

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 Rio Grande River, where the north boundary line of the Town of Albuquerque 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

**DECLARATION OF
RESTRICTIVE AND PROTECTIVE COVENANTS
FOR
MOUNTAIN TRAIL SUBDIVISION**

The undersigned are the owners in fee simple of the following described real estate:

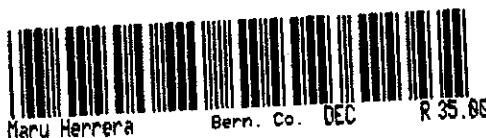
Lots 1-P1 through 27-P1, Tract A, MOUNTAIN TRAIL SUBDIVISION, as the same are shown and designed on the Plat thereof, filed in the Office of the County Clerk of Bernalillo County, New Mexico, New Mexico, on the 28th day of February, 2005, in Book 2005C, Page 82, as Document No. 2005027755.

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

The undersigned hereby establish 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 present 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) "Association" shall mean Mountain Trail Homeowners Association, a New Mexico non-profit corporation.
- (b) "Board" shall mean the Board of Directors of the Association.
- (c) "Common Areas" shall mean the Private Roads, Security Gates and Perimeter Walls and related Improvements.
- (d) "Declarant" shall mean Quivera II LLC, a New Mexico limited liability company.
- (e) "Declaration" shall mean this Declaration of covenants, conditions, reservations, restrictions and easements, and any amendment or modification thereto.



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(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-PI through 27-PI, inclusive, as shown on the Subdivision Plat of Mountain Trail Subdivision, filed in the Office of the County Clerk of Bernalillo County, New Mexico, on the 28th day of February, 2005, in Book 2005C, Page 82, as Document No. 2005027755.

(i) "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 of a Lot or the lessor of a Lot pursuant to a leasehold agreement with a term of twenty (20) years or greater.

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

(k) "Perimeter Walls" shall mean the wall constructed by Declarant or its successor on the perimeter of the Subdivision.

(l) "Plat" shall mean the Subdivision Plat of Mountain Trail Subdivision, filed in the Office of the County Clerk of Bernalillo County, New Mexico, on the 28th day of February, 2005, in Book 2005C, Page 82, as Document No. 2005027755, and all amendments and revisions thereto.

(m) "Plat Easement Notes" shall mean the "Keyed Notes - New Easements" on the Plat.

(n) "Private Roads" shall mean Austin Place and Ashlylynn Lane.

(o) "Security Gate(s)" shall mean the gates on the intersection of Ashlylynn Lane, NE and Glendale Avenue, NE.

2. Land Use and Building Type. The Subdivision will be a gated community consisting of Private Roads, street signs and street lamps all of which shall be maintained by the Association. 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 Committee (as hereinafter defined), and garage doors must be painted or stained to compliment adjoining wall surfaces. No metal roofs or asphalt shingles are permitted on any Dwelling or accessory building. Unshielded high intensity exterior lighting is prohibited. There shall also be permitted, upon approval of the Committee, 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 Private 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. An architectural control committee (the "Committee") is hereby established and shall be comprised of three (3) persons, each of whom shall serve until his or her successor is appointed and qualified or his or her obligations otherwise terminate.

The following persons are hereby appointed and declared to comprise the Committee:

Rhett Waterman
8813 Second Street, NW, Suite E
Albuquerque, New Mexico 87114

Scott Ashcraft
8813 2nd Street, N.W., Suite E
Albuquerque, New Mexico 87114

and

Terry Ashcraft
7850 Jefferson NE
Albuquerque, New Mexico 87109

Successors shall be appointed by a majority of the remaining members of the Committee. After Declarant or its successors has sold the last Lot and Dwelling to a third party purchaser, the duties of the Committee shall be undertaken by the Association, through a committee to be appointed by the Board.

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

C: Documents and :



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- 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 Committee 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 Committee.

The Committee shall have the right and power to disapprove any plans, specifications or details submitted to it, if the Committee 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.

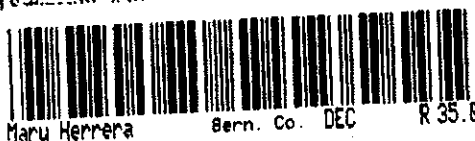
Neither the members of the Committee, either in their individual or in their collective capacities, nor the Declarant, shall be responsible, or have any liability, whatsoever for any defect in any plans, specifications or other data submitted to, approved by or revised by the Committee, or in any work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

The Committee shall approve or disapprove the plans and specifications within thirty (30) days after receipt of the plans and specifications. If the Committee 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.

