAS, the Subdivision Ordinance requires all sidewalks to be completed within four (4) years after execution of the Agreement to Construct Subdivision Improvements; and

WHEREAS, the Developer must execute and deliver to the City an Agreement and an acceptable financial guaranty to provide funds for construction of the sidewalk improvements in case the Developer does not complete the construction as required.

THEREFORE, the City and the Developer agree:

1.A. Sidewalk Construction Deadline. Developer has obtained a sidewalk deferral, as shown in the attached Exhibit "A", which is a copy of the Development Review Board's decision regarding the deferral granted. Developer agrees to utilize the City's sidewalk permit process and complete the sidewalk to the satisfaction of the City by December 1, 2007 ("Sidewalk Construction Deadline").

B. Request for Extension. If this Sidewalk Deferral Agreement establishes a Sidewalk Construction Deadline which is less than four (4) years after execution of the Subdivision Improvements Agreement, the Developer may request an extension from the Project Review Section for an additional period of time, which shall not exceed a total of four years after execution of the Subdivision Improvements Agreement. The form of the Financial Guaranty extension and the amount must be approved by the City, but shall not exceed 125% of the City's estimate of the cost of construction at the time Developer requests an extension. If the Developer will need more than four (4) years after execution of the Subdivision Improvements Agreement to construct the sidewalks, the Developer must request and obtain an extension from the Development Review Board and submit the required documentation to the Design Review Section before expiration of the four (4) years.

Figure 19 - Page 1



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2. Financial Guaranty. Developer will provide a financial guaranty in an amount of not less than 125% of the cost of constructing the sidewalk improvements within the Subdivision, as determined by the City. The financial guaranty must be irrevocable and may be in the form of a City-approved bond, letter of credit, escrow deposit or loan reserve letter issued by a federally insured financial institution; a bond issued by a surety qualified to do business in New Mexico; or other pledge of liquid assets which meets all City requirements. The City must be able to call the financial guaranty at any time within the sixty (60) days immediately following the Sidewalk Construction Deadline. To meet the Subdivision Ordinance requirements, the Developer has provided the following "Financial Guaranty":

Type of Financial Guaranty: LOAN RESERVE
Amount: \$17,044.06 Name of Financial Institution or
Surety providing Guaranty: BANK of OKLAHOMA, N.A.
Date City first able to call Guaranty (Sidewalk Construction
Deadline): DECEMBER 1, 2007.
If Guaranty other than a Bond, last day City able to call
Guaranty is: FEBRUARY 1, 2008.
Additional Information: _____

3. Completion, Acceptance and Release. The Developer shall report completion of sidewalk construction in writing to the City. The City shall inspect the sidewalks to verify completion. Upon acceptance of the improvements, the City shall promptly release the financial guaranty and Sidewalk Deferral Agreement.

4. Conveyance of Property Rights. When the sidewalks have been constructed, if the City does not own the real property upon which the sidewalks are constructed, the Developer shall convey to the City the real property rights required by the City together with the improvements, free and clear of all claims, encumbrances and liens, before the City will release the Financial Guaranty and Sidewalk Variance Agreement. Conveyance may be by dedication on the final plat of the Subdivision.

5. Indemnification. Until the sidewalks are accepted by the City, the Developer shall be solely responsible for maintaining the premises upon which the sidewalks are being constructed in a safe condition. The Developer agrees to defend, indemnify and hold harmless the City and its officers, agents and employees from and against all suits, actions or claims of any kind brought because of any injury or damage arising out of the design or construction of the sidewalks, or by reason of any act, omission or misconduct of the Developer, its agents or employees. The indemnification required hereunder shall not be limited as a result of the specifications of any applicable insurance coverage. Nothing herein is intended to impair any right or immunity under the laws of the State of New Mexico. Provided, however, to the extent, if at all, Section 56-7-1 NMSA 1978 is applicable to this Agreement, this Agreement to indemnify will not extend to liability, claims, damages, losses or expenses, including attorney fees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications by the City, or the agents or employees of the City; or (2) the giving of or the failure to give directions or instructions by the City, where such giving or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to property.

