

RESTATED BYLAWS OF

THE HIGHLAND LOFTS OWNERS ASSOCIATION, INC.

a New Mexico not for profit corporation, operating under the laws of the State of New Mexico.

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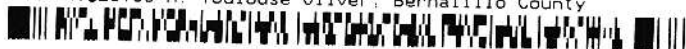


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**RESTATED BYLAWS
THE HIGHLAND LOFTS OWNERS ASSOCIATION, INC.**

NOW, THEREFORE, at the direction by affirmative vote of the Association Membership cast on November 11th, 2011, the Board of Directors hereby adopt the following restated bylaws:

**ARTICLE I
INTRODUCTION**

1.1 Name. The name of the corporation is The Highland Lofts Owners' Association.

1.2 Location. The Association shall have its principal business office at the location of its Management Company or if at any time it has not retained a Management Company at an address within the Development or a P.O. Box.

1.3 Corporate Status. The Association is a not for profit corporation which operates pursuant to the provisions of the Civil Code.

1.4 Definitions. All terms used in these Bylaws shall be defined as set forth in Article 1 of the Declaration of Easements, Covenants, Conditions & Restrictions.

**ARTICLE II
MEMBERSHIP & VOTING RIGHTS**

2.1 Membership. Each Person who is an Owner shall be a Member of the Association, subject to the provisions of the Governing Documents. As a Member, the Owner shall be entitled to exercise those rights as are described in the Governing Documents of the Association.

2.2 Membership Rights. The rights of membership including the right to vote are subject to suspension by the Board of Directors for (a) failure or refusal to pay any assessment payable by the Member during the period that such assessment remains unpaid for more than thirty (30) days; or (b) an infraction of, default in or breach of the Governing Documents or the rules and regulations of the Association by the Member or their Guests or Tenants.

2.3 Suspension of Other Membership Rights. Membership rights and privileges may be suspended for violations of the Governing Documents.

2.4 Membership List. The secretary of the Association, or the agent of the Association having charge of the membership records of the Association, shall make and certify a complete membership list of the Members entitled to vote at a membership meeting or any adjournment. The list shall be produced at the time and place of the membership meeting, be subject to inspection by any members during the whole time of the meeting, and be prima facie evidence of the members entitled to examine the list or vote at the meeting.

2.5 Membership Interest. For membership purposes, each Member shall be treated as a single legal entity regardless of the number or type of legal persons or entities with an Ownership interest in any particular Lot. Membership shall be appurtenant to and may not be separated from Ownership of any Lot. Ownership of a Lot shall be the sole qualification for membership.

2.6 Percentage Interest Schedule. Each Member shall be entitled to the following Voting Interests based on the original construction configuration as constructed in 2006:

<u>Lot #</u>	<u>Percentage Interest(s)</u>	<u>Voting Interest in Association</u>
Lot 21A (Vacant Lot)	0% - Zero Percent	* Shared Parking Owned by Association.
Lot 22 (336 Adams)	7% - Seven Percent	One (1)
Lot 23 (334 Adams)	7% - Seven Percent	One (1)
* Lots 22 & 23 are currently consolidated into a single parcel (Lot 23A).		
Lot 24 (332 Adams)	7% - Seven Percent	One (1)
Lot 25 (330 Adams)	11% - Eleven Percent	One and One-Half (1-1/2)

Lot 26	(328 Adams)	11% - Eleven Percent	One and One-Half (1-1/2)
Lot 27	(326 Adams)	7% - Seven Percent	One (1)
Lot 28	(324 Adams)	7% - Seven Percent	One (1)
Lot 29	(322 Adams)	11% - Eleven Percent	One and One-Half (1-1/2)
Lot 30	(320 Adams)	11% - Eleven Percent	One and One-Half (1-1/2)
Lot 31	(318 Adams)	7% - Seven Percent	One (1)
Lot 32	(316 Adams)	7% - Seven Percent	One (1)
Lot 33	(314 Adams)	7% - Seven Percent	One (1)

* Lots 32 & 33 are currently undergoing a consolidation into a single parcel.

2.7 Building / Lot Integration. In the case of Lot integration or separation, the combining or splitting of any configuration of Lots shall not alter the original voting interests or Assessments as defined by the Percentage Interest Schedule identified by the original building configuration as constructed in 2006. For assessment purposes, the original configuration of lots shall stand as the defining schedule of interests. Segregation or alterations of the original configuration of voting interests shall be allowed only by a vote or written consent of the entire membership wether in good standing or otherwise.

2.8 Eligibility to Vote. No Member shall be entitled to vote at any meeting of the Association until the Member has presented written evidence of Ownership of a Lot in the Project. Each Member shall have the voting rights provided in these Bylaws and any such vote may be cast in person or by proxy executed in writing and filed with the Secretary. In the event of a joint Ownership by more than one person, the vote to which the Lot is entitled shall be apportioned among the Owners as their interest may appear, or may be exercised by one of such joint Owners by the remainder of such joint Owners filing a voting certificate with the Secretary of the Association. Whenever a certificate designating a voting representative is permitted or required, such certificate shall, once filed, be valid until revoked.

2.9 Proxies. Votes may be cast in person or by proxy. Proxies may be made by any designated Voting Representative who is unable to attend the meeting in person and must be filed with the Association before the appointed time of the meeting. Proxies shall be valid only for the particular meeting designated or any adjournment of that meeting.

2.10 Termination of Membership. Membership in the Association shall automatically terminate when the Member no longer holds a fee title interest in his or her Unit.

ARTICLE III MEETINGS OF MEMBERS

3.1 Place of Membership Meetings. All meetings of the Owners shall be held at the Development, or, if a larger room is needed, at a location as close as reasonably possible to the Development.

3.2 Annual Meetings. The Association shall conduct at least one membership meeting annually to elect directors and conduct any other legitimate business which may be raised at the meeting. The annual meeting of the Association shall be held in November or December of each calendar year. The date, time, and place of the annual meeting shall be designated by the Board of Directors. The annual meeting shall be held for the purpose of electing directors and transacting any other business authorized to be transacted by the Members.

3.3 Special Meetings. Special meetings of the Members may be called at any time by the President or by the Board of Directors, or upon written request of any Member in good standing. The notice of special meetings shall state agenda items to be discussed, no business shall be transacted at a special meeting except as stated in the notice.

3.4 Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting. Such notice shall be written or printed, shall state the time and place of the meeting and the purpose for which the meeting is called, and shall be given not less than fourteen (14) days prior to the date set for such meeting. If presented personally, a receipt of such notice shall be signed by the Member, indicating the date on which such notice was received by him. If mailed, such notice shall be deemed to be properly given when deposited in the United States mail, postage prepaid, and addressed to the Member at the post

office address as the same appears on the records of the Association. Proof of such mailing may be given by the affidavit of the person giving the notice and filed in the Association's minute book. Notice may be given by facsimile or e-mail with proof of transmission by affidavit by the Secretary of the Association.

3.5 Quorum. A quorum at any meeting of the Association's Members shall consist of persons entitled to cast votes representing at least fifty-one percent (51%) of the eligible voting rights as determined in the manner set forth in these bylaws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or represented.

3.6 Order of Business. The order of business of all meetings of the Members shall be as follows:

- A. Roll Call;
- B. Proof of Notice of Meeting or Waiver of Notice;
- C. Reading and Approval of Minutes of Preceding Meeting;
- D. Reports of Directors;
- E. Reports of Committees (as applicable);
- F. Unfinished Business;
- G. New Business;
- H. Election of Directors/Officers (if applicable);
- I. Adjournment

3.7 Conduct of Meetings. The President shall preside over all meetings of the Members and the Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted at the meeting as well as a record of all transactions adopted at the meeting occurring thereat. The President may appoint a person to serve as parliamentarian at any meeting of the Association.

3.8 Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all of the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

3.9 Voting Rights. Unless an Owners voting rights have been suspended, he or she shall be entitled to vote in all Association elections. When a vote is taken to elect Directors, Owners may cast one vote for each open position to be filled but may not place more than one vote on any one candidate.

- a. **No Cumulative Voting.** Members shall not be allowed to use cumulative voting in any Association election.
- b. **Co-Owners.** Where there is more than one record Owner of a Unit, all Co-Owners shall be Members and may attend any meeting of the Association but only one shall exercise the vote to which the Unit is entitled.
- c. **Presumption of Consent.** Only one Co-Owner shall cast the vote allocable to his or her Unit. Unless the Board receives a written objection in advance from a Co-Owner, it shall be conclusively presumed that the Person who casts the vote is acting with the consent of his or her Co-Owners.
- d. **Suspension of Voting Rights.** Voting rights shall be automatically deemed suspended when an Owner is delinquent in the payment of any Assessments or fines to the Association, including late charges, interest and collection costs. Additionally, Members voting rights shall be suspended when found in violation of any of the Associations Governing Documents. The right to vote will remain suspended until the delinquency is fully cured.

3.10 Votes Taken Without a Meeting. Other than the election of Directors, any election which may be conducted at a meeting of Owners may be conducted without a meeting if the Association distributes a written ballot to every Owner entitled to vote on the matter. The ballot shall describe the proposed action, provide an opportunity to specify approval or disapproval of any proposal, and provide a reasonable time within which to return the ballot to the Association.

- a. **Valid Approval.** If, by the deadline specified in the notice, Owners constituting a quorum have returned their ballots, the measure will pass if it receives a majority of affirmative votes or such other percentage of affirmative votes that is required in these Bylaws.
- b. **Extension of Time.** If, by the time specified in the voting instructions for return of the ballots, the Association has received completed Ballots from less than 75% of the Members, the Board may, in its discretion, extend the balloting period for a time not to exceed 30 additional days to give more Owners an opportunity to vote.

4.12 Adjournment. The President, or a majority of a quorum of the directors, may direct that a meeting be adjourned to another date and time. Notice of the new meeting date must be given to Owners prior to rescheduled meeting. If at a second meeting of which proper notice was given the meeting does not contain a quorum, the meeting shall be considered valid and the Membership present shall be considered the quorum. Voting percentages shall be adjusted to consist of the Members present at the meeting.

3.12 Parliamentary Procedure. All questions of parliamentary procedure shall be decided in accordance with Roberts Rules of Order.

ARTICLE IV BOARD OF DIRECTORS

The business, property, and affairs of the Association shall be managed by a Board of Directors to be elected annually by the Membership of the Association.

4.1 Number of Directors. The Board shall consist of three Directors each of whom shall be a Member (in good standing) of the Association.

4.2 Qualification of Directors. No person may be a candidate for the Board if on the date nominations are due and/or at the time of the election he or she:

- a. **Percentage Ownership.** Does not own at least a 50% interest in a Unit (as shown in the public records) or in the entity that owns the Unit;
- b. **Delinquent.** Is delinquent by more than thirty (30) days in the payment of any Assessment levied by the Association or is otherwise not a Member in good standing;
- c. **Litigation.** Is engaged (or a guest, tenant or any other party in any way connected with the Owner is engaged) in litigation, arbitration, or mediation with the Association;
- d. **Co-Owners.** Is Co-Owner of a Unit (or multiple units) and the other Co-Owner intends to serve on the Board.

4.3 Disqualification of Directors. Once elected, the Director shall be deemed disqualified if he or she violates any of the foregoing provision or any of the following:

- a. **Non-Member.** Ceases to be a Member of the Association;
- b. **Missed Meetings.** If he or she is elected to the Board, misses more than two regular meetings of the Board within any twelve month period or two consecutive regular meetings of the Board;
- c. **Violation.** Is found to be in violation of the Governing Documents and fails to cure the violation within thirty calendar days after notification.

- d. **Confidentiality.** Is adjudged by a majority of the other Directors to have violated the confidentiality of information discussed or statements made at an executive session meeting;

4.4 Term of Office. Directors shall be elected at each Annual Meeting to hold office until the next Annual Meeting and until the director's successor is elected and qualified, or until the director's death, resignation, or removal.

4.5 Conduct of Elections. Election to the Board of Directors shall be by secret written ballot. At such election the Members or their proxies may cast as many votes as they are entitled to exercise under the provisions of these Bylaws. Ballots shall contain line items for write in candidates and shall contain no information regarding specifics to identify Member information. Candidates shall be identified verbally at the beginning of the election, the persons receiving the largest number of votes shall be elected. Votes shall be tallied by the current secretary and certified by the current board.

4.6 Record Date. The record date in connection with any election shall be the date upon which notice of the meeting/election together with the ballot is sent to the Owners. Only Members in good standing on that date may run for the Board, or vote in the election.

4.7 Resignation. Any Director may resign by giving written notice to the President or Secretary. Such resignation shall take effect on the date of receipt of the notice or at any later time specified in the notice. The acceptance of the resignation shall not be necessary to make it effective.

4.8 Removal for Cause. The Board shall declare vacant the office of a Director who (i) has been declared of unsound mind by a final order of court, (ii) becomes disqualified from serving under Section 5.3 above, (iii) is charged by authorities with commission of a felony; or (iv) is charged by authorities with the commission of a misdemeanor other than routine traffic violations.

4.9 Removal Without Cause. At a Special Meeting of the Owners, the entire Board or any individual Director may be removed from office if a majority of the total voting power of the Association votes in favor of the removal. In the event all Directors are so removed, the former Directors shall remain on the Board temporarily for the purpose of scheduling and overseeing a prompt election for the Owners to choose new Directors.

4.10 Directors Vacancies. A vacancy on the Directors may be filled with a person selected by a majority of the remaining directors of the Directors, even though there may be less than a quorum of the Board of Directors, and a person so elected shall be a director for a term of office from the date of Directors approval continuing until the next election of directors by the members. A vacancy of the Directors may also be filled at the next election of directors by the Members so long as any such vacancy does not preclude quorum by the Directors.

4.11 Compensation. No Director / Officer shall receive compensation from the Association for performing responsibilities as a Director / Officer.