The Committee shall have the right to charge a fee for reviewing plans and specifications of Two Hundred Dollars (\$200.00), which shall be submitted with the initial submission of the plans and specifications. The Board may increase the fee charged by the Committee.

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

5. Compliance with the Grading Plan and Development Plan. All Improvements constructed on each Lot shall comply with the City of Albuquerque approved "Grading 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 plan for the Subdivision approved by, and on file with, the City of Albuquerque Engineering Department (the "Drainage Report"). In no case may the drainage from one Lot drain on to any other Lot, except as allowed by the Drainage Report. All plans and specifications submitted to the Committee must contain sufficient information to enable the Committee to determine compliance with the Grading Plan and Development Plan. However, the Committee shall not be liable to the Owner or any other person for approval of plans, which are contrary to the Grading Plan and 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 2,200 square feet. Dwellings shall not exceed a height of twenty-five feet (25') above finished curb height at the front of the Lot.

7. Setbacks. No Dwelling shall be located on any Lot in contradiction of the following setback requirements:

- A. There shall be a front-yard setback of not less than twenty feet (20') from the front Lot line.
- B. There shall be a rear-yard setback of not less than fifteen feet (15') from the rear Lot line.
- C. There shall be a side yard setback of not less than five feet (5') from each side yard Lot line, except for corner Lots which shall have a side yard setback of not less than ten feet (10') from Private Roads.

Pitched roofs overhanging the setback lines not more than two feet (2') shall not be construed as violating the setback requirements provided they are built at the time of construction of the original Dwelling.

8. Landscaping. The builder constructing any Dwelling shall install the front-yard landscaping. 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 Committee approved plans and specifications within nine (9) months after said commencement. All construction, reconstruction or alteration activities shall be accomplished in such a manner as shall not create unreasonable, unsightly, noisy or objectionable conditions.

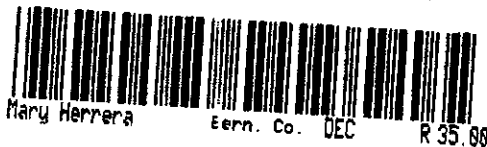
11. Nuisances. No noxious or offensive activity shall be carried on, or permitted upon any Lot. Nothing shall be done, placed or stored on any Lot which may be or may become an annoyance or nuisance to the Owner(s) of other Lot(s), or which will occasion any noise or odor which will or might disturb 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 Committee.

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 Committee, 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 Committee. 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 Private Roads. No clotheslines shall be placed outside any Dwelling.

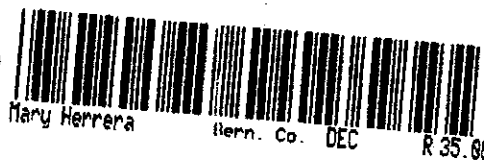


14. Parking and Storage of Vehicles, Etc., Within the Subdivision. No camper, recreational vehicle, trailer, mobile home, boat, commercial type vehicle, van, motorcycle, dune buggy, bus, inoperable vehicle or tractor shall be stored or parked on any Lot continuously for a period of more than twenty-four (24) hours. No camper, recreational vehicle, trailer, mobile home, boat, commercial type vehicle, van, motorcycle, dune buggy, bus, inoperable vehicle or tractor shall be parked on the Private Roads overnight. Operable vehicles may only be parked on the Private Roads for up to seventy-two (72) hours continuously and the same vehicle may not be parked on the Private Roads more than nine (9) days in any calendar month. The Association shall have the right to adopt rules and regulations regarding parking on the Private Roads which amend the requirements of the previous sentence of this paragraph.

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, not to exceed \$2,400.00. Reimbursement shall be made within thirty (30) days of billing therefor and thereafter 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 Private 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.