6. Assignment. This Agreement shall not be assigned without the prior written consent of the City and the Developer and the express written concurrence of financial institution or surety which has undertaken to guaranty the completion of the Improvements. The City's approval will not be withheld unreasonably. If so assigned, this Agreement shall extend to and be binding upon the successors and assigns of the parties hereto.

Figure 19 - Page 2



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7. Release. If the subdivision or any part thereof is sold, conveyed or assigned, the City will not release the Developer from its obligations under this Agreement and will continue to hold the Developer responsible for all Improvements until a successor in interest to the Developer has posted a suitable financial guaranty and entered into a Sidewalk Improvements Agreement with the City. Thereafter, when the Developer's successor in interest has provided a substitute financial guaranty acceptable to the City, the City will release this Agreement and any related Financial Guaranty.

8. Payment for Incomplete Improvements. If the Developer fails to satisfactorily complete construction of the sidewalks by the Construction Completion Deadline, the City may construct or cause the sidewalks to be constructed as shown on the final plat and in the approved plans and specifications. The Developer shall be jointly and severally liable to pay to, and indemnify the City for the total cost, including, but not limited to engineering, legal and contingent costs, together with any damages, either direct or consequential, which the City may sustain as a result of Developer's failure to perform as required by this Agreement. If the direct or indirect costs and damages to the City exceed the amount of the Financial Guaranty, the Developer shall be liable to, and shall pay the City for all such costs and damages. The surety or sureties shall be jointly and severally liable to pay to and indemnify the City for the total cost to the extent of their obligations pursuant to the Financial Guaranty.

9. Binding on Developer's Property. The provisions of this Agreement constitute covenants running with Developer's Subdivision for the benefit of the City and its successors and assigns until terminated, and are binding on the Developer and its heirs, successors and assigns.

10. Notice. For purposes of giving formal written notice, including notice of change of address, the Developer's and the City's addresses are as stated in the first paragraph of this Agreement. Notice may be given either in person or by certified U.S. mail, postage paid. Notice will be considered to have been received within six days after the notice is mailed if there is no actual evidence of receipt.

11. Entire Agreement. This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

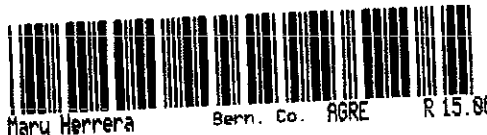
12. Changes to Agreement. Changes to this Agreement are not binding unless made in writing, signed by both parties.

13. Construction and Severability. If any part of this Agreement is held to be invalid or unenforceable, the remainder of the Agreement will remain valid and enforceable if the remainder is reasonably capable of completion.

14. Captions. The captions to the sections or paragraphs of this Agreement are not part of this Agreement and will not affect the meaning or construction of any of its provisions.

15. Form not Changes. Developer agrees that changes to this form are not binding unless initialed by the Developer and signed by the City's Legal Department on this form.

16. Authority to Execute. If the Developer signing below is not the Owner of the Subdivision, the owner must provide a Power of Attorney or other evidence of authority to execute this Agreement which is acceptable to the City.



1900

No. of Lots: 13
Nearest Major Streets
GLENDALE @ BARSTOW NE

FIGURE 12

**SUBDIVISION IMPROVEMENTS
AGREEMENT-PUBLIC AND/OR PRIVATE
(Procedure B)**

AGREEMENT TO CONSTRUCT
PUBLIC AND/OR PRIVATE SUBDIVISION IMPROVEMENTS

THIS AGREEMENT is made this 28th day of January, 2006, by and between the City of Albuquerque, New Mexico ("City"), a municipal corporation, whose address is P. O. Box 1293 (One Civic Plaza), Albuquerque, New Mexico 87103, and LA CUEVA ESTATES, LLC ("Subdivider"), a [state the type of business entity, for instance, "New Mexico corporation," "general partnership," "joint venture," "individual," etc.:] NEW MEXICO LIMITED LIABILITY CORP, whose address is 5610 SAN FRANCISCO NE, ALBU, NM 87109 and whose telephone number is 505-823-2333, is made in Albuquerque, New Mexico, and is entered into as of the date of final execution of this Agreement.