4.12 Limitation of Liability. In the absence of gross negligence or willful misconduct, neither the Association, nor any officer, director, employee, committee member, Manager, or agent of the Association shall be liable for (a) any act or omission, (b) failure to provide any service or perform any duty or function designated herein to be performed, or (c) injury or damage to persons or property from any cause, including, without limitation, electricity, water, rain, dust or sand that may leak or flow from outside any Unit or Common Area. Without limiting the foregoing, in the event of any water damage originating from a condition in the Common Area the Association shall be required to repair the cause of the leak but in the absence of gross negligence or willful misconduct by the Association or its representatives the Owner shall be responsible for repairing any damage to their Unit and the furnishings, decorations, and personal property inside the Unit.

4.13 Indemnification. The Association shall indemnify, defend and hold harmless each officer, director, employee, committee member, and agent against all expenses, liabilities, judgments, claims, demands, attorneys' fees and costs reasonably incurred by such Person in connection with any proceeding to which they may be a party by reason of their representative relationship with the Association. No such obligations exist, however, where the Person is determined under the Corporations Code or any successor statute to have acted in bad faith in the performance of their duties or in the case of a criminal proceeding, to have had reasonable cause to believe their

conduct was unlawful. improvements to the Common Areas of from any action taken by the Association comply with any law, ordinance or with the order or directive of any municipal or other governmental authority.

ARTICLE V POWERS AND DUTIES OF THE BOARD OF DIRECTORS

The Directors shall have all powers and duties necessary for the administration of the affairs of the Association, and may take any action in support of this obligation of administration so long as such action is not prohibited by the Governing Documents or Law.

5.1 General Powers. The Association shall have all the powers of a not for profit corporation organized and operating pursuant to New Mexico Code. Without limiting the foregoing, the Association shall act in conformance with, and subject to the limitations contained in, the Governing Documents.

5.2 Specific Powers. In addition to powers identified in the Articles of Incorporation, the powers and duties of the Board of Directors shall include, by way of example, but shall not be limited to the following:

- a. **Levy Assessments.** The Association shall impose Regular and Special Assessments on the Members, to defray the cost of paying the budgeted gross annual expenses of the Association and any other legitimate expenses which the Board of Directors deems prudent in the management and operation of the Association or the Development;
- b. **Adopt Rules.** The Board of Directors shall have power to adopt, amend, delete or add Rules to these Bylaws as approved by a majority of a quorum of the Membership. Upon adoption, the provisions of the Rules will have the same force and effect as though set forth in these Bylaws;
- c. **Impose Sanctions.** The Association shall have the power to impose discipline in the form of sanctions, including fines and suspensions of privileges and rights, as described elsewhere in these Bylaws
- d. **Make or Settle Claims.** The Association shall have the right to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings, and to seek injunctive, equitable, declaratory, or monetary relief, in its own name as the real party in interest and without joining the Owners as described in the provisions of Civil Code;
- e. **Borrow Money.** The Association shall have the power to borrow money as may be needed in the discharge of its powers and duties as approved by a majority of a quorum of the Owners;
- f. **Right of Entry.** The Association shall have the right to enter any Unit or Common Area, in the presence of the Owner thereof where reasonably possible, for the purpose of
 - (i) maintaining, repairing or replacing those portions of the Development which are the Association's responsibility under the Governing Documents;
 - (ii) performing other maintenance, repairs or replacements which the Association is authorized to perform;
 - (iii) abating any actions or conditions which are a nuisance threatening the health or safety of others. Except in the case of an emergency, entry shall be preceded by at least 48 hours written notice to the Owner. No Person entering a Unit under the authority granted in this paragraph will be liable for trespass but the Association will promptly repair any damage it causes to the Unit except for damage that resulted from the Owner's failure or refusal to allow entry.
- d. **Enforce Governing Documents.** The Association shall have the power to enforce the Governing Documents by any means provided therein or under New Mexico law;

- e. **Contract for Goods and Services.** The Association shall have the power to contract for goods and services as reasonably required to protect, manage, and operate the Association and the Development including without limitation contracts for utility services for the Common Area, insurance, management services, accounting services, legal services, security services, maintenance and repairs, gardening and landscape services, supplies, and all other expenses reasonably required for the Association to perform its powers and duties under the Governing Documents. The length of any such contract shall not exceed one (1) year; provided, however, if the Board of Directors adopts a formal resolution stating that the best interests of the Association are served by entering into a contract for a longer period not to exceed a maximum length of three (3) years;
- f. **Pay Taxes.** The Association shall have the power to file tax returns and pay taxes levied against it by virtue of its corporate existence and its operations;
- g. **Own Property.** The Association may own real or personal property in its own name.
- h. **Corporate Standing.** The Association shall have the power to prepare and file documentation and pay such expenses as are required to maintain its corporate status in good standing;
- i. **Capital Expenditures.** The Board of Directors may make capital improvements to the Common Area provided that any expenditures which exceed an aggregate of 10% of the budgeted gross expenses of the Association for that fiscal year must be approved in advance by a majority of a quorum of the Owners. Notwithstanding the foregoing, the Association may use its reserves for any purpose for which those funds were earmarked without regard to the above limitations as allowed under New Mexico law.
- j. **Virtual Presence.** The Association shall have the rights to publish any information pertinent to the Association which include but shall not be limited to calendars, records, assessments, etc. on a publicly viewable website.
- k. **Miscellaneous.** The Association shall have the power to incur expenses, subject to the limitations in these Bylaws, to promote the health, safety, security, management, operations, and enhancement of the Development.

5.3 Maintenance. The Association shall have the duty to maintain the Common Area and Building Facade in good, clean and sanitary condition.

ARTICLE VI MEETINGS OF THE BOARD OF DIRECTORS

6.1 Directors Annual Meeting. An annual meeting of the Board of Directors shall be held within fourteen (14) days after the Annual Meeting of the Membership. This meeting shall be held with the previous years Directors and the Newly appointed Directors as a "passing of the torch" meeting. This previous years Directors shall provide a recap of the details regarding the past year(s) operating situations in order to bring the incoming Directors up to speed with their New appointment.

6.2 Regular Meetings. Regular meetings of the Board of Directors shall be held at such time and place as is provided by appropriate resolution of the Board of Directors.

6.3 Special Meetings. Special meetings of the Board of Directors shall be held when called by a Member of the Association or by any Director.

6.4 Notice of Meetings. Notice of regular or special meetings of the Directors shall be given to each Director, personally, by mail, facsimile, telephone or telegram at least three days prior to the day named for such meeting, which notice shall state the time and place of the meeting and, as to special meetings, the purpose of the meeting, unless such notice is waived. Notice may be waived in writing by any Directors Member, except in an emergency.

6.5 Board Minutes. The Board of Directors shall keep a written record of the minutes from any meeting, proceeding or other action taken to fulfill the obligations of the Associations Governing Documents or Law. The Board of Directors shall keep any other records related to the administration of the affairs of the Association. The Board of Directors may delegate this responsibility to a Managing Agent.

6.6 Quorum. A majority of the directors then in office constitutes a quorum for the transaction of any business at any meeting of the Directors. Actions voted on by a majority of directors present at a meeting where a quorum is present shall constitute authorized actions of the Directors.

6.7 Consent to Directors Action. Any action required or permitted to be taken pursuant to authorization of the Directors may be taken without a meeting if, before or after the action, all directors consent to the action in writing. Written consents shall be filed with the minutes of the proceeding of the Directors.

6.8 Member Access to Director Meetings. All meetings of the Directors shall be open to all Members except for meetings between the Directors and its attorney with respect to proposed or pending litigation where the contents of the meeting would be governed by the attorney-client privilege.

ARTICLE VII OFFICERS

7.1 Officers. The Officers of the Association shall be the Board of Directors. The Board of Directors shall be elected to the Board of Directors and Officer positions at the annual meeting of the Members. Officer positions shall consist of a President, a Secretary, and a Treasurer.

- a. President.** The president shall be the chief Executive Officer of the Association and shall have authority over the general control and management of the business and affairs of the Association. The president shall have the power to appoint or discharge employees, agents, or independent contractors, to determine their duties, and to fix their compensation. The president shall sign all Association documents and agreements on behalf of the Association, unless the president or the Board of Directors instructs that the signing be done with or by some other officer, agent, or employee. The president shall see that all actions taken by the Board of Directors are executed and shall perform all other duties incident to the office.
- b. Secretary.** The Secretary shall (a) keep minutes of Directors meetings; (b) be responsible for providing notice to each Member as required by law, these Bylaws or any other Association Document; (c) be the custodian of corporate records; (d) keep a register of the names and addresses of each Member, officer and director; and (e) perform all duties incident to the office and other duties assigned by the president or the Board of Directors.
- c. Treasurer.** The Treasurer shall (a) have charge and custody over corporate funds and securities; (b) keep accurate books and records of corporate receipts and disbursements; (c) deposit all moneys and securities received by the corporation at such depositories in the corporation's name that may be designated by the Directors; (d) complete all required corporate filings; and (e) perform all duties incident to the office and other duties assigned by the president or the Board of Directors.
- d.** other duties assigned by the president or the Board of Directors.

ARTICLE VIII FISCAL MANAGEMENT

The Association has a duty to receive, protect, and account for Assessments paid by the Membership, and other sums collected, in a prudent, responsible manner. In meeting this duty the Board of Directors shall be responsible for the following:

8.1 Fiscal Year. The fiscal year of the Association shall commence January 1st of each year and end on December 31st, unless and until a different fiscal year is adopted by the Board.

8.2 Books of Account. The Board of Directors (or its Managing Agent) shall keep books and records containing a detailed account of the Expenses and Receipts of Administration, which will specify the maintenance and repair expenses of the Common Areas and any other expenses incurred by or on behalf of the Association and its members. Such accounts shall be open for inspection by the Members and their mortgagees.

8.3 Review of Accounts. The Board of Directors shall do the following not less frequently than quarterly:

- a. **Operating Accounts.** Cause a current reconciliation of the Association's Operating Accounts to be made and review the same.
- b. **Reserve Accounts.** Cause a current reconciliation of the Association's Reserve Accounts to be made and review the same.
- c. **Actual to Budget.** Review the current year's actual revenues and expenses compared to the current year's budget for the Association's Operating and Reserve Accounts.
- d. **Bank Statements.** Review the most current bank statements prepared by the financial institution where the Association has its Operating and Reserve Accounts.
- e. **Income and Expense Statements.** Review an income and expense statement for the Association's Operating and Reserve Accounts.

8.4 Annual Review. The Board of Directors shall cause to be conducted, on an annual basis, an audit or review of the financial statement of the Association in accordance with generally accepted accounting principles, by a licensee of the State Board of Directors of Accountancy. A copy of the audit or review shall be distributed to the Owners within 120 days after the close of each fiscal year. In lieu of distributing the audit, the Board of Directors may elect to provide a summary thereof available on the Association's website. The cost of such an annual review or audit shall be an Expense of Administration.

8.5 Reserve Study. At least once every three (3) years, the Board of Directors shall cause a study of the Reserve account to be performed. The study shall account for a full assessment of maintenance, repairs or replacement expectations for the Association's scope of responsibility over a 10 year period.

8.6 Financial Records and Statements. The Board of Directors or its Managing Agent shall prepare and distribute a financial statement to each Member at the annual meeting, the contents of which shall be defined by the Association. The books and records shall be reviewed annually and audited at such times as required by the Board of Directors by qualified independent accountants who need not be certified public accountants.

8.7 Corporate Document Procedure. All corporate documents (including stocks, bonds, agreements, insurance and annuity contracts, qualified and non-qualified deferred compensation plans, checks, notes, disbursements, loans, and other debt obligations) shall not be signed by any Director, designated Agent, or Attorney-In-Fact unless authorized by the Board of Directors or by these Bylaws.

8.8 Loans. No loans shall be obtained on behalf of the Association and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Membership. The Directors may authorize the pledge and assignment of any regular or special assessments and the lien rights of the Association as security for the repayment of such loans.

8.9 Signatures. All checks, drafts, or other orders for payment of money, notes, or other evidences of indebtedness issued in the name of the Association shall be signed by such Director / Officer, or Officer's Agent or Agents, of the Association and in such manner as shall from time to time be determined by resolution of the Board of Directors.

8.10 Disbursement of Funds. All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness issued in the name of or payable by the Association greater than \$500.00 shall be signed by two Officers. Ordinarily the treasurer should be one signators.

8.11 Accounts. All sums received by the Association from Assessments, shall be promptly deposited into an FDIC insured checking or savings account in a financial institution selected by the Board of Directors, which account shall be clearly designated in the Association's name as the "Operating Account"(Checking Account) or "Reserves" (Savings Account) of the Association.

- a. **Exclusive Control.** The Board of Directors shall have exclusive control of the account and shall keep accurate records thereof. All checks written in the name of the Association equal to or greater than five-hundred dollars (\$500.00) shall be signed by two officers.
- b. **Commingling.** The Association shall maintain separate accounts for its Operating funds and its Reserves, and no funds from those separate accounts shall be commingled at any time, with exception of temporary transfer of money from a Reserve fund to the general Operating Account to meet short term cash flow requirements or other expenses.
- c. **Interest.** No Owner shall have the right to receive interest on any such funds deposited.
- d. **No Reimbursement.** All dues paid toward Assessments are to the benefit of the Association and not to the benefit of any Member or individual. As such, dues are non-refundable to Owners when such Owners cease to be Members of the Association.

8.12 Expenses of Administration. All costs incurred by the Association in satisfaction of any liability arising within, caused by, or connected with the Common Areas, Building Facade or the administration of the Development shall be expenses of administration (the "Expenses of Administration"). The Expenses of Administration shall consist, among other things, of such amounts as the Directors may deem proper for the operation and maintenance of the Common Area and Building Facade under the powers and duties delegated to it and may include, without limitation, amounts to be set aside for working capital of the Association, for a general operating reserve, for a reserve for replacement, and for meeting any deficit in the for any prior year; provided, that any reserves established by the Directors prior to the initial meeting of Members shall be subject to approval by such Members at the initial meeting.

8.13 Receipts of Administration. All sums received as proceeds of, or pursuant to any policy of insurance covering the interests of the Members against liabilities or losses arising within, caused by, or connected with the Common Areas or the administration of such Common Areas shall be receipts of administration (the "Receipts of Administration").

