

STEWART TITLE

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR LOS LUNAS RIVERFRONT PLAZA

VALENCIA COUNTY
SALLY PEREA, CLERK
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BY LROMERO

THIS DECLARATION is made on the date hereinafter set forth by Los Lunas Riverfront, LLC, a New Mexico limited liability company ("Declarant").

WHEREAS, Declarant is the owner of certain real property (the "Property") in the Village of Los Lunas, County of Valencia, State of New Mexico, which is more particularly described as follows:

Lots B-2-A and B-2-B as the same are shown on the Plat of Tracts B-2-A & B-2-B, Lands of Marvin Causey filed in the Office of the County Clerk of Valencia County, New Mexico on October 1, 2007 in Cabinet L, Page 851. ("Parcel I");

Tract B-1 as the same is shown on the Summary Replat and Land Division Tract "B", Lands of Marvin Causey M.R.G.C.D. Map 72, filed in the Office of the County Clerk of Valencia County, New Mexico on December 5, 1995 in Cabinet I, Page 823 ("Parcel II"); and

Tract A, comprising Tracts 34-A-1, 34-A-2, 34-B-1, 34-B-2 and 33-B-2-A1A as shown on the M.R.G.C.D Map number 72 ("Parcel III").

NOW, THEREFORE, Declarant hereby declares that all of the Property, which shall also be known as and referred to herein as Los Lunas Riverfront Plaza, shall be held, sold, and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of, and which shall run with the real property and shall be binding on all persons having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

**ARTICLE I
DEFINITIONS**

The following words, when used in this Declaration, shall have the following meanings:

Section 1.1 "Architectural Review Committee" ("ARC"), shall mean and refer to the committee described in Article II and shall be composed of not less than two (2) and not more than three (3) individuals designated in accordance with Article II.

Section 1.2 "Building" shall mean any constructed improvement as may be allowed within the Building Site which contains space, either enclosed or open to the air, for which the conduct of office, retail, service or other occupancy is created, including walls, facades, porticos, porches and appurtenances, but not including any drives, roundabouts, landscaping, or common areas designated on the site plan attached hereto as Exhibit "A".

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Section 1.3 "Building Site" shall mean and refer to the portion of each Tract within which a Building(s) may be constructed. Said Building Site is the subject of all structural, occupancy and use limitations and allowances as provided for herein and as may be further regulated by the Village of Los Lunas or other governmental agencies having jurisdiction. Any Building Site, whether comprised of one or more Tracts, may be further divided by leasehold, condominium, rental or other interests not constituting a subdivision of the real property.

Section 1.4 "Common Areas" shall mean and refer to all areas within the Property which shall be used for the common good of all property owners, their agents, employees, customers and invitees. Common Areas include, but are not limited to, pedestrian sidewalks, parking and landscaped areas, roadways for ingress and egress and easements necessary for the Los Lunas Riverfront Plaza. Declarant states that all of the Common Areas are subject to reciprocal access and use easements, as provided for in Article VII herein, for the mutual benefit of all Owners, their agents, employees, customers and invitees. The Common Areas for Parcel I are all areas outside the building footprint as shown on Exhibit "A".

Section 1.5 "Design Standards" shall mean and refer to standards prepared by Consensus Planning and dated 11/20/07, as amended from time to time, for the purposes of controlling the quality and character of the Improvements to be constructed on the Property. The Design Standards shall be binding upon all Owners and Occupants of the Property.

Section 1.6 "Floor Area" shall mean and refer to the total number of square feet of floor space in a Building whether or not actually occupied, including basements, balconies and mezzanine spaces. Floor areas shall be measured from the exterior line of the exterior walls and the center line of any party or common interior walls without deduction for columns, walls or other structural or non-structural components.

Section 1.7 "Improvement" shall mean and refer to any man-made change in the natural condition of the Property including, but not limited to, structures and construction of any kind, whether above or below the Property surface, such as any building, fence, wall, sign, addition, alteration, screen enclosure, sewer, drain, disposal, lake, waterway, road, paving, utilities, grading, landscaping and exterior illumination.

Section 1.8 "Occupant" shall mean and refer to any person or organization which has occupied, purchased, leased, rented or is otherwise licensed or legally entitled to occupy and/or use any Tract or Improvement (whether or not such right is exercised), as well as their heirs, personal representatives, assigns and successors in interest.

Section 1.9 "Owner" shall mean and refer to the record owner, whether one or more partners, persons, trusts, corporations, or other entities, of the fee simple interest (but not contract sellers) to a Tract and including contract purchasers, their heirs, personal representatives, successors or assigns; provided, however, if any portion of the Property is developed as a condominium, Owner shall mean and refer to the condominium association formed for the purposes of managing the condominium development.

Section 1.10 "Owner's Association" shall mean the association of Owners created under Article V of this Declaration.

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Section 1.11 "Tract" shall mean and refer to any parcel of the Property, together with any and all Improvements thereon, created and existing by a plat recorded with or after the date of this Declaration in the public records of Valencia County, New Mexico, which is not exclusively Common Area and on which any Improvement could be constructed, whether or not it has been constructed.

Section 1.12 **Unit Owner.** "Unit Owner" shall mean and refer to the record owner of a condominium unit in the event that any portion of the Property shall be subjected to a condominium declaration and shall be developed into a condominium regime.