1. Recital. The Subdivider is developing certain lands within the City of Albuquerque, Bernalillo County, New Mexico, known as [existing legal description:] LOTS 12, 13, 19, 20, 21, BLK 11, TRACT 1, UNITS, NORTH ALBUQUERQUE, NM, recorded on SEPTEMBER 10, 1931 in the records of the Bernalillo County Clerk at Book VOL-D, pages 121 through _____ (the "Subdivision"). The Subdivider certifies that the Subdivision is owned by [state the name of the present real property owner exactly as shown on the real estate document conveying title in the Subdivision to the present owner:] LA CUEVA ESTATES, LLC. ("Owner").

The Subdivider has submitted and the City has approved a preliminary plat or Site Development Plan identified as LA CUEVA ESTATES describing Subdivider's Property.

As a result of the development of the Subdivision, the Subdivision Ordinance ("S.O.") and/or the Zoning Code, Section 14-16-3-11, require the Subdivider, at no cost to the City, to install certain public and/or private Improvements, which are reasonably related to the development of the Subdivision, or to financially guarantee the construction of the public and/or private improvements as a prerequisite to approval of the final plat of, or the Site Development Plan for the Subdivision.

2. Improvements and Construction Deadline. The Subdivider agrees to install and complete the public and/or private improvements described in Exhibit A, the required infrastructure listing ("Improvements"), to the satisfaction of the City, on or before the 1ST day of DECEMBER, 2006 ("Construction Completion Deadline"), at no cost to the City. The Improvements are shown in greater detail on the Subdivider's proposed and approved plans, which have been filed with the City Engineer and are identified as Project No. 754981.

Note: To compute the Construction Completion Deadline: If a final plat will be filed after Subdivider meets the requirements of this Agreement, the Construction Completion Deadline can be no later than two years after execution of this Agreement. (See Subdivision Ordinance Section 14-14-3.) If a final plat will not be filed pursuant to this Agreement, the Construction Completion Deadline can be no later than one year after approval of the preliminary plat by the Development Review Board ("DRB"), unless

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the DRB grants an extension, not to exceed one additional year per extension, and the Subdivider processes an amendment to the Agreement. (See Subdivision Ordinance Section 14-14-3.) If this Agreement, with any amendments does not utilize the maximum time allowed for completion of construction, the Subdivider may obtain an extension of the Construction Completion Deadline if Subdivider shows adequate reason for the extension.

3. Work Order Requirements. The City agrees to issue a Work Order after:

A. The Subdivider causes to be submitted all documents, and meets all requirements listed in Development Process Manual, Volume 1, Chapter 5, Work Order Process, and figure 1, including submitting a Certificate of Insurance in a form acceptable to the City. The certificate must establish that the Subdivider has procured or has caused to be procured public liability insurance in the amount of not less than One Million Dollars (\$1,000,000) combined single limit for accidents or occurrences which cause bodily injury, death or property damage as a result of any condition of the Subdivision, the Improvements or the Subdivider's construction activities within, or related to the Subdivision. The insurance policy must name the City of Albuquerque, its employees and elected officials, as their interest may appear, as additional insured. The Subdivider must maintain the insurance until the City accepts the public Improvements and/or approves the private Improvements. The cancellation provision must provide that, if the policy is either canceled prior to the expiration date of the policy or is materially changed or not renewed, the issuing company will mail 30 days written notice to the City, attention City Engineer.