ARTICLE IX ASSESSMENTS

The purpose of Assessments is to fund the Association so it may perform those rights and duties as are prescribed in the Governing Documents. Assessments shall be calculated, levied, and collected by the Association in the manner described below in this Article:

9.1 Annual Operating Budget. The Association shall prepare each year a pro forma operating budget which shall contain estimates of the cost of performing the functions of the Association. The budget shall be distributed at the annual meeting of the membership and a copy of the budget shall be made available on the Association website, accessible for review by all Owners. The annual budget shall be presented and adopted by the Membership annually.

9.2 Regular Assessments. Each Owner shall pay "dues" to the Association on a monthly basis. These "dues", known as Regular Assessments, shall be levied by the Board of Directors each year to pay the anticipated operating expenses reflected in the annual operating budget.

- a. **Assessment Schedule.** All Regular Assessments shall be divided among and paid by each Owner based on the percentage interest schedule provided in the Percentage Interest Schedule.
- b. **Payable Monthly.** The Regular Assessment shall be payable by all Owners in twelve equal monthly installments. Each such payment is due on the first day of the calendar month and will automatically be deemed delinquent if not received by the Association by the 15th day of the calendar month. No portion of any Assessment is refundable if a person ceases to be a Member in the middle of a month.
- c. **Modification of Assessment.** The Board of Directors may propose a modification to the Regular Assessment during the course of the fiscal year if necessary to conform to a revised estimate of costs and expenses. Any proposed modification to the Regular Assessments shall be presented by special meeting to the Membership for approval.

9.3 Special Assessment to Individual Owner. The Board of Directors may levy against any individual Owner a Special Assessment for the following purposes:

- a. **Owner Damage.** Reimbursement for expenses incurred by the Association for damage caused to the Common Area or Building Envelope by the Owner or their Residents and Guests.
- b. **Unit Repairs.** Reimbursement of expenses incurred by the Association for repairs made to the Owner's Unit as permitted in these Bylaws or the Governing Documents.
- c. **Noncompliance.** As a fine for noncompliance as described herein, or for reimbursement of legal fees and other expenses incurred in bringing an Owner into compliance with the Governing Documents, whether or not a lawsuit is filed.
- d. **Written Notice.** A Special Assessment under this section shall be made by written notice to such Owner who shall have thirty (30) days, or longer as directed by the Board of Directors, to pay the Assessment.

9.4 Emergency Assessments. Notwithstanding any other provision of this Article, the Board of Directors may, in emergency situations, impose a Regular or Special Assessment in an emergency situation defined as any one of the following:

- a. **Order of Court.** An expense required by an order of a court of competent jurisdiction.
- b. **Threat to Personal Safety.** An extraordinary expense necessary to repair or maintain the Development or any part of it for which the Association is responsible where a threat to personal safety in the Development is discovered.
- c. **Unforeseen Expenses.** An extraordinary expense necessary to repair or maintain the Development or any part of it for which the Association is responsible and could not have been reasonably foreseen by the Board of Directors in preparing and distributing the pro-forma operating budget. However, prior to imposition or collection of an Assessment under this subsection, the Board of Directors shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Membership with the notice of Assessment.

9.5 Reserves. All sums collected by the Association as part of the Regular Assessments which are budgeted to fund Reserves for anticipated long-term maintenance, repair and replacement of major components of the Common Area or Building Facade. The reserve fund shall be maintained at a level that is deemed appropriate to meet the 3 year reserve review as performed by the Board. The minimum reserve standard required by this section may prove to fluctuate, and the Directors should carefully analyze the affairs and requirements of the development from time to time in order to determine if a greater amount should be set aside or if additional reserve funds shall be established for other purposes.

- a. **Segregated.** Be received in trust by the Board of Directors and not commingled with the Association's Operating Account.
- b. **Invested.** Be invested with prudence and in accordance with fiduciary obligations owed to the Association in accounts or other instruments which are FDIC insured or backed by the full faith and credit of the United States government.
- c. **Two Signatures.** Be withdrawn from the Reserve account only upon the signature of two officers who should be the President and Treasurer unless they are unavailable. Ordinarily the treasurer should be one signators.
- d. **Temporary Transfers.** The Board of Directors may authorize the temporary transfer of money from a Reserve fund to the general Operating Account to meet short term cash flow requirements or other expenses.

9.6 Delinquencies. Any Assessment made in accordance with these Bylaws shall be the separate debt of the Owner against whom it is levied. Unpaid Regular Assessments shall be deemed delinquent if not received by the fifteenth day of the calendar month. In the event an Owner defaults in the payment of an Assessment, the following consequences shall or may occur:

- a. **Late Charge.** Delinquent Assessments shall be assessed a one time late charge of \$25.00.
- b. **Interest.** Delinquent Assessments and all late charges and collection costs shall bear interest at a rate of 18% annually (1.5% monthly assessed at the end of each month an account is delinquent.) or the maximum rate permitted by Law. Interest shall commence thirty days after the Assessment becomes due.
- c. **Acceleration.** At the Board of Directors's election the total Regular Assessment due to be paid by the delinquent Owner during that fiscal year may be accelerated in which case the total annual Regular Assessment will be due and payable immediately by that Owner.
- d. **Assignment of Rents.** Any delinquent Owner who is receiving rent for their Unit will be deemed to have assigned to the Association all of the rents and other income which may become due from the lease or rental to pay the past due Assessments including the late charges and interest. Upon notice from the Association to the tenant with a copy to the Owner, the tenant shall pay to the Association, rather than to the Owner, all rent and other income until such time as the delinquent sums are paid in full.

9.7 Liability for Assessments. Each Owner shall be personally liable for any Assessments levied against them under these Bylaws together with any late charges, interest, costs and attorneys' fees as may be authorized. In a conveyance of a Unit by an Owner, the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments, late charges, interest, costs and attorneys' fees.

9.8 Assessment Notice. Notice of the annual assessment levied against each Lot, together with a copy of the annual budget as prepared by the Board of Directors, shall be presented to each Member at the annual meeting. The annual assessment shall be payable on the first of the month beginning January 1st and shall be deemed late per the guidelines set forth in these Bylaws.

9.9 No Offsets. No offsets shall be permitted against any Assessments levied pursuant to these Bylaws, for any reason, including without limitation:

- (i) a claim that the Association is not properly exercising its duties and powers;
- (ii) a Member has made or elects to make no use of the Common Area;

- (iii) any construction or maintenance for which the Association is responsible has not been performed;
- (iv) any construction or maintenance for which the Association is responsible has not been performed to a Member's satisfaction.

9.9 No Waiver of Use. No Owner of a Unit may exempt themselves from liability for Assessments duly levied by the Association, nor release the Unit owned by the party from the liens and charges thereof, by waiver of the use and enjoyment of the Common Area or by abandonment of their Unit.

ARTICLE X ENFORCEMENT OF ASSESSMENTS

As described elsewhere in the Bylaws, the Association has a duty to collect Assessments from each Owner according to the procedures described in the Governing Documents. When an Owner fails or refuses to pay their Assessments, the Association may exercise the powers described below in this Article in order to collect the delinquent sums:

10.1 Enforcement of Assessments. The Association may collect delinquent Assessments by any of the following means:

- (i) Collections efforts via an Attorney's services or a collection service;
- (ii) lawsuit against the Owner;
- (iii) establishing a lien against the Owner's Unit and foreclosing the lien through judicial or nonjudicial proceedings. The filing of a suit and obtaining judgment thereon does not waive the Association's right to record a lien against the Unit for the delinquent Assessment.

10.2 Assessment Becomes Lien. A delinquent Assessment, together with the related late charges, interest, costs, and attorneys' fees shall become a lien on the Unit upon the recordation of a "Notice of Delinquent Assessment" in the Office of the County Recorder. The lien shall be recorded in compliance with the New Mexico Civil Code.

10.3 Foreclosure. If the Association elects to enforce a delinquent assessment by foreclosure on a lien, as described above, it shall proceed with the foreclosure per the provisions of Civil Code.

10.4 Additional Remedies. The remedies specified in this Article shall be in addition to any other rights and remedies which the Association may have by law or in the Governing Documents.

ARTICLE XI ENFORCEMENT OF GOVERNING DOCUMENTS

The Association and all Owners are legally required to adhere to the provisions of the Governing Documents. In the event of noncompliance the following rights and procedures shall apply.

11.1 Standing to Enforce. Enforcement of the Governing Documents may be accomplished by the means described below in this Article or by any proceeding at Law or in equity against the Person who has committed or is attempting to commit a violation. The only Persons who shall have standing in any judicial proceeding to enforce the Governing Documents are:

- a. **The Association.** The Board of Directors or any Person duly authorized by the Board of Directors, or
- b. **The Membership.** Any Owner or group of Owners.

11.2 Discretion to Take Action. The Association is not obligated to impose sanctions or file a lawsuit for any infraction(s) of the Governing Documents. Whether to impose sanctions or commence litigation are decisions left to

the sound discretion of the Board of Directors unless noted otherwise by the Membership. If, for example, the Board of Directors believes a dispute is isolated to two Owners, and does not materially impact other Owners/Tenants or the Common Areas, the Board of Directors may decline to impose sanctions or take any other action and may leave resolution of the dispute to the Owners directly involved.

11.3 Fines. The Board of Directors is authorized to assess fines against any Owner who violates the Governing Documents, or if there is a violation by their Tenants or Guests. In the case of ongoing violations, a fine may be imposed on a daily basis. The Board of Directors shall adopt a fine schedule as allowed by Civil Code and authorized by the Membership. No fine may exceed \$25 per incident, or, in the case of continuing violations, \$10 per day.

11.4 Hearing Procedures. Except as described below, before any fine or suspension is imposed by the Board of Directors, it shall conduct a hearing and notify the Owner of their right to attend the hearing. The hearing will be conducted as follows:

- a. **Executive Session.** The Board of Directors shall convene a hearing in executive session to consider whether to impose discipline against the Owner.
- b. **Notice.** Notice of the date, time and location of the hearing must be given to the Owner in writing by personal delivery, email, facsimile, or first class mail, not later than 10 calendar days prior to the date of the hearing. Owner shall have the right to re-schedule the hearing upon written request. The Board of Directors will make every effort to schedule a hearing to meet an acceptable schedule of all involved.
- c. **Right to Be Heard.** At the hearing, the Owner has a right to be heard orally and/or in writing. They may be accompanied by an attorney or other representative but there is no duty to meet with such person unless the Owner is also present. If the Owner fails for any reason to attend a hearing without notice, the Board of Directors may convene the hearing anyway and decide the matter based on the information and documentation available to it.
- d. **Decision of Board of Directors.** After the hearing the Owner will be excused and the Board of Directors will deliberate in executive session to determine whether a violation has occurred and if so what sanctions to impose.
- e. **Notice of Decision.** Within fifteen days after conclusion of the hearing, the Board of Directors shall notify the Owner in writing of its decision and the grounds for the decision.
- f. **Exception for Delinquencies.** The requirement that a hearing be held does not apply in the following instances:
 - (i) when the breach is in the form of a failure to pay Assessments;
 - (ii) when the breach is in the form of a failure to reimburse the Association, as required in these Bylaws, for out-of-pocket costs it incurred performing acts which should have been performed by the Owner at their expense.

11.5 Fines Constitute Assessment. Unless prohibited by law, any fine imposed pursuant to the governing documents shall constitute a Special Assessment against the Owner and shall be enforceable by any means available under these Bylaws or as prescribed by Civil Code.

11.6 Cumulative Remedies. The exercise by the Association of the rights and remedies specified in these Bylaws shall be non-exclusive and shall not limit the right to resort to any other remedy available under New Mexico law.

11.7 Failure Not A Waiver. Failure by the Board of Directors or any Owner to enforce the Governing Documents shall not be deemed a waiver of the right of such party to do so in the future for the same or a different violation.

11.9 Dispute Resolution. In the event a dispute arises which is related to the Governing Documents or the management and operation of the Development, if invoked by one side or the other the parties shall comply with the internal dispute resolution procedures contained in Civil Code.

11.11 Attorneys' Fees and Costs. In any legal proceeding or arbitration arising from or related to the Governing Documents or the management and operation of the Development, the prevailing party shall recover his, her, or its reasonable attorneys' fees and costs.

ARTICLE XII INSPECTION OF RECORDS

12.1 Document Retention. The Secretary shall keep in his or her office a list containing all names, mailing addresses and telephone numbers of the Membership, minutes of the meetings of the Board, minutes of meetings of the Owners, and financial records and books of account of the Association. The financial records will include a chronological listing of all receipts and expenditures of funds, as well as a separate account for each Assessment levied or charged against each Unit or the Owner thereof, the dates when so assessed and when the same is due, the amounts paid thereon, and the balance, if any, of any Assessment remaining unpaid.

12.2 Inspection of Records. Members shall have the right to inspect records of the Association. Such accounts shall be open for inspection by the Members and their mortgagees.

12.3 Limitations. Owners shall have the right to inspect any records not deemed protected by Attorney Client privilege or otherwise deemed inappropriate by NM Civil Code.

12.4 Procedure for Copying. Any Owner may, at his expense, upon giving written notice to the Board as required by law, copy the records specified above which he has a right to inspect. The written notice shall specify the purpose for which the Owner seeks to copy the records. Notwithstanding the foregoing, the Association shall provide a copy of the membership list upon not less than ten business days written request by the Owner provided he or she specifies in writing the purpose for which he seeks a copy and tenders payment to the Association for the list in a reasonable sum specified by the Board.

12.6 Prospective Purchaser's Right to Inspect. The Association shall provide to prospective purchasers only such documentation and information that is required by Law.

ARTICLE XIII ADDITIONAL PROVISIONS

13.1 Singular Includes Plural. As used in these Bylaws the singular shall include the plural, the masculine shall include the feminine, and vice versa.

13.2 Proof of Membership. No Person shall exercise the rights of membership in the Association until satisfactory proof thereof has been furnished to the Secretary. Such proof must consist of a copy of a duly recorded deed identifying the Person as the fee title owner of the Unit which shall be deemed conclusive as to ownership.

13.3 Governing Law. In the event of any dispute related to the Project or the Association Documents, such dispute shall be governed by the laws of the State of New Mexico.