ARTICLE II ARCHITECTURAL REVIEW COMMITTEE

Section 2.1 **Creation of Architectural Review Committee.** There is hereby created an Architectural Review Committee ("ARC") consisting of from one to three individuals which shall carry out the functions assigned to it herein. Until such time as all of the vacant land in the Property has been improved through the construction of buildings, parking and landscaped areas, the ARC shall consist of the following:

James Jaramillo
407 Rio Grande Blvd. NW
Albuquerque, NM 87104

Harold Prezzano
P.O. Box 359
Peralta, NM 87042

Brian Hansen
Los Lunas Riverfront, LLC
P.O. Box 359
Peralta, NM 87042

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After all of the vacant land in the Property has been improved, or upon resignation of the above-named members of the ARC, the ARC shall be appointed by the Owner's Association. Until such time, the Declarant reserves the right to replace or appoint a successor to any member of the ARC. The ARC is authorized to adopt its own policies and procedures consistent with the requirements of this Article. Decisions of the ARC shall be by majority vote and may be made in writing without a meeting.

The ARC shall have the right from time to time to make changes in the shape, size, location, number and extent of the land, buildings and other improvements constituting the Common Area or any Improvement within Los Lunas Riverfront Plaza.

Section 2.2 **Powers and Duties.** The ARC shall have the following powers and duties:

(A) To modify or amend the Design Standards; provided, however, that as long as Declarant

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is the owner of a Tract, Declarant's written consent for such modification or amendment shall be required.

(B) To require submittals by Owners and Tenants related to all Improvements.

(C) To approve or disapprove any Improvement or change or modification thereto, the construction, erection, performance or placement of which is proposed upon the Property and to approve or disapprove any exterior additions, changes, modifications or alterations therein, thereon or thereto. All decisions of the ARC shall be final and dispositive upon all parties.

(D) If any Improvement is changed, modified or altered without prior approval of the ARC, then the Owner shall upon demand cause the Improvement to be restored to comply with the Plans and Specifications originally approved by the ARC and said Owner shall bear all costs and expenses of such restoration, including the costs and reasonable attorney's fees of the ARC.

(E) To perform such incidental acts as may be necessary in the exercise of its powers.

Section 2.3 Necessity of Architectural Review and Approvals. No Improvement of any kind shall be commenced, constructed, erected, placed, altered or maintained upon any Tract, nor shall any addition, change or alteration thereon or thereof be made, nor shall any subdivision platting or replatting of any Tract be made, until plans and specifications with respect thereto have been approved by the ARC. The plans and specifications ("Plans and Specifications") shall include the proposed Building Site, plot layout, exterior elevations, materials, colors, signs, landscaping plan and such other information as required by the ARC. The Plans and Specifications shall be submitted in writing over the signature of the Owner or the Owner's authorized agent together with a review fee of not more than Two Hundred Fifty and No/100 Dollars (\$250.00) ("ARC Review Fee").

Section 2.4 Liability. Neither the ARC, its individual members, the Declarant nor their respective heirs, successors or assigns shall be liable in damages to anyone submitting Plans and Specifications to them for approval, or to any Owner affected by this Declaration, by reason of mistakes in judgment, negligence or nonfeasance arising out of or in connection with the approval, disapproval or failure to approve any such Plans and Specifications. Every person who submits Plans and Specifications to the ARC for approval agrees, by submission of such Plans and Specifications, and every Owner or Occupant of any Tract agrees, by acquiring title thereto or an interest therein, that said Owner or Occupant will not bring any action or suit against the ARC, its members or Declarant to recover any such damages.

Section 2.5 Limitation of Action. Notwithstanding anything to the contrary herein, after the expiration of one (1) year from the date of the issuance of a certificate of occupancy by the appropriate governmental authority for any Improvement or substantial completion thereof if no certificate of occupancy is required, said Improvement shall, in favor of purchasers and encumbrances, in good faith and for value, be deemed to be in compliance with all provisions of this Article, unless: (i) the purchaser or encumbrancer has actual notice of such noncompliance or noncompletion; (ii) the ARC has filed of record a notice of noncompliance or noncompletion in the public records of Valencia County, New Mexico; or (iii) legal proceedings shall have been instituted to enforce compliance or completion.

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**ARTICLE III
REGULATION OF IMPROVEMENTS**

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Section 3.1 General. No Improvement shall be commenced, erected, constructed or maintained upon any Tract, nor shall any change or alteration thereon or thereof be made, nor any subdivision, plat or replat be made unless and until the Plans and Specifications shall have been submitted to and approved in writing by the ARC as more fully set forth in Article II of this Declaration.

Section 3.2 Architectural Theme. The architectural theme of Los Lunas Riverfront Plaza shall be dictated by the design and motif set forth in the Design Standards. The ARC will require compliance with the theme established by the Design Standards in approving Plans and Specifications.

Section 3.3 Outdoor Satellite Dishes and Antenna. The placement and screening of outdoor satellite dishes and antennae on Tracts shall be approved in advance by the ARC; provided, further, that in no event shall a satellite dish or antenna protrude above the highest point of the parapet line of the Buildings on said Tract.