B. The Subdivider complies with all applicable laws, ordinances and regulations, including, but not limited to the City Excavation Ordinance and Sidewalk Ordinance, and pays the following required engineering, staking, testing fees, and other related City fees and County Clerk recording fees:

<u>Type of Fee</u>	<u>Amount</u>
<u>Engineering Fee</u>	<u>3.25% of Actual Construction Cost</u>
<u>Excavation And Sidewalk Ordinance, Street Restoration Fees</u>	<u>As required per City-approved estimate. (Figure 7)</u>

(Note: The Subdivider must pay the City all City fees which have been incurred during construction before the City will accept the public Improvements.

4. Surveying, Inspection and Testing. The Improvements shall be inspected, surveyed and tested in accordance with all applicable laws, ordinances, and regulations, and according to the following terms:

A. Construction Surveying. Construction surveying for the construction of the public Improvements shall be performed by ALDRICH LAND SURVEYING and construction surveying of the private Improvements shall be performed by ALDRICH LAND SURVEYING. If the construction surveying is performed by an entity other than the City, the City may monitor the construction surveying and the Subdivider shall ensure that the construction surveying entity provides all construction surveying field notes, plats, reports and related data to the City which the City requires for review. Record drawings shall be provided by the entity performing the survey. The Subdivider shall pay the City a reasonable fee for any construction surveying performed by the City.

B. Construction Inspection Methods. Inspection of the construction of the public Improvements shall be performed by BRASKER + LORENZ INC, and inspection of the private Improvements shall be performed by BRASKER + LORENZ, INC., both New Mexico Registered Professional Engineers. If the inspection is performed by an entity other than the City, the City may monitor the inspection and the Subdivider



shall ensure that the inspecting entity provides all inspection results, reports and related data to the City which the City requires for review. The City retains the right to perform its own general overall inspection of the construction project at any time prior to final acceptance of the Improvements, if deemed necessary or advisable by the City Engineer. The Subdivider shall pay the City a reasonable fee for the level of inspection performed by the City.

C. Field Testing. Field testing of the construction of the public Improvements shall be performed by VINYARD + ASSOC, INC, and field testing of the private Improvements shall be performed by VINYARD + ASSOC, INC, both certified testing laboratories under the supervision of a New Mexico Registered Professional Engineer, in accordance with the current City of Albuquerque Standard Specifications for Public Works Construction. If any field testing is performed by an entity other than the City, the City may monitor the field testing and the Subdivider shall ensure that the field testing entity provides all field testing results, reports and related data to the City which the City requires for review. The Subdivider shall pay the City a reasonable fee for any field testing performed by the City.

D. Additional Testing. The City retains the right to perform all additional testing which the City Engineer deems is necessary or advisable, and the Subdivider shall pay the City a reasonable fee therefor.

5. Financial Guaranty. If final plat approval is not requested prior to construction of the Subdivision, a financial guaranty is not required. If final plat approval is requested, the Subdivider must provide the City with a financial guaranty in an amount of not less than 125% of the estimated cost of constructing the Improvements, as approved by the City Engineer. The financial guaranty must be irrevocable and may be in the form of a letter of credit, escrow deposit or loan reserve letter issued by a Federally Insured Financial Institution; a bond issued by a surety qualified to do business in New Mexico; or other pledge of liquid assets which meets all City requirements. The City must be able to call the financial guaranty at any time within the sixty (60) days immediately following the Construction Completion Deadline.

To meet the Subdivision Ordinance requirements, the Subdivider has acquired or is able to acquire the following "Financial Guaranty:"

Type of Financial Guaranty: LOAN RESERVE - BANK OF OKLAHOMA
Amount: \$ 397,558.06 Name of Financial Institution or Surety
Date City first able to call Guaranty: DECEMBER 1, 2006
[Construction Completion Deadline]: DECEMBER 1 2006
If Guaranty other than a Bond, last day City able to call Guaranty is:
FEBRUARY 1, 2007
Additional information: _____

6. Notice of Start of Construction. Before construction begins, the Subdivider shall deliver an acceptable Notice to Proceed to the City and shall arrange or a preconstruction conference and all required inspections.