13.4 Severability. In the event that any of the terms, provisions, or covenants of these Bylaws or of any Association Document are held to be partially or wholly invalid or unenforceable for any reason whatsoever, such holding shall not affect, alter, modify, or impair any of the other terms, provisions, or covenants of such documents or the remaining portions of any terms, provisions, or covenants held to be partially invalid or unenforceable.

13.5 Conflicting Provisions. In the event of a conflict between the Bylaws or other laws of the State of New Mexico and any Association Document, the Bylaws or other laws of the State of New Mexico shall govern. In the event of a conflict between the provisions of any one or more of the Association Documents themselves, the following order of priority shall be applied, and the provisions of the document having the highest priority shall govern; (a) The Articles of Incorporation; (b) these Bylaws; (c) the Declaration of Easements with Covenants and Restrictions.

13.6 Amendments. These Bylaws may be modified, amended or repealed, and new provisions may be adopted, only by the vote or written consent of two-thirds (2/3) majority of the total voting power of the association. Any amendment or restatement adopted under this Article shall be recorded in the office of the Bernalillo County Recorder and shall be effective upon recordation.

13.7 Confirmation of Approval. A certificate signed and sworn to by two (2) Board of Directors of the Association that the requisite number of Owners have either voted or consented in writing to any amendment, when recorded, shall be conclusive evidence of such fact.

13.8 Failure to Enforce. The failure of the Association or of any Member to enforce any right, provision, covenant or condition which may be granted by the Association documents shall not constitute a waiver of the right of the Association or of any such Member to enforce such right, provisions, covenant or condition in the future.

13.9 Rights Cumulative. All rights, remedies and privileges granted to the Association or any co-owner or co-owners pursuant to any terms, provisions, covenants or conditions of the aforesaid condominium documents shall be deemed to be cumulative and the exercise of any one or more shall not be deemed to constitute in election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be available to such party at law or in equity.

Adoption of Bylaws

IN WITNESS WHEREOF, these Bylaws have been duly approved and adopted by the Board of Directors of the Association on December 5th, 2012.

By: [Signature]
Devin Cannady, President

12/12/12
Date

By: [Signature]
Jean-Paul de Jager, Secretary

12/12/12
Date

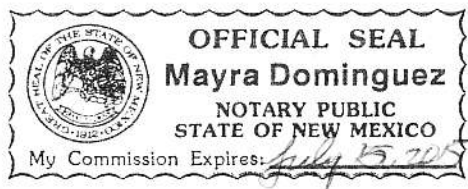
By: [Signature]
Onesimo Vigil, Treasurer

12/12/12
Date

Verification

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

Subscribed and sworn to before me this 12th day of December, 2012.



[Signature]
Notary Public

AMENDED AND RESTATED
DECLARATION OF EASEMENTS, COVENANTS,
CONDITIONS & RESTRICTIONS

THE HIGHLAND LOFTS OWNERS ASSOCIATION, INC.

a New Mexico not for profit corporation, operating under the laws of the State of New Mexico.

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DEC R:\$25.00 M. Toulouse Oliver, Bernalillo County



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RESTATED DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS & RESTRICTIONS

THE HIGHLAND LOFTS OWNERS ASSOCIATION, INC.

a New Mexico not for profit corporation, operating under the laws of the State of New Mexico.

PREAMBLE

The Association of Members and all present or future members, tenants, future tenants, or any other persons acquiring an interest in or using the facilities of the project in any manner are subject to and shall comply with the these By-Laws, the Articles of Incorporation of the Association, the Declaration of Easements with Covenants and Restrictions and any other the Rules and Regulations adopted by the Association. The mere acquisition, occupancy or rental or any unit or an interest therein or the utilization of or entry upon the Association premises shall signify that the Association documents are accepted and ratified. Failure of the Association to enforce any right, provision, covenant or conditions shall not constitute a waiver of the right of the Association to force such right, provision, covenant or condition in the future.

A. The Association is comprised of all Persons who own Lots / Units at that certain common interest development known as "The Highland Lofts", which is more particularly described as:

Lots numbered Nineteen (19) through Thirty-three (33), Block 11, of the Valley View Addition to the City of Albuquerque, New Mexico, as the same are shown and designated on the map of said Addition filed in the office of the County Clerk of Bernalillo County, New Mexico.

B. The Association intends by this Declaration to revoke the document entitled Bylaws of The Highland Lofts Owners Association, Inc. recorded in 2005 and the Declaration of Easements with Covenants and Restrictions Affecting Land for The Highland Lofts ("ECR") recorded on May 23, 2006, as Instrument No. 2006074783 in the office of the Bernalillo County Recorder.

C. The Association is a New Mexico not for profit corporation formed to manage a common interest development within the meaning of the New Mexico Nonprofit Corporation Act (53-8-1 to 53-8-99 NMSA 1978); and

D. This Declaration is intended to:

- (i) Be for the benefit and protection of the Development and each Unit;
- (ii) Be for the benefit of all Owners;
- (iii) Run with the land and be binding upon all Persons having or acquiring any right, title or interest in any Unit or in the Development; and
- (iv) Run with the land and be binding upon any Tenant, Guest or other Person entering the Development at any time for any reason.

NOW, THEREFORE, at the direction by affirmative vote of the Association Membership cast on November 11th, 2011, the Board of Directors hereby adopt the following restated easements, covenants, conditions and restrictions.

SECTION 1 DEFINITIONS

1.1 "Articles" shall mean the Articles of Incorporation of the Association originally filed with the Public Regulation Commission on May 11, 2006, or as officially amended.

1.2 "Assessment" shall mean any charge levied against a Unit in accordance with the Governing Documents or as permitted in the provisions of NM Civil Code.

1.3 "Association" shall mean the Highland Lofts Owners' Association, a not for profit corporation.

1.4 "Balcony" shall mean the balcony, deck, or patio adjacent to a Unit which is for the exclusive use of the Owner of that Unit.

1.5 "Board of Directors" shall mean the Board of Directors of the Association whose Members are elected by the Owners.

1.6 "Building" shall mean the structure consisting of 12 fee simple units configured as a shared wall development herein titled as "The Highland Lofts" independently owned by the Association Membership.

1.7 "Building Facade" shall mean elements of the building that make up the perimeter finishes or elements of the building. Exterior finishes of the building consisting of stucco, window frames, metal trim, and facade paint.

1.8 "2006 Construction Standards" shall mean the conditions as permitted and constructed in 2006 under a single construction contract by the property developer. (Refers to the state at which the initial property Owners were sold their building for initial occupancy)

1.9 "Bylaws" shall mean the Restated Bylaws of the Association as amended from time to time.

1.10 "Common Area" shall mean all real property owned by the Association, together with those areas on each of the platted parcel which are not Building Area.

1.11 "Common Expenses" shall mean all costs incurred by the Association in maintaining, repairing and replacing the Common Areas and Building Facade as well as managing and operating the Development and the Association.

1.12 "Commercial Lots" are identified as Lots 23a, 24, 27, 28 and 31 through 33.

1.13 "Commercial Uses" means those uses permissive in the OR-2 zone as identified in the Nob Hill / Highlands Sector Development Plan.

1.14 "Declaration" shall mean these Restated Declaration of Easements, Covenants, Conditions and Restrictions as it may be amended or restated from time to time.

1.15 "Development" shall mean the entire common interest development located at 314 to 334 Adams St. SE, Albuquerque, New Mexico, which is described as a "townhouse style project".

1.16 "Improvements" shall mean any construction performed beyond the initial purchased condition of the building as permitted and constructed in 2006. (Further description is found under 2006 Construction Standards)

1.17 "Guest" shall mean any Person who enters the Development at any time at the request or for the benefit of an Owner or Tenant but who does not reside in the Development. Without limitation the term "Guest" will include collectively the Owner or Tenant's invitees, social guests, contractors, employees, and service providers.

1.18 "Manager" shall mean any Person employed by the Association to oversee the operation, maintenance and management of the Development. The term shall refer collectively to the on site manager (if any) and the management company, who are hired to provide management services to the Association.

1.19 "Member" shall mean an Owner who by reason of his record title ownership of a Unit holds a membership in the Association.

1.20 "Mortgage" shall mean any mortgage, deed of trust or other security device encumbering all or any portion of the Development or any Condominium located therein.

1.21 "Owner" shall mean the Person in whom fee title to a Unit is vested as shown by the Official Records of the Office of Bernalillo County, whose records are deemed conclusive. If title is vested in the name of an entity, the trustee(s) of the trust, chief executive officer of the corporation, managing member(s) of the limited liability company, and general partner(s) of the partnership, will be the sole Persons who may exercise the right of ownership for that Unit.

1.22 "Person" shall mean a natural person, corporation, partnership, or other entity and shall include (except where the context otherwise requires) an Owner.

1.23 "Personal Property" shall mean all tangible and intangible personal property owned, held or controlled by the Association or Owner.

1.24 "Regular Assessment" shall mean annual dues levied by the Association against the Owners and their Units to pay for the Common Expenses.

1.25 "Reserves" or "Reserve Accounts" shall mean those monies set aside in a separate account for the purpose of repairing, replacing, restoring, or maintaining the major components of the Development in accordance with the provisions of this Declaration.

1.26 "Tenant" shall mean all persons occupying a Unit other than the record title Owner of the Unit including tenants, guests, and family members living in a residential Unit.

1.27 "Residential / Commercial Lots" are identified as Lots 25, 26, 29 and 30.

1.28 "Residential Uses" means a single housekeeping Unit, operating on a non-profit, non-commercial basis between its occupants, cooking and eating with a common kitchen and dining area, and accessory uses as permitted herein.

1.29 "Rules" shall mean the rules and regulations, including architectural guidelines, adopted and amended from time to time in accordance with the provisions of Civil Code.

1.30 "Special Assessment" shall mean all Assessments other than Regular Assessments levied against the Owners collectively for the Association to raise money to pay the Common Expenses. In addition, the term shall refer to a fine or charge against an Owner as a result of their noncompliance with the Governing Documents or to reimburse the Association for an expense it incurred due to the acts or omissions of an Owner.

1.31 "Unit" shall mean a physical building structure which is a fee simple Building constructed on an individual parcel of land. The Residential / commercial Units consist of two story Units with commercial areas on the lower level and Residential areas on the upper level with a two car garage. The boundaries of each Unit are defined as the center of the party walls which are constructed on Property lines.

1.32 "Party Wall" shall mean the structural walls between Lots / Units.

1.33 "Quiet Enjoyment" shall mean the right to unimpaired use and enjoyment of development.

1.34 Definition of Other Terms. Unless the context clearly requires otherwise, all other terms used in the Governing Documents are intended to be defined as set forth in New Mexico Statutes.

SECTION 2

OWNERSHIP RIGHTS AND LIMITATIONS

Each Owner, by virtue of his or her membership in the Association, shall be entitled to certain rights and benefits as described below. The rights and benefits are subject to limitations, however, as listed in Section 2.4 and elsewhere in this Declaration.

2.1 Right to Membership in Association. All Owners shall automatically be deemed Members of the Association and shall be entitled to the rights and benefits of membership (subject to the limitations contained herein).

2.2 Right to Inspect Records. Members shall have the right to inspect records of the Association as provided by Civil Code and the Bylaws.

2.3 Right to Use and Quiet Enjoyment. Each Owner is entitled to the exclusive use and quiet enjoyment of the Common Area, subject to the limitations contained in the Governing Documents.

2.4 Limitations. The rights described above in this Article and elsewhere in the Governing Documents are subject to the following limitations:

- a. **Suspension of Rights.** An Owner's right to vote and receive all nonessential services from the Association, may be suspended under the circumstances and according to the procedures described elsewhere in the Governing Documents;
- b. **No Separation of Interests.** An Owner's Unit, interest in the Common Areas, membership in the Association, and easements, shall not be separated or separately conveyed. Any conveyance of a Unit shall be deemed to automatically include fee title to the Unit, an interest in the Common Area, Membership in the Association, and the easements specified in this Declaration, whether mentioned or omitted in the deed;
- c. **Delinquencies.** Any person who acquires a Unit by any means shall be bound by the restrictions in this Declaration but shall not be entitled to the rights, benefits and privileges of Membership, if at the time of acquisition any former Owner of that Unit has failed to pay any portion of their Assessments due under this Declaration to the Association and the debt remains unpaid. If and only if the prior debt is paid shall the new Owner become entitled to receive the rights, benefits and privileges of membership;
- d. **Health and Safety.** The right of the Association to impose reasonable conditions on the use of the Common Areas to protect the health and safety of the Members and other Persons using them and to protect the Common Areas from damage or premature deterioration;
- e. **Rules.** The right of the Membership to adopt, and to modify from time to time, Rules pursuant to Civil Code; and
- f. **Governing Documents.** Any other reasonable restrictions and limitations contained in the Governing Documents.

SECTION 3

GRANT OF EASEMENTS & SHARED PARKING

3.1 Grant of Easements. Each Lot is subject to: non-exclusive perpetual easements for:

- a. **Reciprocal Ingress & Egress.** Each Lot is subject to: non-exclusive perpetual easements for parking, ingress, and egress by vehicular and pedestrian traffic upon, over and across that portion of the Common Area located on said Lot for the benefit of every other Lot and the Owners thereof. The reciprocal rights of parking, ingress, and egress set forth in this Section shall apply to the Common Area for each Lot as such area may be changed from time to time pursuant to this Declaration.

- b. **Utilities.** Each Lot is subject to non-exclusive perpetual easements under, through and across the Common Area of said Lots for the installation, operation, maintenance, repair and replacement of water drainage systems or structures, water mains, sewers, water sprinkler system lines, telephones, electrical conduits or systems, gas mains and other public or private utilities for the benefit of every other Lot and the Owners thereof. All such systems, structures, mains, sewers, conduits, lines and other utilities shall be installed and maintained below the ground level or surface of such easements except for ground mounted electrical transformers and such other facilities as are required to be above ground by the utility providing such service (including temporary service required during the construction, maintenance, repair, replacement, alteration or expansion of any buildings or improvements located in the Highland Lofts). The installation, operation, maintenance, repair and replacement of such easement facilities shall not unreasonably interfere with the use of the improved Common Area or with the normal operation of any business in the Highland Lofts. The Owners of each Lot shall execute such additional easements as are reasonably required by any public or private utility for the purpose of providing the utilities described herein provided such easements are not otherwise inconsistent with the provisions of this Declaration.
- c. **Drainage.** Each Lot is subject to non-exclusive perpetual drainage easements under, through and across the Common Area of said lots for the purpose of surface drainage and runoff of rainwater for the benefit of every other Lot and the Owners thereof.