Section 3.4 Landscaping. All Tracts shall be landscaped only in accordance with the Design Standards; and the landscaping plan shall be approved in writing by the ARC prior to any development of the Tract. Such landscaping plans shall include information regarding the type of sodding, the type of seeding, the type of mulch, the types of trees, hedges and shrubs and information regarding other customary landscape treatment for the entire Tract, including fences, walls and screening. All landscaping plans shall also include an underground irrigation system. All landscaping shall be undertaken, completed and maintained in accordance with such approved plan and said plan may not be altered, amended or revised without obtaining the prior written approval by the ARC. All landscaping shall be maintained by the Owner's Association.

Section 3.5 Drainage and Water Retention. The development of every Tract must conform to the drainage requirements of the Los Lunas Riverfront Drainage Plan.

Section 3.6 Loading, Service and Outside Storage. Rubbish and garbage facilities shall be screened and located in compliance with the Design Standards and must be approved by the ARC.

Section 3.7 Irrigation. Automatic irrigation systems shall be required for all landscaping within Los Lunas Riverfront Plaza. All costs associated with maintaining the irrigation system and irrigation water shall be paid by the Owner's Association.

Section 3.8 Parking Areas. No parking shall be permitted on any street, lawn, median strip, public walkway, swale, berm or other unpaved area or at any place other than on the paved parking spaces provided for in the Common Areas. Each Owner and Occupant shall be responsible for compliance with the foregoing by its employees, customers and visitors. Sufficient parking shall be provided by each Owner and Occupant for employees, customers and visitors on said Owner's and Occupant's Tract. No reserved parking on any Tract shall be permitted without the written approval of the ARC. Proper visual screening, e.g., trees, earth mounding and other landscaping, is desired between any parking area and any street. Overnight

parking of campers, mobile homes, boats, trailers or motor homes is prohibited. Any changes in ARC approved parking areas due to restriping or other reconfiguration must be reapproved in advance by the ARC. Parking areas for Parcel I are shown on Exhibit "A", and shall not be changed without prior approval of the ARC. Parking areas for the other Parcels shall be determined by the Declarant.

Section 3.9 Signs. All signs which shall be erected on any Tract shall have the prior written approval of the ARC as to size, color, materials, location and content and shall be in conformance with the Design Standards.

Section 3.10 Exterior Lighting. All exterior lighting within Los Lunas Riverfront Plaza must be approved by the ARC. The maintenance and operational costs associated with the exterior lighting shall be paid by the Owner's Association. The ARC shall have the right to designate pole light locations of any Tract Owner within the Property. Said Tract Owner shall pay the expense of the pole lights, installation and utility expense. The maintenance of such shall be paid by the Owner's Association. In order to maintain general aesthetics of the Property, all pole lights installed on any Tract shall be equipped with a photocell to allow the pole light to come on at dusk and go off at sunrise.

Section 3.11 Maintenance. Each undeveloped Tract, and the grounds, buildings and improvements of each improved Tract shall be kept in a safe, clean, wholesome condition. The maintenance costs of maintaining any undeveloped tract shall be paid by the owner of such tract(s).

ARTICLE IV COMMON AREAS

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Section 4.1 Development.

(A) The configuration of the Common Areas for Parcel I as shown on the Los Lunas Riverfront Plaza Site Plan attached hereto as Exhibit "A" shall not be changed in a manner inconsistent with the provisions of this Declaration.

(B) Concurrent with any Building being constructed by the Owner of any Tract (the "Developing Party"), the Common Areas of that Tract shall be developed in accordance with the construction plans approved by the ARC at the expense of such Developing Party.

Section 4.2. Limitations on Use.

(A) The Common Areas are hereby reserved for the sole and exclusive use of the Owners, the Unit Owners, their tenants, contractors, employees, agents, customers, licensees and invitees and the subtenants, contractors, employees, agents, customers, licensees and invitees of such tenants. All Improvements placed or constructed in the Common Areas shall be approved by the ARC and shall be in accordance with the Design Standards. The Common Areas shall be kept and maintained as provided for in Article VI. All portions of a Building Site which are not used for Buildings and are not part of the Common Areas depicted on the Site Plan shall be developed by the Owner of the Tract, at that Owner's sole cost and expense, in accordance with the plans and specifications approved by the ARC.

(B) Customers and invitees of businesses in Los Lunas Riverfront Plaza shall not be permitted to park on the Common Areas except while shopping or transacting business in Los Lunas Riverfront Plaza. Each Owner shall use reasonable efforts to enforce said policy. The Common Areas to be used for motor vehicle parking by employees of Occupants of Los Lunas Riverfront Plaza may be designated within Los Lunas Riverfront Plaza from time to time with the prior written consent of the ARC. In the event employee parking areas are designated as provided herein, then employees of any Owner or Occupant shall use only those portions of the Common Areas designated for such motor vehicle parking purposes. The authority herein granted shall be exercised in such manner as not to discriminate against any Owner, Unit Owner or Occupant of Los Lunas Riverfront Plaza.