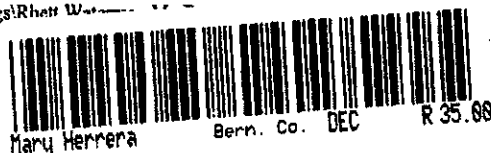
18. Casualty. If any Improvement on any Lot is destroyed, wholly or in part, by fire or other casualty, the Improvement so damaged or destroyed shall be promptly and properly rebuilt or repaired in conformity with the provisions of this Declaration; or, in the alternative, all remaining portions of the 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 Common Areas, constructed by the Declarant or its successors, and shall be maintained by the Association. Each Lot containing a portion of the Perimeter Walls shall be subject to a perpetual non-exclusive easement for said Perimeter Walls which shall be three (3) feet in width ("Perimeter Wall Easements") and shall be located as follows:

- (1) The southern three (3) feet of Lots 1-P1 through 7-P1 and Lots 22-P1 through 27-P1.
- (2) The western three (3) feet of Lots 7-P1 and 8-P1.
- (3) The northern three (3) feet of Lots 8-P1 through 21-P1.
- (4) The eastern three (3) feet of Lots 21-P1 and 22-P1.

The Perimeter Wall Easements shall be perpetual and non-exclusive for the benefit of Declarant, its successors, and the Association for the construction, maintenance and repair of the Perimeter Walls. No Owner shall have the right to tie into or alter the Perimeter Walls on said Owner's Lot without the prior written consent of Declarant, its successors or the Association.

E. Landscape Easements. The Ashlynn Lane Entry Median and the Glendale Avenue Right of Way Landscaping



The Landscape Easements shall be maintained by Declarant, its successors or the Association.


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 24.

23. Common Areas. The Common Areas shall be maintained by the Association. The Board shall have the right to establish rules and regulations related to use of the Common Areas.

24. Association. The Association shall be a New Mexico non-profit corporation which shall be controlled by the articles of incorporation and bylaws thereof.

- A. Every Lot shall be entitled to one (1) membership in the Association which shall be vested in the Owner or Owners thereof. If an Owner owns more than one (1) Lot, said Owner shall have only one (1) Membership in the Association, however, said Owner shall have one (1) vote for each Lot. Membership shall be appurtenant to and may not be separated from the ownership of any Lot. Ownership of a Lot shall be the sole qualification for membership.
- B. The Association shall have one (1) class of voting membership.
- C. The expenses of the Association shall be paid through assessments against each Lot. Such assessments shall be fixed, established and collected from time to time as hereinafter provided. The assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on each Lot and shall be a continuing lien upon each Lot against which each such assessment is made. These assessments and costs shall also be the personal obligation of each person or entity who was the Owner of the Lot when the assessment became due. Assessments will begin on the date set by the Board and will be prorated for partial assessment years.
- D. The assessments shall be used exclusively for the Common Areas and costs of the Association.
- E. The initial annual assessments for each of the Lots shall be \$480.00, prorated from the date each Owner closes on the purchase of a Lot and Dwelling from Declarant or the initial builder. Annual assessments

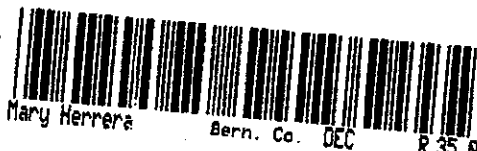
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thereafter shall be due and payable on January 1 of each successive year and shall be delinquent each February 1 if not paid in full; provided however, the Association may decide to assess the Owners monthly or quarterly for the annual assessments. Neither Declarant nor a builder holding a Lot for development or a Lot with a Dwelling for initial sale shall be required to pay any assessments for Lots it owns; provided however, if any Dwelling owned by Declarant or the initial builder is occupied as a residence prior to the sale, the annual assessments shall commence on the date of occupancy and shall be paid by the Owner of said Lot. The \$480.00 annual assessment shall remain in effect until modified by a two-thirds (2/3) vote of the members of the Association at a meeting held for the purpose of determining said assessments, which meeting shall be called at least thirty (30) days in advance thereof, except in the event of an emergency.

- F. Written notice of the annual assessments shall be sent to every member at the time of its determination by the members. The Association shall, upon demand at any time, furnish to a member a certificate in writing signed by an officer designated by the Board as the one responsible for keeping the records, or for this purpose, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.
- G. If any installment of an assessment is not paid within thirty (30) days after it is due, then such assessment 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 assessment, 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 the assessment is not paid within thirty (30) days after the delinquency date, a reasonable late charge may be assessed at the discretion of the Board and the assessment shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum until paid. The Association 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 the assessment as above provided, reasonable attorney's fees to be fixed by the court, together with the costs of the action.
- H. 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 the assessments 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 assessments thereafter becoming due.

25. 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.

26. 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, the Association and the Committee 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 Committee, the Association 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 Association.