7. Completion, Acceptance and Termination. When the City receives Subdivider's final acceptance package, the City shall review it for completeness and accuracy. (See DPM Volume 1, Chapter 5, Work Order Process, Step 9.) If the package is acceptable, the City shall approve the package and issue a Certificate of Completion and Acceptance for the public Improvements and a Certificate of Completion for the private Improvements. Thereafter, the Subdivider's obligations to the City pursuant to this Agreement shall terminate, with the exception of the bond or other guarantee which the Subdivider has provided to assure the materials and workmanship, as required by the Subdivision Ordinance. After the City approves the final acceptance package, the City will promptly release this Agreement and the Financial Guaranty.



8. Conveyance of Property Rights. When the Improvements are completed, if the City does not own the real property upon or in which the public Improvements are constructed, the Subdivider will convey to the City all real and personal property rights which the City deems reasonably necessary, and all public Improvements, free and clear of all claims, encumbrances and liens before the City will accept the public Improvements. Conveyance may be made by appropriate dedication on the final plat of the Subdivision.

9. Reduction of Financial Guaranty Upon Partial Completion. The Subdivider shall be entitled to a reduction of the Financial Guaranty as a result of completing construction of part of the Improvements if the following conditions are met:

A. Loan Reserve Financial Guaranty. If a loan reserve letter was provided as the Financial Guaranty, the Subdivider must follow the procedures and meet the requirements detailed in the Development Process Manual, Volume 1, Chapter 5.

B. Non-Loan Reserve Financial Guaranty. If a Financial Guarantee other than a loan reserve letter has been provided, the completed Improvements must be free-standing, functionally independent of any Improvements which have not yet been completed and completed in substantial compliance with the approved construction plans, as determined by City on-site inspection in order to qualify for a Financial Guaranty reduction. If the Improvements which have been completed meet all City requirements, the City Engineer will estimate the cost of completing the remaining Improvements. Thereafter, the subdivider must submit the following documents to the City for review and approval:

(1) A revised Financial Guaranty in an amount of not less than 125% of the cost of completing the remaining Improvements, as estimated by the City;

(2) A bond or other instrument acceptable to the City, which guarantees the completed Improvements against defective materials and workmanship for the period required by the Subdivision Ordinance.

(3) Conveyance of real and personal property rights which meet the requirements of section 8 of this Agreement.

After the City receives and approves the required documents, the City shall issue a Partial Certificate of Completion and Acceptance for the completed public Improvements and a Certificate of Partial Completion for the completed private Improvements.

10. Indemnification. Until the Improvements are accepted by the City, the Subdivider shall be solely responsible for maintaining the premises upon which the Improvements are being constructed in a safe condition. The Subdivider agrees to defend, indemnify and hold harmless the City and its officials, agents and employees from any claims, actions, suits or other proceedings arising from or out of the negligent acts or omissions of the Subdivider, its agents, representatives, contractors or subcontractors or arising from the failure of the Subdivider, its agents, representatives, contractors or subcontractors to perform any act or duty required of the Subdivider herein; provided, however, to the extent, if at all, Section 56-7-1 NMSA 1978 is applicable to this Agreement, this Agreement to indemnify will not extend to liability, claims, damages, losses or expenses, including attorney fees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications by the indemnitee, or the agents or employees of the indemnitee; or (2) the giving of or the failure to give directions or instructions by the indemnitee, where such giving or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to property. The indemnification required hereunder shall not be limited as a result of the specifications of any applicable insurance coverage. Nothing herein is intended to impair any right or immunity under the laws of the State of New Mexico.



11. Assignment. This Agreement shall not be assigned without the prior written consent of the City and the Subdivider and the express written concurrence of any financial institution or surety which has undertaken to guarantee the completion of the Improvements. The City's approval will not be withheld unreasonably. If so assigned, this Agreement shall extend to and be binding upon the successors and assigns of the parties hereto.