(C) The alteration in the natural water flow which may occur on a Tract as a natural consequence of normal construction activities and the existence of the Improvements substantially as shown on the Los Lunas Riverfront Plaza Site Plan (including, without limitation, Buildings and Building expansions, curbs, drives and paving) shall be permitted, provided that such diversion of water flows does not interfere with the use and beneficial enjoyment of any of the other Tracts.

(D) The designated roadways and parking areas located within Los Lunas Riverfront Plaza are for the benefit and use of the Owners, Tenants and employees, agents, customers, licensees and invitees of such Owners and Tenants and may not be altered, changed or modified without the mutual consents and agreement, in writing, of all of the affected Owners and the written consent of the ARC.

ARTICLE V THE OWNER'S ASSOCIATION

Section 5.1 **Formation of the Owner's Association.** An Owner's Association, which shall be a not-for-profit corporation, shall be formed in order to provide for enforcement of this Declaration, and for the continuing maintenance and repair of improvements on the Property, which are of common value to Owners. Each Owner shall be a member of the Owner's Association. The Owner's Association, through its Board of Directors, has the authority to do the following:

(A) Enforce the provisions and covenants of this Declaration and zoning requirements on the Property;

(B) Provide for the maintenance, repair and replacement of the Tract improvements, other than buildings, on the Property, including but not limited to pavement repair or repaving, sweeping and snow removal; and keeping undeveloped tracts, (at the expense of the owners of such tracts), relatively weed free;

(C) Provide for the maintenance and repair of the landscaping, underground sprinkler system, vehicular ingress and egress ways, and common parking areas;

(D) Repair damage to landscaping, paving and other surface improvements which may be caused by excavating underground gas, electrical, water or sewer utility lines;

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- (E) Establish and maintain a reserve fund, in a reasonable amount, to cover projected capital expenses and attorney's fees it may incur in carrying out its duties;
- (F) Assess Owners, in advance if desired, for the equitable share of the costs incurred by the Owner's Association pursuant to this Declaration;
- (G) Appoint a managing agent to act in its behalf for the collection and counting of said fees and pay said agent a reasonable fee in connection with its services;
- (H) Perform such other functions as it may assume in accordance with its own procedural rules.

Any action of the Board of Directors is subject to modification by the members of the Owner's Association, but such action shall be valid until so modified.

Section 5.2 Assessments. Assessments of Owners for all expenses incurred by the Owner's Association (including reserves) shall be made based on the Floor Area of the building located on each Owner's Tract within the Property. Thus, the percentage of such expenses to be paid by an Owner of a developed tract shall be the ratio of the Floor Area on each Owner's Tract to the total Floor Area of the substantially completed Buildings on the Property. The owner of any undeveloped tract shall pay for maintaining such tract.

Section 5.3 Lien. Each Owner of a Tract or any undivided interest therein (by acceptance of a deed for a Tract, whether or not it shall be so expressed in a such deed or other conveyance), including any purchaser at a judicial sale, shall be deemed to covenant and agree to pay to the Owner's Association any assessments or charges for repairs, maintenance or expenses for the common areas. All such assessments, together with interest and late charges, and costs of collection thereof (including reasonable attorney's fees), shall be a charge on the Tract and shall be a continuing lien upon the Tract against which each such assessment is made, and shall also be the personal obligation of the Owner. No Owner of a Tract may waive or otherwise escape liability for the assessments provided for herein by non-use of the common areas or by abandonment.

(A) The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage. The sale or transfer of any Tract shall not affect the assessment lien. However, the sale or transfer of any Tract pursuant to mortgage foreclosure or any proceedings in lieu thereof shall extinguish the lien of such assessments as to the payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Owner from liability of any assessment thereafter becoming due or from the lien thereof.

(B) In the event an assessment is not paid in a timely manner and is unpaid for more than ninety (90) days after it became due, the President of the Owner's Association shall execute a sworn affidavit stating the amount owed, legal description of the Tract upon which said assessment is owed and a statement that said amount is more than ninety (90) days past due, with said statement to be notarized and to be completed and recorded in the records of the Valencia County Clerk's office to create a lien against said Tract.

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(C) The assessments levied by the Owner's Association shall be used exclusively to promote the health, safety and welfare of the Owners within the Property as well as the payment of liability insurance premiums for the Common Area and for the improvement and maintenance of such Common Area.

(D) Each Owner hereby agrees to be bound by the terms and conditions of all management agreements entered into by the Owner's Association. A copy of all such agreements shall be available to each Owner. Any and all management agreements entered into by the Owner's Association shall provide that said management agreements may be cancelled by an affirmative vote of the Owner's Association. In no event shall such management agreement be cancelled prior to the effecting by the Association or its Board of Directors of a new management agreement with a party or parties, which new management agreement will become operative immediately upon the cancellation of the preceding management agreement. It shall be the duty of the Owner's Association or its Board of Directors to effect a new management agreement prior to the expiration of any previous management agreement. Any and all management agreements shall be made with a responsible party or parties having experience adequate for the management of a project of this type.

Section 5.4 Voting. Each Tract Owner shall have the right to cast one (1) vote for each square foot of land owned by said Owner within the Property.

Section 5.5 Waiver. Each Owner hereby waives any right to recover against the Declarant for errors made in good faith by Declarant or for ordinary negligence of Declarant.