3.2 Utility Rights. Each Owner shall have access through all parts of the Development to maintain any sections of utility lines for sewer, storm drains, water, electricity, gas, telephone, television cables, or any required utilities that exclusively serve their Unit. To the extent such elements are not maintained or repaired by a governmental agency or utility company, it shall be the duty of the Owner to maintain, repair and replace such sections wherever located and Owner shall have a nonexclusive easement over all areas of the Development for the purpose of meeting this duty.

3.3 Right to Parking. Each Owner shall have a nonexclusive drive and parking easement throughout all lots (identified as common area) included in the Highland Lofts for shared access and parking use.

- a. **Shared Parking.** Each Lot is subject to an open/shared parking arrangement, whereby, the Owners shall not segregate property access/parking rights or significantly impair access to parking on the property by users of any portion of the property. Parking spaces shall be for the benefit of all Owners, their Tenants, employees, customers and guests on a first come first serve basis (subject to dedicated spaces as defined below).
- b. **Dedicated Parking Spaces.** Each Unit Owner shall have a right to the exclusive use of two dedicated parking spaces within the shared common areas. Owner's shall have the right to place signage without prior permission (meeting City of Albuquerque post mounted handicap placard standards) on said Owner's designated parking spaces which are required to be located on the Owners respective parcel of land. Owners shall have the right to have unapproved vehicles towed at the vehicle Owners sole expense. The Association shall have the right to implement reasonable rules and regulations related to parking so long as said rules and regulations apply equitably to all Owners. The designated parking spaces may be reallocated or additional spaces designated for exclusive use with the consent of the Membership.
- c. **Residential Unit Garages.** Garages are to be utilized for occupant parking. Garages shall not be permitted to be used for any purpose that would reduce parking allowances unless approved by the Association Membership.
 - (i) Parking spaces shall be occupied by operable vehicles only and may not be used for long term storage as shall be defined as vehicular parking for longer than 3 days;
 - (ii) No extended stay motor vehicle or accessory (i.e. motorhome or trailer) shall be permitted to be parked overnight or for long term storage as defined above;
 - (iii) Vehicles shall not be built, serviced or repaired inside the Development except on an emergency basis when they become inoperable.

SECTION 4

MAINTENANCE OBLIGATIONS

The Development shall be maintained at all times in good condition so as to preserve property values, the quiet enjoyment of Owners / Tenants, and the right of each Owner to the full use and occupancy of their Unit. The respective rights and duties of the Association and the Owners with regard to maintenance of the Development are described in this Article:

4.1 Maintenance by the Association. The Association shall have the duty to maintain, repair, replace and restore, as needed, the Common Area, and all components thereof (inclusive of the Building Facade) so that it is at all times in clean, safe, and good condition. Without limiting the foregoing this duty shall include:

- a. Maintenance, repair and replacement of all paved surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal or superior in quality, use and durability; and re-striping when necessary;
- b. Maintenance, repair and replacement of all landscape areas with the type of landscape palette originally installed or such substitute as shall in all respects be equal or superior in quality, appearance and durability;
- c. Maintenance, repair and replacement of the exterior facade of the building. The Association shall not be responsible for Owner or Tenant provided signage, roof elements, patios or decks, electrical or mechanical equipment, or any other elements not defined as Building Facade. However, if the Board of Directors concludes that elements of the Common Area such as, for example, patio walls, balcony railings, exterior elements, or garage doors throughout the Development are in need of repair or replacement at the same time, the Association may elect to make such repairs or replacements and utilize Common Funds in order to do so;
- d. Treatment and repair of mold, mildew, fungus or other similar conditions found in the Common Area only. The Association shall not be responsible under any circumstances for treating, repairing or otherwise addressing such conditions within any Building.

4.2 Maintenance by Owners. Every Owner shall have the duty to maintain, repair, replace and restore all portions of the building not specifically identified in the scope of the Association responsibility identified above, so that it is at all times in clean, safe, and good condition. This duty shall include, but not be limited to:

- a. Maintain, repair, replace and restore all portions of their Building so it is in good, clean, and sanitary condition at all times. This is inclusive of roofing, parapet caps, balconies, etc. to ensure watertight conditions at all times;
- b. Treat, repair, replace, restore and maintain their Building in the event dry rot, mold, mildew, fungus or other similar conditions are found in those areas;
- c. Repair, replace and restore any part of the Building damaged as a result of termites, rodents, insects, and other pests and infestations (it shall be the Owner's duty to eradicate the termites, pests and other like infestations and repair or replace any areas damaged by such pests and infestations);
- d. Maintenance, repair and replacement of Owner or Tenant provided building signage. If an Owner or Tenant removes any item which requires any element of the building to be recoated or re-finished, the Owner shall bear the sole expense for repair.

4.3 Owner Liability for Damage to Other Units or Common Area. Each Owner is liable to the Association and to all other Owners for any damage to or from their Units or Common Area caused by:

- (i) their acts or omissions;
- (ii) the acts or omissions of their Tenants and Guests;
- (iii) any condition originating in their Unit.

4.4 Association's Right to Make Repairs. If an Owner fails, in the Board of Directors's opinion, to adequately maintain, repair or replace any elements in need of attention, the Association may, after giving not less than ten days written notice to the Owner (except in the case of an emergency), make the necessary repairs or perform maintenance on the Owner's behalf. In such event, Owner shall reimburse the Association for all costs incurred and should Owner fail to do so the Association may impose a Special Assessment on the Owner for the cost which shall be enforceable by any means available under this Declaration or New Mexico law.

4.5 Limitation on Association's Liability. In the absence of gross negligence or willful misconduct, neither the Association nor any officer, director, employee, or agent of the Association shall be liable to any Person for:

- a. theft of or injury to any article, vehicle or thing which may be kept by such Owner or other Person in any part of the Development,
- b. water leakage or mold from any source which results in damage to an Owner's Unit or Common Area, or
- c. the Association's need to access Common Area in order to perform maintenance or repairs for which the Association is responsible.

SECTION 5

TAXES & INSURANCE

The Association shall purchase and maintain in force and effect at all times, as part of the Common Expenses, the policies of insurance which are described below in this Article:

5.1 Authority to Purchase. All insurance specified in this Article, or otherwise deemed prudent by the Membership, shall be purchased and maintained by the Association. The premiums shall be part of the Common Expenses.

5.2 Real Property Taxes. Real property taxes and assessments for Lot 21a shall be the responsibility of the Association. Lot Owners are responsible for Real Property Taxes for their respective Lots located within the HLOA.

5.3 Insurance Responsibility by Association. The Association shall be responsible for:

- a. **Property Insurance.** The Association shall purchase and maintain a property insurance policy to include, at a minimum, coverage for fire, theft, vandalism, and any other loss or peril which the Membership believes is necessary or appropriate to include. The policy shall be based on replacement cost values, and not based on actual cash value. The policy shall specify that all insurance proceeds shall be payable to the Association as trustee to be held and expended for the benefit of the Owners and their respective mortgagees. Directors shall be responsible to assess a replacement cost for the building upon each insurance renewal period and provide a policy with limits appropriate to ensure adequate replacement coverage for the building. The Deductible for the policy shall be determined by the Membership. Casualty Insurance purchased by the Association is specifically limited to coverage of the building to the level of construction as permitted and constructed during the initial construction in 2006. Interior build-outs (walls, ceilings, lighting, flooring, etc., renovations, contents and all other items not provided in the scope of the 2006 construction are to be covered by Owner provided policies paid for by each independent Unit Owner.
- b. **General Liability Insurance.** The Association shall purchase and maintain a comprehensive public liability policy naming as insureds the Association Membership and its officers, directors, employees, and management company (if any). The policy shall provide protection with minimum limits of at least Two Million Dollars (\$2,000,000.00) per occurrence / Four Million Dollars (\$4,000,000.00) aggregate.
- c. **Directors and Officers Insurance.** The Association shall purchase and maintain directors and officers errors and omission insurance providing coverage with minimum limits of not less than One Million Dollars (\$1,000,000.00) aggregate. The Deductible for the policy shall be determined by the Membership.
- d. **Worker's Compensation.** The Association shall purchase and maintain worker's compensation and employer's liability insurance as required by law or otherwise prudent if applicable.

- e. **Fidelity Insurance.** The Association shall purchase and maintain fidelity coverage against dishonest acts on the part of officers, directors, employees, volunteers, and managing agents who handle or may handle the funds of the Association. The amount of the coverage shall be at least equal to or greater than 100% of the total sum of the Regular Assessments and Reserves which the Association is anticipated to collect and/or have in its possession or control during any calendar year.

5.4 Insurance Responsibility by Owners. Each Owner, shall have the continuing responsibility to insure their independent interests and purchase at their sole expense:

- a. **Property Insurance.** To the extent not covered by the Association's insurance policy as described above, Owners shall be responsible for independent property insurance appropriate to protect their assets which include, but are not limited to; restoration and repair of interior build-outs, damage to personal property, furniture, furnishings and decorations, fixtures, equipment, building signage (elements beyond the scope of the Associations coverage). This policy shall be made by and at the sole expense of the Owner.

- b. **General Liability Insurance.** Owners shall at their sole expense, purchase and maintain a comprehensive public liability policy for coverage beyond the scope of the Association responsibility for coverage, which specifically includes coverage for specialty uses within the common area. This policy is intended to extend coverage beyond the Association general liability coverage for the common areas as specified above.

* Owners shall be solely responsible for general liability coverage extending into the shared common areas for any special event or utilization of the common areas for any use beyond the scope of traditional vehicular and pedestrian access and parking.

- c. **Glass Coverage.** Glass insurance coverage and replacement costs shall be the sole responsibility of the Unit Owner. Glass replacement shall be coordinated by Owner and shall be replaced in a timely fashion. The Association shall have right to replace glass on Owners behalf as specified herein when necessary.

- d. **Additional Policies.** Owners shall purchase any other policy of insurance which they feel is reasonably necessary to protect their separate interests.

5.5 Increasing Insurance Rates. Nothing shall be done or kept by any Owner which will increase the rate of insurance for any other Unit, the Common Area, or cause the cancellation of any insurance policy. If, by reason of any act or omission by an Owner, the cost of insurance on any policy normally purchased by the Association is increased, that Owner shall be personally liable to reimburse the Association for the cost of any such increase which cost shall become a Special Assessment against their Unit.

5.6 Choice of Insurance Companies. All policies of insurance purchased by the Association shall be obtained from insurance companies qualified to do and doing business in the State of New Mexico and holding a rating of "A" or better in Best's Insurance Reports (or the equivalent rating by another reputable company or agency).

5.7 Waiver by Members. All insurance obtained by the Association shall be maintained by the Association for the benefit of the Association and as trustee for the Owners and the Mortgagees as their respective interests may appear. In the event of damage or injury which is covered by an Association policy, the Owners may pursue collection from such policy and in the event of coverage, the Owners hereby waive and release all claims against the Association, the Board of Directors, Association Consultants, and other Owners with respect to any loss covered by such insurance.

5.8 Payment of Policy Proceeds. Regardless of the nature of the claim, all insurance proceeds paid under a policy purchased by the Association shall be delivered and made payable to the Association only. The Association shall then use those funds for the purpose described in the claim.

SECTION 6

DESTRUCTION OF IMPROVEMENTS

In the event of a casualty or other major event that results in destruction of the development or serious damage to a significant portion thereof, the following regulations will apply:

6.1 Responsibility by Association. In the event that a portion of the common area or portion of the building insured by the Association policy is partially or totally destroyed by fire, earthquake or other casualty, the following shall occur:

- a. **Cost of Reconstruction.** The Board of Directors shall examine the cost of repair and the amount of Reserves and insurance proceeds available for reconstruction. The Membership shall review contractor proposals and shall select a contractor for construction. Construction estimates should be obtained from at least three (3) reputable licensed contractors.
- b. **Automatic Reconstruction.** The Association shall have the responsibility to repair the common area or re-construct the building back to the level of construction as permitted and constructed during the initial construction of the building in 2006 (subject to any increased building standards then in effect). The Reserves and insurance proceeds shall be used for this purpose.
- c. **Membership Approval.** If the circumstances of destruction deem the building a substantial loss the Membership shall have the right to vote not to re-build, subject to the rights of mortgagees or any other guarantors. The decision not to re-build would require a 100% unanimous vote by the Membership as well as approvals for guarantors of all properties.

6.2 Right of Entry to Assess Damage And Make Repairs. If repairs or replacements are required under this Article, Owners shall work with representatives of the Association in allowing access to any Unit to make repairs or assess damage.

6.3 Negotiations with Insurer. The Board of Directors shall have full authority to negotiate in good faith with representatives of the insurer of the totally or partially destroyed within the Association scope of coverage, and to settle with the insurer on the Owners behalf once the Board of Directors concludes a settlement is prudent. Any settlement made by the Board of Directors in good faith shall be binding upon all Owners.

6.4 Responsibility by Owner. In the event that a portion of the common area or portion of the building insured by an Owners policy is partially or totally destroyed by fire, earthquake or other casualty:

- a. Owners shall have the right to determine independently whether they will re-build beyond the Associations scope of insurance coverage. Owners are required to work with the Association to bring their Unit back to 2006 specifications as described above, but have the ability to collect on their independent Owners policy leaving a Unit at the 2006 level of completion (subject to any increased building standards then in effect) if they so desire.

SECTION 7 OCCUPANCY RESPONSIBILITIES & USE RESTRICTIONS

Owners shall comply with the following restrictions in connection with the use and occupancy of their Units and Common Areas. These restrictions are intended to preserve and enhance the safety and security of the Development, the value of the Development and the Units, and the quiet enjoyment of the Tenants.