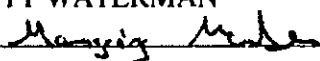
27. Severability. If any one or more of the provisions, conditions, covenants and restrictions in this Declaration are held by any court of competent jurisdiction to be null and void, all remaining provisions, conditions, covenants and restrictions shall continue unimpaired and in full force and effect.

28. 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.

29. 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.

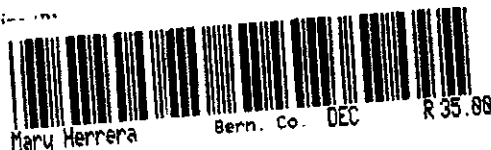
30. Amendment. At any time after the date of the filing this Declaration, the Owners of not less than seventy-five percent (75%) of the Lots may release one or more of the Lots from, or may modify, change or amend all or any portion of the provisions, conditions, covenants or restrictions contained in 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.

QUIVERA II LLC
a New Mexico limited liability company

By: 
RHETT WATERMAN
Its: 

Dated: 3/8, 2005

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ACKNOWLEDGMENT

STATE OF NEW MEXICO)
)
COUNTY OF BERNALILLO)




OFFICIAL SEAL
WHITNEY L. WATERS
NOTARY PUBLIC-STATE OF NEW MEXICO
My Commission expires 10/13/08

This instrument was acknowledged before me on 3/8, 2005, by RHETT WATERMAN, Mary Herrera of QUIVERA II LLC, a New Mexico limited liability company.

MY COMMISSION EXPIRES:
October, 13 2008

Whitney L. Waters
NOTARY PUBLIC


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No. of Lots: _____
Nearest Major Streets _____

Mountain Trail

FIGURE 19
SIDEWALK DEFERRAL AGREEMENT
PROJECT NO. 745981

THIS AGREEMENT is made this 31st day of January, 2005, 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 Quivera 2, LLC ("Developer"), whose address is PO Box 10005, Albuquerque, NM 87184 and whose telephone number is 922-9411, a (state the type of business entity, for instance, "New Mexico corporation," "general partnership," "joint venture," "individual," etc.): New Mexico limited liability company, is 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) Lots 22-30, Block 11, Tract 1, Unit 3, NAA filed in the Bernalillo County clerk's office D, Book 121, Page -- (the "Subdivision"); and

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

I.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 October 22, 2005 ("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.

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: Letter of Credit #1624
Amount: \$ 52,437.30 Name of Financial Institution or
Surety providing Guaranty: Los Alamos National Bank
Date City first able to call Guaranty (Sidewalk Construction
Deadline): October 22, 2005
If Guaranty other than a Bond, last day City able to call
Guaranty is: December 22, 2005
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.



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.

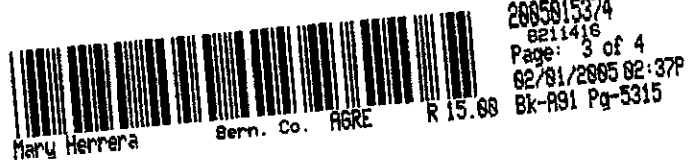
12. Changes to Agreement. Changes to this Agreement are not binding unless made in writing, signed by both parties.

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.



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

DEVELOPER: Quivera 2, LLC

CITY OF ALBUQUERQUE:

By (Signature): *[Signature]*

[Signature]
City Engineer

Name: Scott Ashcraft

Dated: 1-31-05

Title: Member

Dated: _____

9/25/05
KR 11/25/05

DEVELOPER'S NOTARY

STATE OF New Mexico)
) ss.
COUNTY OF Bernalillo)

This instrument was acknowledged before me on 10th day of January 2005 by (name of person:) Scott Ashcraft, (title or capacity, for instance, "President" or "Owner":) member of (Developer:) Quivera 2, LLC.



OFFICIAL SEAL
SUSAN RASINSKI
NOTARY PUBLIC-STATE OF NEW MEXICO

Susan Rasinski
Notary Public

My Commission Expires

9-10-2008

My commission expires: 9-10-08

CITY'S NOTARY

STATE OF New Mexico)
) ss.
COUNTY OF Bernalillo)

This instrument was acknowledged before me on 31st day of January, 2005 by Richard Dourte, City Engineer of the City of Albuquerque, a municipal corporation, on behalf of said corporation.

Gloria A. Saavedra
Notary Public

My Commission Expires:

11-25-2007

EXHIBIT "A" ATTACHED