Section 5.6 Insurance. The Association shall provide and maintain commercial general liability insurance with broad form coverage endorsement (including broad form property damage endorsement) insuring the Association against claims for personal injury, bodily injury or death, and property damage or destruction occurring in, on or about the Common Areas. Such insurance shall be written with an insurer licensed to do business in New Mexico and all Owners of a Tract upon which a Building has been constructed shall be named on the policy as additional insureds. The limits of liability of such insurance shall be not less than \$1,000,000 for personal injury or bodily injury or death of any one person, \$1,000,000 for personal injury or bodily injury or death of more than one person in one occurrence and \$500,000 with respect to damage to or destruction of property; or in lieu of such coverage, a combined single limit (covering personal injury, bodily injury or death and property damage or destruction) with a limit of not less than \$1,000,000 per occurrence. The Association may increase the limits of such insurance as reasonably necessary to reflect then appropriate limits for such insurance.

ARTICLE VI MAINTENANCE/TAXES

Section 6.1 Maintenance Responsibilities for Common Area. The Owner's Association shall be responsible for maintaining, repairing and replacing Improvements located in the Common Area. Maintenance of the Common Areas includes, but is not limited to the following:

(A) Removing promptly all litter, trash, refuse and waste from improved and unimproved Tracts.

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- (B) Mowing of lawns no less often than when the grass is more than three (3) inches high.
- (C) Pruning of trees and shrubbery.
- (D) Watering and fertilizing.
- (E) Keeping exterior lighting, signs and mechanical facilities in working order.
- (F) Keeping lawn and landscaped areas alive, free of weeds and attractive.
- (G) Keeping parking areas, driveways and roads in good repair.
- (H) Resurfacing, resealing and restriping of parking and driveway areas.
- (I) Keeping all the irrigation and drainage systems in good repair and working order.
- (J) Maintaining all exterior Improvement surfaces in good condition.

Section 6.2 Maintenance Responsibilities for Building Exteriors. Owners shall have the duty and responsibility, at their sole cost and expense, to keep the exterior of their building in a safe, clean, attractive and well-maintained condition at all times.

Section 6.3 Maintenance of Unimproved Tracts. The Owner of any unimproved tract shall be responsible for maintaining its tract(s) in a safe and litter-free condition and shall keep the tract relatively weed free.

Section 6.4 Taxes and Assessments. The Owners shall pay prior to delinquency all taxes and assessments levied or assessed against their respective Tracts. The Owners shall each have the right to contest the amount or validity of all or any part of the taxes and assessments which said Owners are required to pay.

ARTICLE VII PROPERTY RIGHTS

Section 7.1 Owners' Easements of Enjoyment. Every Owner shall have a right of easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title of all portions of the Property, subject to the following:

- (A) All provisions of this Declaration and the plats of all or any part of the Property.
- (B) Restrictions filed separately in the records of Valencia County, New Mexico with respect to all or any part of the Property.

Section 7.2 Allowed Operations and Uses. With the exception of Parcel III, all of the Property is intended to be used for a mixed use office/commercial neighborhood center, including accessory or directly related services, in compliance with all ordinances of the Village of Los Lunas and the Design Standards. Parcel III may allow some residential use in conjunction with mixed use office/commercial.

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(A) The following uses are specifically prohibited within Los Lunas Riverfront Plaza:

- (1) Adult book or adult video store
- (2) Massage Parlor
- (3) Industrial uses
- (4) Theater
- (5) Bowling Alley
- (6) Skating Rink
- (7) Dance Hall
- (8) Billiard or Pool Hall
- (9) Video Arcade (with more than ten (10) electronic machines)
- (10) Pawn shops
- (11) Flea markets
- (12) The resale of used clothing
- (13) Tattoo and Piercing Parlors or any similar such use
- (14) Funeral Parlor or Mortuary
- (15) Churches, synagogues or any place of religious worship
- (16) Uses which cause or produce a nuisance to adjacent Tracts such as, but not limited to, vibration, sound, electro-mechanical disturbance, radiation, discharge of waste materials, electromagnetic disturbance, air or water pollution, dust pollution or the emission of odorous, toxic or non-toxic matter.

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Section 7.3 Other Easements.

(A) A non-exclusive landscaping easement is granted within the Common Areas to the Owner' Association, including the right to landscape, irrigate and maintain and replace surface and subsurface facilities related thereto.

(B) A non-exclusive access and parking easement for vehicles and bicycles is granted to the Owners, Occupants, Unit Owners and their agents and customers within the portions of the Common Areas on each Tract designated by the Owner and approved by the ARC as driveways and parking areas.

(C) A non-exclusive signage easement is granted within Parcel II located adjacent to New Mexico State Road 6 for purposes of placing a sign to identify the Los Lunas Riverfront Plaza and to allow maintenance of the sign and subsurface power for lighting the sign.

Section 7.4 No Partition. There shall be no judicial partition of the Common Areas, nor shall any Owner, Unit Owner or any other person acquiring any interest in the Property or any part thereof, seek judicial partition thereof.