7.1 Leasing / Use Limitations. No Owner shall be permitted to utilize any portion of their Unit for any purpose specifically excluded in the governing documents. Any proposed use must be consistent with all federal, state and local laws, ordinances, and zoning regulations. The following uses shall be specifically restricted:

- a. **Use Restrictions.** No Owner shall be permitted to lease their Unit for any purpose not provided for in the Association governing documents. Any such use must be consistent with all federal, state and local laws, ordinances, and zoning regulations. Certain commercial uses shall be specifically restricted as follows:
 1. Gambling Operation.
 2. Tattoo.
 3. Liquor Sales.
 4. Animal Sales, Service, Breeding, Veterinary.

* Pet Supplies Store shall be allowed.

5. Smokers Shop.

6. Music or Dance Studio.

7. Recording Studio.

* Excluded use due to acoustical implications.

8. Adult Entertainment, Merchandise, Product Sales.

9. Vehicle Sales.

* Vehicle Accessories sales shall be allowed with no installation services):

7.2 Residential Occupancy Restriction. The maximum number of Persons who may reside in any Unit at any time shall not exceed two (2) Persons per bedroom plus one (1). The Association may require Owners to disclose in writing the names of the Persons residing in a Unit at any time.

7.3 Additional Restrictions. Owners, Tenants and Guests shall be responsible to abide by all federal, state and local laws, ordinances and zoning regulations. Certain activities shall be specifically restricted as follows:

- a. **Barbecues; Exterior Fires.** There shall be no exterior fires whatsoever except for use of barbecues on Balconies.
- b. **Filming Activities.** No Owner shall allow his Unit or any other part of the Development to be used for commercial filming or photography purposes except with the prior written approval of the Board or as otherwise allowed in the Rules.
- c. **Garage Sales.** No rummage sales, garage sales, estate sales, or flea markets of any kind shall be permitted unless otherwise approved in writing in advance by the Board.
- d. **Laundry.** No exterior clothesline shall be permitted in the Development which can be seen from the Common Area or another Owner's Unit or Common Area.
- e. **Obstruction of Common Areas.** No Owner may obstruct or interfere in the Association's management of the Common Area or the right of passage through the Common Area by Owners, Tenants and Guests. No Owner or Tenant shall obstruct any walkway in any way, inclusive of the rear exit walkways.
- f. **Power Tools.** Power tools, welding equipment, or carpentry shops may be used only between the hours of 9:00 a.m. and 5:00 p.m. Use of power tools shall not from creating unreasonable noise that disturbs neighbors.
- g. **Acoustical Limitations.** No Owner shall permit any use that would transfer sound, vibration or the like from one Unit to another without written consent of the adjacent building Owners.
- h. **Nuisance.** No Owner shall conduct any business or provide conditions that shall constitute a nuisance which is prohibited. Nuisance shall be defined as noxious, offensive or illegal activities, and anything which threatens to cause or causes unreasonable embarrassment, disturbance or annoyance to the Association or any other Owners or Tenants.

7.3 Pets. No animal, bird or reptile may live in the Development or in any Unit except for ordinary domesticated household pets including dogs, cats, birds (in cages only), fish in tanks, and hamsters (or like animals) kept in cages. All such pets shall comply with the following restrictions as well as those contained in the Rules.

- a. **Number and Size.** Only three (3) dogs or cats, or a combination of each up to a total of three (3), may reside in any Unit.
- b. **No Commercial Use.** No animal or pet living in the Development may be bred for commercial purposes.

- c. **Removal.** The Membership may cause the removal of any animal or pet which in its subjective opinion is disturbing the quiet enjoyment, health, safety or welfare of any other Owner.
- d. **Liability / Indemnity.** All Owners are strictly liable for any damage or injury to Persons or property caused by their pets. Further, each Owner shall indemnify, defend and hold harmless the Association and its officers, directors, employees, committee members, manager, and agents from all claims, obligations, liabilities, damages, expenses, judgments, attorneys' fees and costs arising from or related to their pets.
- e. **Leash.** Dogs shall be kept on a leash at all times when they are in the Common Areas.
- f. **Litter.** Each Owner shall immediately remove and dispose of any litter left by their pet in the Common Areas or Common Areas.

7.4 Contact Information. Owners shall provide the Association with the name, phone number, and email address for all lessees/occupants who will reside in Units.

7.5 Exclusive Right to Common Area. When any Unit is non-owner occupied the Tenants shall have the exclusive right to use the Common Area and receive whatever services would otherwise be provided to the Owner of that Unit.

7.6 Sanitary Conditions. Each Owner shall maintain their Unit in a clean and sanitary condition in good at all times.

7.7 Unlawful Detainer to Enforce Rules. Any Owner of a non-owner occupied Unit shall be responsible for enforcing compliance by their Tenants and Guests with the Association's Governing Documents. In the event of a breach, the Association shall give notice to the Owner who shall have fourteen days to cause the breach to be fully remedied. If the breach is not corrected within that period, the Owner and Tenant shall be subject to fines and other disciplinary action by the Association.

7.8 Security. If an Owner is delinquent in payment of assessments, they will be deemed to have assigned to the Association the right to collect any rent generated by their Unit until such delinquency is cured. The Association may demand in writing that the Tenant pay their rent to the Association until such time as the delinquency (including interest, late charges, and collection costs) is fully paid. If the Tenant fails to do so, they shall be liable to the Association for the amount of the rent even if they pay such rent to the Owner.

7.9 Trash; Refuse. Owners shall comply with all laws with respect to the disposal of trash, refuse, and other rubbish. In utilizing trash receptacles located in the Common Area, Owners shall make sure the trash is deposited inside the receptacle only and that the receptacle is able to be closed, and is fully closed, afterwards. No off-site trash shall be permitted to be deposited into the common trash receptacle unless previously approved by the Board of Directors.

SECTION 8

ARCHITECTURAL CONTROL

It is the Association's duty to exercise architectural control over all Improvements constructed or installed in the Development. In order to meet this duty the Association shall act in accordance with the following regulations as well as those contained in the Rules. These restrictions are intended to preserve and enhance the safety and security of the Development, the value of the Development and the Units, and the quiet enjoyment of the Users:

8.1 No Liability for Approval. By approving any work as described herein, the Board of Directors, or Association are not representing to the Owner that what they plan to build is prudent, safe, or legal. The approval shall not; relieve the Owner of the duty to satisfy the terms of the Governing Documents and of all applicable laws, statutes, regulations, and codes; provide a defense to a legal action by the Association; or give rise to any liability on the part of the Association, the Board of Directors, or their representatives.

- a. **Compliance With Laws.** Owners shall be responsible to ensure that the final product meets all applicable laws and regulations, is free of defects, meets all provisions of the Governing Documents, and does not disturb the quiet enjoyment of any other Owner.

- b. **Mechanic's Liens.** Each Owner shall indemnify, defend, and hold harmless the Association, and its officers, directors, employees, committee members, managing agent, and agents, from and against any damage, loss, attorneys' fees, costs, claims, or injuries caused in whole or in part by the recordation of a mechanic's lien against any part of the Development or another Owner's Unit. In the event a mechanic's lien is filed which affects in any way the Common Area or another Owner's Unit, the Owner shall promptly take all steps needed to cause the removal of the mechanic's lien.

8.2 Appeals. If the decision disapproving an application is made by the Board of Directors, any Owner who wishes to appeal the disapproval may do so by submitting a request, in writing, to the Membership in care of the Tenant which request must be received not later than fifteen (15) days following the date of the notice of disapproval. If such an appeal is requested it will be considered by the Association at a hearing of the membership. In the event an appeal is timely submitted the Board of Directors shall issue a written decision of the membership within fifteen (15) days following the date of the hearing and its decision will be final and binding.

8.3 Right to Decorate. Each Owner shall have the exclusive right (at their sole expense) to furnish and decorate the interior surfaces within their Unit. Each Owner may furnish their Unit as they see fit provided such furnishings do not cause a threat of damage or injury to any other Owner or Unit or violate any noise restrictions contained in the Governing Documents, subject to the following exceptions:

- a. **Holiday Decorations.** Owners shall be allowed to provide seasonal holiday decorations during respective holiday seasons. Exterior decorations must consist of a temporary installation and shall not compromise the integrity of the exterior building systems.
- b. **Special Event.** Owners shall have the right to decorate for special events or promotions. Event decorations shall be temporary as shall be defined as 3 weeks or less.
- c. **Board Discretion.** The Board of Directors shall have the authority to request the removal or replacement of decorations if the decoration, in the Board's opinion, is in violation of any restrictions within these governing documents or appears inappropriate in any way. The Association shall have the right to implement reasonable rules and regulations related to decoration so long as said rules and regulations apply equitably to all Owners.

8.4 Alteration of Common Area. No Owner shall alter, construct, install or remove anything on or from the Common Area, without the prior written approval of the Association Membership.

8.5 Building Modifications. The Building shall not be modified as to color or exterior surfaces without written consent of the Association Membership. The Building extents shall not be extended or altered beyond the existing conditions without written approval of the Association membership.

- a. **Prior Approval.** No alteration, construction, or remodeling may commence as described above until the prior written approval of the Membership has been given, if such work is related to or could potentially affect any of the following;
 - (i) The electrical, HVAC, or plumbing systems of the Building or Development,
 - (ii) the resistance of any Unit or other part of the Development to water intrusion,
 - (iii) the foundation or structural integrity of any Unit, Building, or Common Area,
 - (iv) the exterior uniform appearance of any Unit or Building,
 - (v) the level of noise transference to another Unit, or Common Area,
 - (vi) the right to quiet enjoyment of any other Owner, or
 - (vii) the right of any other Owner to the full ownership, occupancy, and use of their Unit.

- h. **Garage Conversion.** The Owners of Residential / Commercial Units shall not have the right to convert garages into storage or heated commercial space without written approval of the Association Membership.
- i. **Glass Tint.** Window tint shall be allowed per the following restrictions: (i) Tint color is to be grey; (ii) Light transmission reduction cannot exceed 35%; (iii) Exterior reflectance cannot exceed 25%.
- j. **Security Doors.** Owners shall be allowed to install security doors (black in color) at the lower level, East (Rear) side of the building. Security doors shall be provided per local building codes and ordinances.
- k. **Satellite Dish.** No exterior mast, antenna or satellite dish of any size shall be permitted in the Development which can be seen from the Common Area, or another Owner's Unit. Owners may install an antenna or satellite dish (not to exceed 36 inches in diameter) to receive television or radio reception to be located below the level of roof parapets and out of sight from anywhere around the perimeter of the common properties. Wiring is to be run internally and shall not be allowed to be run along the exterior of the building facades and shall be out of sight.
- l. **Electrical Equipment.** No Owner may install, attach or hang any equipment or wiring for electrical installations, machines, air conditioning units or exposed wiring in any portion of the Common Area or on the Building Facades without the prior written approval of the Association Membership.

8.6 Conduct of Construction. During any construction Owner shall use best efforts to minimize inconvenience to other Tenants of the Development.

8.7 Construction Debris. Construction projects within the Units shall either provide (i) an independent dumpster for waste removal or (ii) may coordinate for appropriate trash services if common area receptacle is approved for use by Board of Directors. The Board of Directors may adopt further provisions in the Rules with regard to the subject of construction disposal.

8.8 Balconies. Owners are responsible for waterproofing their Balconies and for any water leakage through the flooring that causes damage to the Common Area or to another Owner's Unit. A Balcony may be furnished as the Owner sees fit though the Board of Directors may cause the removal of any furnishing or decoration that it finds unsightly, inconsistent with the uniform appearance of a Building, or a potential threat to cause damage or injury to others.

8.9 Mechanic's Liens. Each Owner shall indemnify, defend, and hold harmless the Association, and its officers, directors, employees, committee members, managing agent, and agents, from and against any damage, loss, attorneys' fees, costs, claims, or injuries caused in whole or in part by the recordation of a mechanic's lien against any part of the Development or another Owner's Unit. In the event a mechanic's lien is filed which affects in any way the Common Area or another Owner's Unit or Common Area, the Owner shall promptly take all steps needed to cause the removal of the mechanic's lien.

SECTION 9 SIGNAGE DESIGN GUIDELINES

9.1 Purpose. The purpose of these Signage Design Criteria is to inform Building Owners of the framework within which the (Highland Lofts Owners Association) Association Board of Directors will review and approve all signs proposed at the Highland Lofts. There shall be no deviation from or modification of the specific limits or requirements stated herein unless approved by the Association Members. When "general" requirements are mentioned, the Board of Directors reserves the sole right to interpret them in the case of each and every sign. Nothing hereinafter stated shall be construed as limiting Board of Directors's right to require modifications to signs prior to its approving them or to modify these criteria at its sole discretion.

9.2 General Requirements. The following criteria shall be met prior to installation of signage within the Association:

- a. **Number of Signs** – Only one sign is permitted per building unit.
- b. **Location of Building Mounted Signage** – Building Signage shall specifically limited to the following:

- (i) The 8 retail / office suites signage shall be limited to the west facing Building Facade currently accented as a maroon color. The signage shall be centered on the existing electrical outlet in both the horizontal & vertical dimensions.
 - (ii) The 4 live / work units shall be limited to the area directly over the garage door currently accented as a maroon color. Signage shall be centered directly over the garage door opening in both the horizontal & vertical dimensions.
- c. **Size of Sign** – Each party's sign shall be located within the limits of its respective storefront and shall be limited to 3'-0" tall x 7'-0" wide.
- d. **Types of Sign Permitted.** Individual letters & tenant logos if applicable; Script style letters; Channel Letter: A fabricated or formed three-dimensional letter that may accommodate a light source. The following types of Channel Letters shall be permitted:
- (i) **Backlight Letter:** An illuminated reverse channel letter with an open or translucent back so that light from the letter is directed against the surface behind the letter, producing a halo lighting effect around the letter.
 - (ii) **Front-Lighted Letter:** An illuminated channel letter with a translucent face.
 - (iii) **Pan Channel Letter:** A dimensional letter that is constructed with side walls, a back, and a face, making the letter a solid integral unit with the side walls and back having a pan-shaped cross-section.
 - (iv) **Reverse Channel Letter:** A fabricated dimensional letter with opaque face and side walls.
- e. **Colors of Sign Letters.** Illuminated signage may be comprised of any single or combination of colors as approved by the Association Board of Directors; Non-Illuminated signage may be of a natural metals finishes or color as approved by the Association.
- f. **Types of Illumination.** Maximum brightness allowed for signs will be 100' lamberts taken at the letter face and must comply with all governmental codes. Signage illumination shall be limited to the following: (i) Illuminated signage internally illuminated (with opaque or translucent faces and with light source completely concealed); (ii) Back-lighted (with lamps or tubes completely concealed within the depth on the letter).
- g. **Sign Text.** Sign text shall be limited to Tenant's trade name & logo if applicable. Association reserves the right to limit the use of Tenant's customary "logo" at its discretion.