12. Release. If the Subdivision or any part thereof is sold, conveyed or assigned, the City will not release the Subdivider from its obligations under this Agreement and will continue to hold the Subdivider responsible for all Improvements until a successor in interest to the Subdivider has entered into a Subdivision Improvements Agreement with the City. Thereafter, if the Subdivider's successor in interest has provided a substitute financial guaranty acceptable to the City, the City will release this Agreement and any related Financial Guaranty.

13. Payment for Incomplete Improvements. If the Subdivider fails to satisfactorily complete construction of the Improvements by the Construction Completion Deadline, the City may construct or cause the Improvements to be constructed as shown on the final plat and in the approved plans and specifications. The Subdivider shall be jointly and severally liable to pay to, and indemnify the City for the total cost, including, but not limited to engineering, legal and contingent costs, together with any damages, either direct or consequential, which the City may sustain as a result of Subdivider's failure to perform as required by this Agreement. If the direct or indirect costs and damages to the City exceed the amount of the City's Claim of Lien or any Financial Guaranty, the Subdivider shall be liable to, and shall pay, the City for all such costs and damages. The surety or sureties shall be jointly and severally liable to pay to and indemnify the City for the total cost to the extent of their obligations pursuant to any Financial Guaranty.

14. Binding on Subdivider's Property. The provisions of this Agreement constitute covenants running with Subdivider's Property for the benefit of the City and its successors and assigns until terminated, and are binding on the Subdivider and the Owner and their heirs, successors and assigns.

15. Notice. For purposes of giving formal written notice, including notice of change of address, the Subdivider's and the City's addresses are as stated in the first paragraph of this Agreement. Notice may be given either in person or by certified U.S. mail, postage paid. Notice will be considered to have been received within six days after the notice is mailed if there is no actual evidence of receipt.

16. Entire Agreement. This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

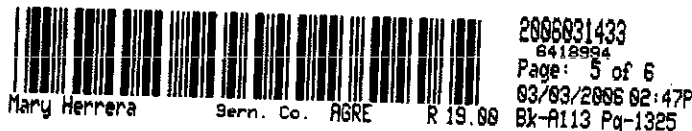
17. Changes to Agreement. Changes to this Agreement are not binding unless made in writing, signed by both parties.

18. Construction and Severability. If any part of this Agreement is held to be invalid or unenforceable, the remainder of the Agreement will remain valid and enforceable if the remainder is reasonably capable of completion.

19. Captions. The captions to the sections or paragraphs of this Agreement are not part of this Agreement and will not affect the meaning or construction of any of its provisions.

20. Form not Changed. Subdivider agrees that changes to this form are not binding unless initialed by the subdivider and signed by the City's Legal Department on this form.

21. Authority to Execute. If the Subdivider signing below is not the Owner of the Subdivision, the Owner must execute the Power of Attorney below.



Executed on the date stated in the first paragraph of this Agreement.

SUBDIVIDER:

By [Signature]: Keith Naylor
Name: LA CUEVA ESTATES LLC
Title: MANAGING MEMBER
Dated: 2-16-06

CITY OF ALBUQUERQUE
[Signature]
City Engineer
Dated: 2-28-06

[Signature]

[Signature]
2-22-06

SUBDIVIDER'S NOTARY

STATE OF New Mexico)
COUNTY OF Bernalillo) ss.

This instrument was acknowledged before me on 16th day of February, 2006 by [name of person:] Keith Naylor, [title or capacity, for instance, "President" or "Owner":] Managing Member of [Subdivider:] La Cueva Estates LLC

[Signature]
Notary Public

My Commission Expires: 12/15/08

CITY'S NOTARY

STATE OF NEW MEXICO)
COUNTY OF BERNALILLO) ss.

This instrument was acknowledged before me on 28th day of February, 2006 by Richard Bourte, City Engineer of the City of Albuquerque, a municipal corporation, on behalf of said corporation.

[Signature]
Notary Public

My Commission Expires: 11-25-2007

EXHIBIT A AND POWER OF ATTORNEY ATTACHED



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