**ARTICLE VIII
INDEMNIFICATION/INSURANCE/WAIVER OF SUBROGATION**

Section 8.1 Indemnification. Each Owner of property within Los Lunas Riverfront Plaza hereby agrees to indemnify and save the other Owners harmless from any and all liability, damage, expense, causes of action, suits, claims or judgments of third parties arising from

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personal injury, death or property damage and occurring on or from its Tract, including the Common Areas, except to the extent proximately caused, in whole or in part, by the act or omission of the party claiming indemnification hereunder, including its officers, employees or agents.

Section 8.2 Insurance.

(A) Each Owner shall provide and maintain commercial general liability insurance with broad form coverage endorsement (including broad form property damage endorsement) covering its obligations under this Article VIII and insuring it against claims for personal injury, bodily injury or death, and property damage or destruction. Such insurance shall be written with an insurer licensed to do business in New Mexico. The limits of liability of all such insurance shall be not less than \$1,000,000 for personal injury or bodily injury or death of any one person, \$1,000,000 for personal injury or bodily injury or death of more than one person in one occurrence and \$1,000,000 with respect to damage to or destruction of property; or, in lieu of such coverage, a combined single limit (covering personal injury, bodily injury or death and property damage or destruction) with a limit of not less than \$1,000,000 per occurrence. Each Owner shall furnish the Association with certificates evidencing such insurance. The policies of such insurance shall provide that the insurance represented by such certificates shall not be canceled, materially changed or nonrenewed without the giving of thirty (30) days' prior written notice to the insureds and to the holders of such certificates.

(B) At all times during the term of this Declaration, each Owner shall keep Improvements on its Tract insured against loss or damage by fire and other perils and events as may be insured against under the broad form of Uniform Extended Coverage Clause in effect from time to time in New Mexico, with such insurance to be for the full replacement value of the insured Improvements.

Section 8.3 Waiver of Subrogation. An Owner shall not be liable to another Owner or to any insurance company (by way of subrogation or otherwise) insuring the other Owner for any loss or damage to any Improvement or other tangible property, or any resulting loss of income and benefits, even though such loss or damage might have been occasioned by the negligence of such Owners, its agents or employees if any such loss or damage is covered by insurance benefiting the party suffering such loss or damage or was required to be covered by insurance pursuant to this Declaration. Each Owner and their successors and assigns shall require their respective insurance companies to include a standard waiver of subrogation provision in their respective policies.

ARTICLE IX RESTORATION OF LOS LUNAS RIVERFRONT PLAZA – CASUALTY OR EMINENT DOMAIN

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In the event all or any portion of any Building or the Improvements in Los Lunas Riverfront Plaza is damaged or destroyed by fire or other casualty, or is taken or damaged as a result of the exercise of the power of eminent domain, condemnation or any transfer in lieu thereof, the Owner shall promptly restore or cause to be restored: (i) the remaining portion of the Improvements in the Common Areas as nearly as practicable to the condition of the same immediately prior to such casualty or eminent domain, condemnation or transfer in lieu thereof,

and (ii) the remaining portion of such Building or, in lieu thereof, shall remove or cause to be removed the damaged portion of such Building together with all rubble and debris related thereto. All Building Sites on which Buildings are not reconstructed following a casualty or eminent domain condemnation or transfer in lieu thereof shall be graded or caused to be graded by the Owner to the level of the adjoining property and in such a manner as not to adversely affect the drainage of Los Lunas Riverfront Plaza or any portion thereof.

ARTICLE X DECLARANT'S RESERVED RIGHTS TO PROPERTY

Section 10.1 Extension of Covenant, and Restrictions to Include Additional Property. Declarant may at any time make other properties now or hereafter owned by Declarant subject to these Covenants and Restrictions by executing an instrument in writing applying these Covenants and Restrictions to such other properties and by recording the instrument in the public records of Valencia County, New Mexico.

Section 10.2 Public Road – Easements. Declarant reserves the right from time to time hereafter to delineate, plat, grant or reserve within portions of the Property not previously conveyed or hereby granted, such public streets, roads, sidewalks, ways and appurtenances thereto, and such easements for drainage and public utilities, as it may deem necessary or desirable for the development of Los Lunas Riverfront Plaza (and from time to time to change the location of the same) free and clear of these Covenants and Restrictions and to dedicate the same to public use or to grant the same to any governing municipal or regulatory authority, including any appropriate public utility corporations.

ARTICLE XI MISCELLANEOUS

Section 11.1 Term. This Declaration, every provision hereof, and every covenant, condition, restriction and reservation contained herein shall continue in full force and effect for a period of thirty (30) years from the recording hereof in the public records of Valencia County, New Mexico, and shall thereafter be renewed automatically for successive ten (10) year periods unless and until terminated as provided in Section 11.2.

Section 11.2 Termination and Modification. This Declaration, or any provision hereof, or any covenant, condition or standard contained herein, may be terminated, extended, modified or amended, as to the whole of the Property or any portion thereof, with the written consent of the Owners of seventy percent (70%) of the acreage of the Tracts owned by a person other than Declarant and subject to these Covenants and Restrictions; provided, however, that so long as the Declarant owns any portion of the Property, no such termination, extension, modification or amendment shall be effective without the written approval of Declarant. No such termination, extension, modification or amendment shall be effective until a proper instrument in writing has been executed and acknowledged and recorded in the public records of Valencia County, New Mexico. No such termination, extension, modification or amendment shall affect any Plans and Specifications or uses of the Property theretofore approved by the ARC or any Improvements theretofore or thereafter made pursuant to such approval unless such termination, extension, modification or amendment is approved by the Owner(s) of the Tract(s) so affected.