9.3 Additional Signage. The following sign types shall be approved by the Board of Directors prior to installation. These signs shall have a limited timeframe as to their use as determined by the Board of Directors:

- a. **Number of Signs.** Only one sign is permitted per building unit.
- b. **Banner:** A temporary sign of lightweight fabric or similar material that is mounted to a pole or building.
- c. **Real Estate Signage.** For Sale or Lease signage is specifically limited to the interior side of a buildings windows.
- d. **Window Sign:** A sign that is painted on, attached to, or suspended directly behind or in front of a window or the glass portion of a door. Shall be allowed as approved by the Association Board of Directors.
- e. **Freestanding Sign:** A sign that is not attached to a building.
- f. **Temporary Sign:** Any sign not intended for permanent installation.
- g. **Wall Sign:** A building-mounted sign either attached to or displayed or painted on an exterior wall.

9.4 Sign Prohibitions. The following are specifically prohibited:

- a. Flashing, rotating and moving signs.
- b. Exposed neon (except where specifically reviewed and approved by Association) and exposed light sources of any type.
- c. Visible sign company names.
- d. Suspended signs beneath the fascia or recessed entrances.
- e. Paper signs, stickers, banners or flags.
- f. Exposed electrical transformers.
- g. Box Signs (Illuminated or Non-Illuminated).
- h. Awning Sign: A building-mounted sign that provides additional functionality as shelter.
- i. Electronic Message Center: A variable-message sign that utilizes computer-generated messages or some other electronic means of changing copy.
- j. Exterior Illuminated Sign: A sign that is illuminated by a light source that is directed towards and shines on the face of a sign.
- k. Flat Cut-Out Letter: A dimensional letter cut from sheet or plate stock.
- l. Open Channel Letter: A dimensional letter that has no face and, if illuminated, has a visible light source.
- m. Changeable-Copy Sign: A sign or portion thereof on which the copy of symbols change either automatically through electrical means or manually through replacement of letters or symbols.
- n. Pan Face: A plastic sign face molded into a three-dimensional shape.
- o. Message Center: An electronic or mechanical variable-message sign enabling changes to be made from locations other than at the sign.
- p. Projecting Sign: A building-mounted sign with the faces of the sign projecting from and perpendicular to the Building Facade.
- q. Roof Sign: A building-mounted sign erected upon and completely over the roof of the building.

9.5 Sign Prohibitions. Approvals of any proposed signage shall be submitted in writing to the Association Board of Directors for approval prior to installation. Any Tenant or Building Owner can appeal any decision regarding signage approvals / rejections to the Association Members by special meeting as defined in these governing documents:

- a. **Approvals Required.** Anything hereinbefore notwithstanding, all exterior signs are subject to approval by the Association; All exterior signs are subject to approval by City of Albuquerque. Tenant shall obtain all necessary permits through their respective sign contractors. Signage permits are to be submitted to the Association Board of Directors upon approvals for verification; Electrical signage is to be UL listed and shall be installed by a licensed electrical contractor.
- b. **Drawings To Be Submitted.** Three (3) complete sets of exterior sign drawings must be submitted for Association Approval. Tenant's sign drawings must include the following:

- (i) Elevation view of the building facade in which the sign is to be located. Height of letters and length of sign must be dimensioned.
 - (ii) Cross Section view through sign, showing details of mounting and dimensioned projection of the face of the letter from the face of the building wall.
- c. **Preliminary Submission.** Tenant / Building Owner may, at its option first submit two (2) copies of its exterior sign drawing to the Association Board of Directors for preliminary review and comment prior to submitting the three (3) sets required for final approval. This procedure is recommended for preliminary feedback.

9.6 Signs. Except as expressly permitted by law, no Owner may display any sign, banner, flag (other than U.S. Flag), notice, painting or advertisement of any kind in the Development that is visible from any location outside the Unit.

9.7 Miscellaneous Signs. Any and all signs which, in Association's opinion, are not covered by the requirements set forth above shall be reviewed on their individual merits. All signs, wherever located within the Demised Premises shall be subject to the provisions of these Sign Criteria.

SECTION 10 PARTITION AND SEVERANCE

10.1 Right of Partition. In accordance with the provisions of NM Civil Code, the right of partition of the Common Area is hereby suspended and no proceeding shall be brought for the partition of said Common Area, except as provided by law or as expressly stated in this Declaration.

10.2 Prohibition Against Severance. No Owner shall have the right, for any purpose, to sever his Unit or Common Area from his undivided interest in the Association.

SECTION 11 AMENDMENTS

11.1 Amendment. This Declaration may be amended or restated by the affirmative vote of a two-thirds (2/3) majority of the total voting power of the Association. Any amendment or restatement adopted under this Article shall be recorded in the office of the Bernalillo County Recorder and shall be effective upon recordation.

11.2 Confirmation of Approval. A certificate signed and sworn to by two (2) Board of Directors of the Association that the requisite number of Owners have either voted or consented in writing to any amendment, when recorded, shall be conclusive evidence of such fact.

SECTION 12 MISCELLANEOUS

13.6 Amendments. This Declaration may be modified, amended or repealed, and new provisions may be adopted, only by the vote or written consent of two-thirds (2/3) majority of the total voting power of the association. Any amendment or restatement adopted under this Article shall be recorded in the office of the Bernalillo County Recorder and shall be effective upon recordation.

12.1 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the use, operation and maintenance of the Development.

12.2 Severability. The provisions of this Declaration are severable from one another. If any provision is found to be invalid, illegal or unenforceable it shall not affect the validity, legality and enforceability of the remaining provisions.

12.3 Reference to Owners. Although restrictions in this Declaration may from time to time refer only to the Owners, each such restriction shall also be binding on all Tenants, Guests, and all other Persons entering the Development.

12.4 Conflicting Provisions. In the case of any conflict between the Governing Documents, the order of priority shall be as follows: (i) Articles, (ii) Bylaws, (iii) Declaration, (iv) Rules.

12.5 Harassment. Owners and Tenants shall not threaten, intimidate, berate, harass, embarrass or act in a menacing manner towards any officer, director, Manager, employee, vendor, agent, Tenant or Member of the Association.

12.6 Successors and Assigns. This Declaration shall inure to the benefit of and be binding upon the Owners, and their respective heirs, personal representatives, grantees, lessees, licensees, successors and assigns.

12.7 Notices. Any communication or notice permitted or required herein shall be delivered as submitted in writing to the applicable party. Any notice sent by certified mail addressed to the mailing address of the contact on file with the secretary shall be deemed appropriate notice. Notice to the association shall be provided to the Association's address on record.

7.10 Indemnity. Whenever a Unit is non-owner occupied, the Owner thereof agrees to indemnify, defend, and hold harmless the Association, its officers, directors, employees, manager, and other Members from any attorneys' fees, expenses, debts, liabilities, damages or injuries caused by the Occupants or arising from the lease/occupancy agreement.

Adoption of Declaration

IN WITNESS WHEREOF, this Declaration has been duly approved and adopted by the Board of Directors of the Association on December 5th, 2012.

By: [Signature]
Devin Cannady, President

12/12/12
Date

By: [Signature]
Jean-Paul de Jager, Secretary

12/12/12
Date

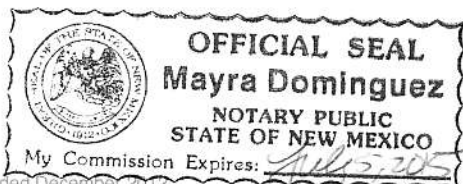
By: [Signature]
Onesimo Vigil, Treasurer

12/12/12
Date

Verification

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

Subscribed and sworn to before me this 12th day of Dec, 2012.



[Signature]
Notary Public

AMENDED AND RESTATED
DECLARATION OF EASEMENTS, COVENANTS,
CONDITIONS & RESTRICTIONS

THE HIGHLAND LOFTS OWNERS ASSOCIATION, INC.

a New Mexico not for profit corporation, operating under the laws of the State of New Mexico.

Doc# 2012131374

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DEC R:\$25.00 M. Toulouse Oliver, Bernalillo County



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RESTATED DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS & RESTRICTIONS

THE HIGHLAND LOFTS OWNERS ASSOCIATION, INC.

a New Mexico not for profit corporation, operating under the laws of the State of New Mexico.

PREAMBLE

The Association of Members and all present or future members, tenants, future tenants, or any other persons acquiring an interest in or using the facilities of the project in any manner are subject to and shall comply with the these By-Laws, the Articles of Incorporation of the Association, the Declaration of Easements with Covenants and Restrictions and any other the Rules and Regulations adopted by the Association. The mere acquisition, occupancy or rental or any unit or an interest therein or the utilization of or entry upon the Association premises shall signify that the Association documents are accepted and ratified. Failure of the Association to enforce any right, provision, covenant or conditions shall not constitute a waiver of the right of the Association to force such right, provision, covenant or condition in the future.

A. The Association is comprised of all Persons who own Lots / Units at that certain common interest development known as "The Highland Lofts", which is more particularly described as:

Lots numbered Nineteen (19) through Thirty-three (33), Block 11, of the Valley View Addition to the City of Albuquerque, New Mexico, as the same are shown and designated on the map of said Addition filed in the office of the County Clerk of Bernalillo County, New Mexico.

B. The Association intends by this Declaration to revoke the document entitled Bylaws of The Highland Lofts Owners Association, Inc. recorded in 2005 and the Declaration of Easements with Covenants and Restrictions Affecting Land for The Highland Lofts ("ECR") recorded on May 23, 2006, as Instrument No. 2006074783 in the office of the Bernalillo County Recorder.

C. The Association is a New Mexico not for profit corporation formed to manage a common interest development within the meaning of the New Mexico Nonprofit Corporation Act (53-8-1 to 53-8-99 NMSA 1978); and

D. This Declaration is intended to:

- (i) Be for the benefit and protection of the Development and each Unit;
- (ii) Be for the benefit of all Owners;
- (iii) Run with the land and be binding upon all Persons having or acquiring any right, title or interest in any Unit or in the Development; and
- (iv) Run with the land and be binding upon any Tenant, Guest or other Person entering the Development at any time for any reason.

NOW, THEREFORE, at the direction by affirmative vote of the Association Membership cast on November 11th, 2011, the Board of Directors hereby adopt the following restated easements, covenants, conditions and restrictions.

SECTION 1 DEFINITIONS

1.1 "Articles" shall mean the Articles of Incorporation of the Association originally filed with the Public Regulation Commission on May 11, 2006, or as officially amended.

1.2 "Assessment" shall mean any charge levied against a Unit in accordance with the Governing Documents or as permitted in the provisions of NM Civil Code.

1.3 "Association" shall mean the Highland Lofts Owners' Association, a not for profit corporation.

1.4 "Balcony" shall mean the balcony, deck, or patio adjacent to a Unit which is for the exclusive use of the Owner of that Unit.

1.5 "Board of Directors" shall mean the Board of Directors of the Association whose Members are elected by the Owners.

1.6 "Building" shall mean the structure consisting of 12 fee simple units configured as a shared wall development herein titled as "The Highland Lofts" independently owned by the Association Membership.

1.7 "Building Facade" shall mean elements of the building that make up the perimeter finishes or elements of the building. Exterior finishes of the building consisting of stucco, window frames, metal trim, and facade paint.

1.8 "2006 Construction Standards" shall mean the conditions as permitted and constructed in 2006 under a single construction contract by the property developer. (Refers to the state at which the initial property Owners were sold their building for initial occupancy)

1.9 "Bylaws" shall mean the Restated Bylaws of the Association as amended from time to time.

1.10 "Common Area" shall mean all real property owned by the Association, together with those areas on each of the platted parcel which are not Building Area.

1.11 "Common Expenses" shall mean all costs incurred by the Association in maintaining, repairing and replacing the Common Areas and Building Facade as well as managing and operating the Development and the Association.

1.12 "Commercial Lots" are identified as Lots 23a, 24, 27, 28 and 31 through 33.

1.13 "Commercial Uses" means those uses permissive in the OR-2 zone as identified in the Nob Hill / Highlands Sector Development Plan.

1.14 "Declaration" shall mean these Restated Declaration of Easements, Covenants, Conditions and Restrictions as it may be amended or restated from time to time.

1.15 "Development" shall mean the entire common interest development located at 314 to 334 Adams St. SE, Albuquerque, New Mexico, which is described as a "townhouse style project".

1.16 "Improvements" shall mean any construction performed beyond the initial purchased condition of the building as permitted and constructed in 2006. (Further description is found under 2006 Construction Standards)

1.17 "Guest" shall mean any Person who enters the Development at any time at the request or for the benefit of an Owner or Tenant but who does not reside in the Development. Without limitation the term "Guest" will include collectively the Owner or Tenant's invitees, social guests, contractors, employees, and service providers.

1.18 "Manager" shall mean any Person employed by the Association to oversee the operation, maintenance and management of the Development. The term shall refer collectively to the on site manager (if any) and the management company, who are hired to provide management services to the Association.

1.19 "Member" shall mean an Owner who by reason of his record title ownership of a Unit holds a membership in the Association.

1.20 "Mortgage" shall mean any mortgage, deed of trust or other security device encumbering all or any portion of the Development or any Condominium located therein.

1.21 "Owner" shall mean the Person in whom fee title to a Unit is vested as shown by the Official Records of the Office of Bernalillo County, whose records are deemed conclusive. If title is vested in the name of an entity, the trustee(s) of the trust, chief executive officer of the corporation, managing member(s) of the limited liability company, and general partner(s) of the partnership, will be the sole Persons who may exercise the right of ownership for that Unit.