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Section 11.3 Assignment of Declarant's Rights and Duties. Any and all of the rights, powers and reservations of the Declarant herein contained may be assigned to any person or entity, which person or entity will assume the duties of the Declarant pertaining to the particular rights, powers and reservations assigned, and upon any such person or entity evidencing its consent in writing to accept such assignment and assume such duties, it shall, to the extent of such assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein. Declarant may from time to time delegate any or all of its rights, powers, discretion and duties hereunder to such agents as it may nominate. Declarant may also permanently assign any or all of its powers and duties (including discretionary powers and duties), obligations, rights, title, easements and estates reserved to it by this Declaration to any one or more persons or entities that will accept the same. Any such assignment shall be in writing and recorded in the public records of Valencia County, New Mexico and the assignee shall join therein for the purpose of evidencing its acceptance of the same. Such assignee shall thereupon have the same rights, title, powers, obligations, discretion and duties as are herein reserved to Declarant and the Declarant shall automatically be released from such responsibility.

Section 11.4 Mutuality and Reciprocity Runs With Land. All covenants, restrictions, conditions and agreements contained herein are made for the direct, mutual and reciprocal benefit of each and every Tract and other Property in favor of every other Tract and other Property, shall create reciprocal rights and obligations between all grantees of each Tract and other Property, their heirs, successors, personal representatives and assigns, and shall, as to said grantees, their heirs, successors, personal representatives and assigns, operate as covenants running with the land for the benefit of all other Tracts and other Property.

Section 11.5 Benefits and Burdens. The terms and provisions contained in this Declaration shall bind and inure to the benefit of the Owner, the future Owners of all Tracts described on Exhibit A, the grantees of the other Property, and the grantees of additional land made subject to this Declaration and their respective heirs, successors, personal representatives and assigns.

Section 11.6 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Common Areas to the general public or for the general public or for any public purpose whatsoever, it being the intention of the parties hereto that this Declaration shall be strictly limited to and for the purposes herein expressed. The right of the public or any person to make any use whatsoever of the Common Areas of a Tract, or any portion thereof (other than any use expressly allowed by a written or recorded map, agreement, deed or dedication) is by permission, and subject to the control of the Owner. Notwithstanding any other provisions herein to the contrary, Declarant and the future Owner(s) of the Tract(s) affected hereby may periodically restrict ingress and egress to and from the Common Areas in order to prevent a prescriptive easement from arising by reason of continued public use. Any restriction on ingress and egress shall be limited to the minimum period necessary to prevent the creation of a prescriptive easement and shall occur at such a time as to have a minimum effect on the Owners and Occupants, and to the extent it is done by Owners shall be approved by the ARC.

Section 11.7 Notices. Any notice required or permitted herein shall be in writing and mailed, postage prepaid by registered or certified mail, return receipt requested, and shall be

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directed as follows: If intended for an Owner: (A) to the address of the Tract, if improved; (B) if the Tract is not improved, to the address set forth in the purchase contract or purchase contract application; or (C) if none of the foregoing, to the last known address of the Owner; and if intended for Declarant, to the following address:

Los Lunas Riverfront, LLC
Attn: James Jaramillo
407 Rio Grande Blvd. NW
Albuquerque, NM 87104

Section 11.8 Singular and Plural. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine or feminine, as the context requires.

Section 11.9 Failure to Enforce Not a Waiver of Rights. Any waiver or failure to enforce any provision of these Covenants and Restrictions in a particular situation shall not be deemed a waiver or abandonment of such provision as it may apply in any other situation or to the same or a similar situation at any other location in Los Lunas Riverfront Plaza or of any other provision of this Declaration. The failure of any Owner or Unit Owner to enforce any provision of the Covenants and Restrictions shall in no event be deemed to be a waiver of the right to do so thereafter nor of the right to enforce any other provision of the Covenants and Restrictions.

Section 11.10 Condominium. This Declaration shall not be construed to limit or prevent one or more tracts or other Property and the Improvements thereon from being submitted to a plan of condominium ownership, and particularly the recordation of a plan of condominium ownership for any tract or other property shall not be construed as constituting a subdivision of the tract or other Property.

Section 11.11 Constructive Notice and Acceptance. Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property has and shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained herein.

Section 11.12 Severability. All of the conditions, covenants, restrictions and reservations contained in this Declaration shall be construed together, but if it shall at any time be held that any one of said conditions, covenants, restrictions or reservations, or any part thereof, is invalid, or for any reason becomes unenforceable, no other conditions, covenants, restrictions and reservations nor any part thereof shall be thereby affected or impaired.

Section 11.13 Captions. The captions, section numbers and article numbers appearing in this Declaration are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections or articles of the Protective covenants and Restrictions nor in any way modify or affect these Protective Covenants and Restrictions.

IN WITNESS WHEREOF, the Owner has executed this Declaration effective the date first hereinabove set forth.

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Los Lunas Riverfront, LLC
By: James A. Jaramillo Revocable Trust u/t/a
dated October 10, 2001, Member

By: [Signature]
James A. Jaramillo, Trustee

By: H+P Holdings, Inc. Member

By: [Signature]
Harold E. Prezzano, President

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ACKNOWLEDGEMENT

STATE OF NEW MEXICO)
COUNTY OF Valencia) ss.

The foregoing instrument was acknowledged before me on this 30th day of November, 2007, by James A. Jaramillo, Trustee of the James A. Jaramillo Revocable Trust u/t/a dated October 10, 2001, on behalf of said Trust

[Signature]
NOTARY PUBLIC

My commission expires:

June 27, 2011



OFFICIAL SEAL
BERNADETTE A. PADILLA
NOTARY PUBLIC-STATE OF NEW MEXICO
6-27-2011

ACKNOWLEDGEMENT

STATE OF NEW MEXICO)
COUNTY OF Valencia) ss.

The foregoing instrument was acknowledged before me on this 30th day of November, 2007, by Harold A. Prezzano, President of H+P Holdings, Inc., a New Mexico corporation, on behalf of said company.

[Signature]
NOTARY PUBLIC

My commission expires:

June 27, 2011



OFFICIAL SEAL
BERNADETTE A. PADILLA
NOTARY PUBLIC-STATE OF NEW MEXICO
6-27-2011

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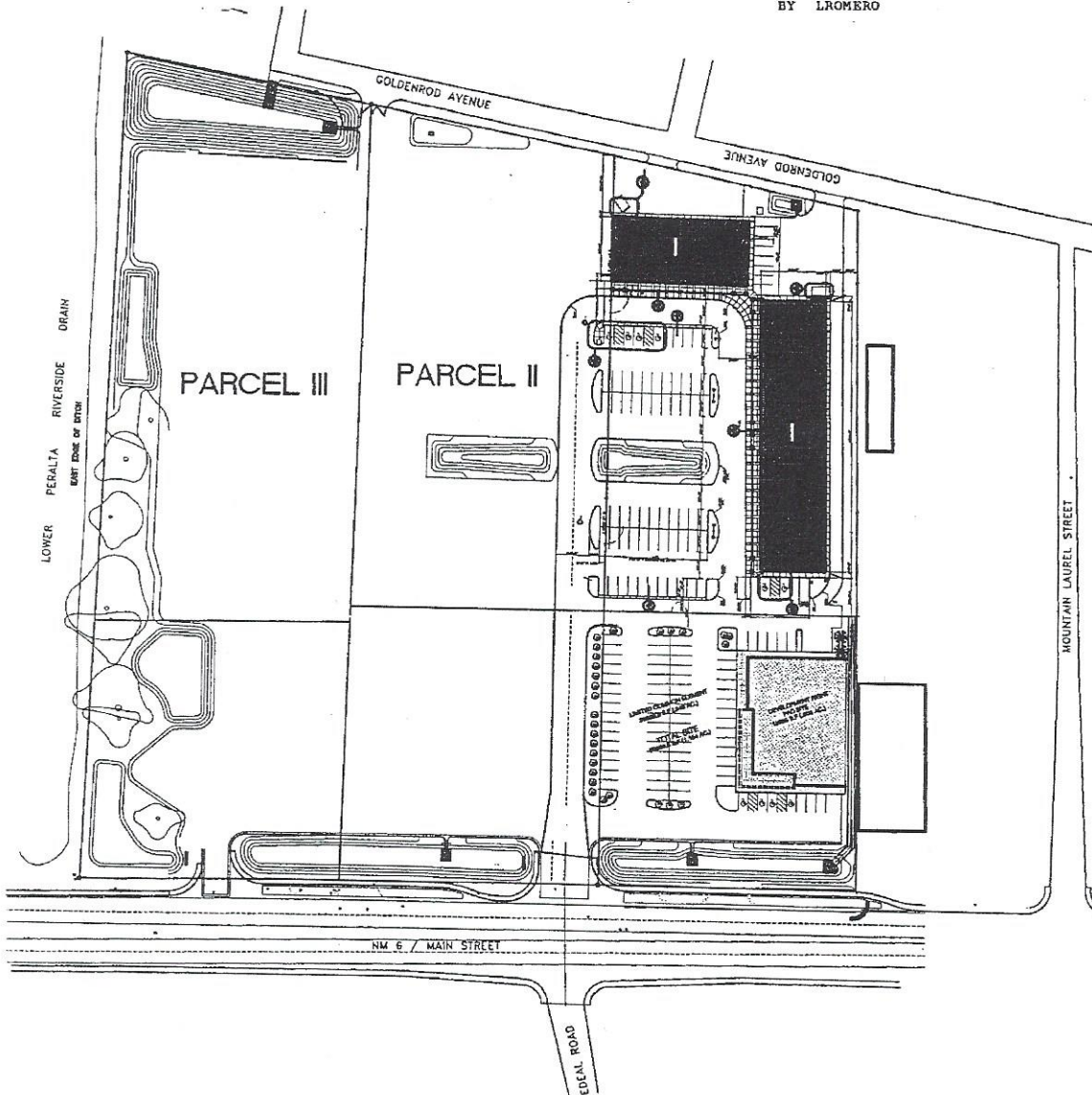


EXHIBIT A