1.22 "Person" shall mean a natural person, corporation, partnership, or other entity and shall include (except where the context otherwise requires) an Owner.

1.23 "Personal Property" shall mean all tangible and intangible personal property owned, held or controlled by the Association or Owner.

1.24 "Regular Assessment" shall mean annual dues levied by the Association against the Owners and their Units to pay for the Common Expenses.

1.25 "Reserves" or "Reserve Accounts" shall mean those monies set aside in a separate account for the purpose of repairing, replacing, restoring, or maintaining the major components of the Development in accordance with the provisions of this Declaration.

1.26 "Tenant" shall mean all persons occupying a Unit other than the record title Owner of the Unit including tenants, guests, and family members living in a residential Unit.

1.27 "Residential / Commercial Lots" are identified as Lots 25, 26, 29 and 30.

1.28 "Residential Uses" means a single housekeeping Unit, operating on a non-profit, non-commercial basis between its occupants, cooking and eating with a common kitchen and dining area, and accessory uses as permitted herein.

1.29 "Rules" shall mean the rules and regulations, including architectural guidelines, adopted and amended from time to time in accordance with the provisions of Civil Code.

1.30 "Special Assessment" shall mean all Assessments other than Regular Assessments levied against the Owners collectively for the Association to raise money to pay the Common Expenses. In addition, the term shall refer to a fine or charge against an Owner as a result of their noncompliance with the Governing Documents or to reimburse the Association for an expense it incurred due to the acts or omissions of an Owner.

1.31 "Unit" shall mean a physical building structure which is a fee simple Building constructed on an individual parcel of land. The Residential / commercial Units consist of two story Units with commercial areas on the lower level and Residential areas on the upper level with a two car garage. The boundaries of each Unit are defined as the center of the party walls which are constructed on Property lines.

1.32 "Party Wall" shall mean the structural walls between Lots / Units.

1.33 "Quiet Enjoyment" shall mean the right to unimpaired use and enjoyment of development.

1.34 Definition of Other Terms. Unless the context clearly requires otherwise, all other terms used in the Governing Documents are intended to be defined as set forth in New Mexico Statutes.

SECTION 2

OWNERSHIP RIGHTS AND LIMITATIONS

Each Owner, by virtue of his or her membership in the Association, shall be entitled to certain rights and benefits as described below. The rights and benefits are subject to limitations, however, as listed in Section 2.4 and elsewhere in this Declaration.

2.1 Right to Membership in Association. All Owners shall automatically be deemed Members of the Association and shall be entitled to the rights and benefits of membership (subject to the limitations contained herein).

2.2 Right to Inspect Records. Members shall have the right to inspect records of the Association as provided by Civil Code and the Bylaws.

2.3 Right to Use and Quiet Enjoyment. Each Owner is entitled to the exclusive use and quiet enjoyment of the Common Area, subject to the limitations contained in the Governing Documents.

2.4 Limitations. The rights described above in this Article and elsewhere in the Governing Documents are subject to the following limitations:

- a. **Suspension of Rights.** An Owner's right to vote and receive all nonessential services from the Association, may be suspended under the circumstances and according to the procedures described elsewhere in the Governing Documents;
- b. **No Separation of Interests.** An Owner's Unit, interest in the Common Areas, membership in the Association, and easements, shall not be separated or separately conveyed. Any conveyance of a Unit shall be deemed to automatically include fee title to the Unit, an interest in the Common Area, Membership in the Association, and the easements specified in this Declaration, whether mentioned or omitted in the deed;
- c. **Delinquencies.** Any person who acquires a Unit by any means shall be bound by the restrictions in this Declaration but shall not be entitled to the rights, benefits and privileges of Membership, if at the time of acquisition any former Owner of that Unit has failed to pay any portion of their Assessments due under this Declaration to the Association and the debt remains unpaid. If and only if the prior debt is paid shall the new Owner become entitled to receive the rights, benefits and privileges of membership;
- d. **Health and Safety.** The right of the Association to impose reasonable conditions on the use of the Common Areas to protect the health and safety of the Members and other Persons using them and to protect the Common Areas from damage or premature deterioration;
- e. **Rules.** The right of the Membership to adopt, and to modify from time to time, Rules pursuant to Civil Code; and
- f. **Governing Documents.** Any other reasonable restrictions and limitations contained in the Governing Documents.

SECTION 3

GRANT OF EASEMENTS & SHARED PARKING

3.1 Grant of Easements. Each Lot is subject to: non-exclusive perpetual easements for:

- a. **Reciprocal Ingress & Egress.** Each Lot is subject to: non-exclusive perpetual easements for parking, ingress, and egress by vehicular and pedestrian traffic upon, over and across that portion of the Common Area located on said Lot for the benefit of every other Lot and the Owners thereof. The reciprocal rights of parking, ingress, and egress set forth in this Section shall apply to the Common Area for each Lot as such area may be changed from time to time pursuant to this Declaration.

- b. **Utilities.** Each Lot is subject to non-exclusive perpetual easements under, through and across the Common Area of said Lots for the installation, operation, maintenance, repair and replacement of water drainage systems or structures, water mains, sewers, water sprinkler system lines, telephones, electrical conduits or systems, gas mains and other public or private utilities for the benefit of every other Lot and the Owners thereof. All such systems, structures, mains, sewers, conduits, lines and other utilities shall be installed and maintained below the ground level or surface of such easements except for ground mounted electrical transformers and such other facilities as are required to be above ground by the utility providing such service (including temporary service required during the construction, maintenance, repair, replacement, alteration or expansion of any buildings or improvements located in the Highland Lofts). The installation, operation, maintenance, repair and replacement of such easement facilities shall not unreasonably interfere with the use of the improved Common Area or with the normal operation of any business in the Highland Lofts. The Owners of each Lot shall execute such additional easements as are reasonably required by any public or private utility for the purpose of providing the utilities described herein provided such easements are not otherwise inconsistent with the provisions of this Declaration.
- c. **Drainage.** Each Lot is subject to non-exclusive perpetual drainage easements under, through and across the Common Area of said lots for the purpose of surface drainage and runoff of rainwater for the benefit of every other Lot and the Owners thereof.

3.2 Utility Rights. Each Owner shall have access through all parts of the Development to maintain any sections of utility lines for sewer, storm drains, water, electricity, gas, telephone, television cables, or any required utilities that exclusively serve their Unit. To the extent such elements are not maintained or repaired by a governmental agency or utility company, it shall be the duty of the Owner to maintain, repair and replace such sections wherever located and Owner shall have a nonexclusive easement over all areas of the Development for the purpose of meeting this duty.

3.3 Right to Parking. Each Owner shall have a nonexclusive drive and parking easement throughout all lots (identified as common area) included in the Highland Lofts for shared access and parking use.

- a. **Shared Parking.** Each Lot is subject to an open/shared parking arrangement, whereby, the Owners shall not segregate property access/parking rights or significantly impair access to parking on the property by users of any portion of the property. Parking spaces shall be for the benefit of all Owners, their Tenants, employees, customers and guests on a first come first serve basis (subject to dedicated spaces as defined below).
- b. **Dedicated Parking Spaces.** Each Unit Owner shall have a right to the exclusive use of two dedicated parking spaces within the shared common areas. Owner's shall have the right to place signage without prior permission (meeting City of Albuquerque post mounted handicap placard standards) on said Owner's designated parking spaces which are required to be located on the Owners respective parcel of land. Owners shall have the right to have unapproved vehicles towed at the vehicle Owners sole expense. The Association shall have the right to implement reasonable rules and regulations related to parking so long as said rules and regulations apply equitably to all Owners. The designated parking spaces may be reallocated or additional spaces designated for exclusive use with the consent of the Membership.
- c. **Residential Unit Garages.** Garages are to be utilized for occupant parking. Garages shall not be permitted to be used for any purpose that would reduce parking allowances unless approved by the Association Membership.
 - (i) Parking spaces shall be occupied by operable vehicles only and may not be used for long term storage as shall be defined as vehicular parking for longer than 3 days;
 - (ii) No extended stay motor vehicle or accessory (i.e. motorhome or trailer) shall be permitted to be parked overnight or for long term storage as defined above;
 - (iii) Vehicles shall not be built, serviced or repaired inside the Development except on an emergency basis when they become inoperable.

SECTION 4

MAINTENANCE OBLIGATIONS

The Development shall be maintained at all times in good condition so as to preserve property values, the quiet enjoyment of Owners / Tenants, and the right of each Owner to the full use and occupancy of their Unit. The respective rights and duties of the Association and the Owners with regard to maintenance of the Development are described in this Article:

4.1 Maintenance by the Association. The Association shall have the duty to maintain, repair, replace and restore, as needed, the Common Area, and all components thereof (inclusive of the Building Facade) so that it is at all times in clean, safe, and good condition. Without limiting the foregoing this duty shall include:

- a. Maintenance, repair and replacement of all paved surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal or superior in quality, use and durability; and re-striping when necessary;
- b. Maintenance, repair and replacement of all landscape areas with the type of landscape palette originally installed or such substitute as shall in all respects be equal or superior in quality, appearance and durability;
- c. Maintenance, repair and replacement of the exterior facade of the building. The Association shall not be responsible for Owner or Tenant provided signage, roof elements, patios or decks, electrical or mechanical equipment, or any other elements not defined as Building Facade. However, if the Board of Directors concludes that elements of the Common Area such as, for example, patio walls, balcony railings, exterior elements, or garage doors throughout the Development are in need of repair or replacement at the same time, the Association may elect to make such repairs or replacements and utilize Common Funds in order to do so;
- d. Treatment and repair of mold, mildew, fungus or other similar conditions found in the Common Area only. The Association shall not be responsible under any circumstances for treating, repairing or otherwise addressing such conditions within any Building.

4.2 Maintenance by Owners. Every Owner shall have the duty to maintain, repair, replace and restore all portions of the building not specifically identified in the scope of the Association responsibility identified above, so that it is at all times in clean, safe, and good condition. This duty shall include, but not be limited to:

- a. Maintain, repair, replace and restore all portions of their Building so it is in good, clean, and sanitary condition at all times. This is inclusive of roofing, parapet caps, balconies, etc. to ensure watertight conditions at all times;
- b. Treat, repair, replace, restore and maintain their Building in the event dry rot, mold, mildew, fungus or other similar conditions are found in those areas;
- c. Repair, replace and restore any part of the Building damaged as a result of termites, rodents, insects, and other pests and infestations (it shall be the Owner's duty to eradicate the termites, pests and other like infestations and repair or replace any areas damaged by such pests and infestations);
- d. Maintenance, repair and replacement of Owner or Tenant provided building signage. If an Owner or Tenant removes any item which requires any element of the building to be recoated or re-finished, the Owner shall bear the sole expense for repair.

4.3 Owner Liability for Damage to Other Units or Common Area. Each Owner is liable to the Association and to all other Owners for any damage to or from their Units or Common Area caused by:

- (i) their acts or omissions;
- (ii) the acts or omissions of their Tenants and Guests;
- (iii) any condition originating in their Unit.

4.4 Association's Right to Make Repairs. If an Owner fails, in the Board of Directors's opinion, to adequately maintain, repair or replace any elements in need of attention, the Association may, after giving not less than ten days written notice to the Owner (except in the case of an emergency), make the necessary repairs or perform maintenance on the Owner's behalf. In such event, Owner shall reimburse the Association for all costs incurred and should Owner fail to do so the Association may impose a Special Assessment on the Owner for the cost which shall be enforceable by any means available under this Declaration or New Mexico law.

4.5 Limitation on Association's Liability. In the absence of gross negligence or willful misconduct, neither the Association nor any officer, director, employee, or agent of the Association shall be liable to any Person for:

- a. theft of or injury to any article, vehicle or thing which may be kept by such Owner or other Person in any part of the Development,
- b. water leakage or mold from any source which results in damage to an Owner's Unit or Common Area, or
- c. the Association's need to access Common Area in order to perform maintenance or repairs for which the Association is responsible.

SECTION 5

TAXES & INSURANCE

The Association shall purchase and maintain in force and effect at all times, as part of the Common Expenses, the policies of insurance which are described below in this Article:

5.1 Authority to Purchase. All insurance specified in this Article, or otherwise deemed prudent by the Membership, shall be purchased and maintained by the Association. The premiums shall be part of the Common Expenses.

5.2 Real Property Taxes. Real property taxes and assessments for Lot 21a shall be the responsibility of the Association. Lot Owners are responsible for Real Property Taxes for their respective Lots located within the HLOA.

5.3 Insurance Responsibility by Association. The Association shall be responsible for:

- a. **Property Insurance.** The Association shall purchase and maintain a property insurance policy to include, at a minimum, coverage for fire, theft, vandalism, and any other loss or peril which the Membership believes is necessary or appropriate to include. The policy shall be based on replacement cost values, and not based on actual cash value. The policy shall specify that all insurance proceeds shall be payable to the Association as trustee to be held and expended for the benefit of the Owners and their respective mortgagees. Directors shall be responsible to assess a replacement cost for the building upon each insurance renewal period and provide a policy with limits appropriate to ensure adequate replacement coverage for the building. The Deductible for the policy shall be determined by the Membership. Casualty Insurance purchased by the Association is specifically limited to coverage of the building to the level of construction as permitted and constructed during the initial construction in 2006. Interior build-outs (walls, ceilings, lighting, flooring, etc., renovations, contents and all other items not provided in the scope of the 2006 construction are to be covered by Owner provided policies paid for by each independent Unit Owner.
- b. **General Liability Insurance.** The Association shall purchase and maintain a comprehensive public liability policy naming as insureds the Association Membership and its officers, directors, employees, and management company (if any). The policy shall provide protection with minimum limits of at least Two Million Dollars (\$2,000,000.00) per occurrence / Four Million Dollars (\$4,000,000.00) aggregate.
- c. **Directors and Officers Insurance.** The Association shall purchase and maintain directors and officers errors and omission insurance providing coverage with minimum limits of not less than One Million Dollars (\$1,000,000.00) aggregate. The Deductible for the policy shall be determined by the Membership.
- d. **Worker's Compensation.** The Association shall purchase and maintain worker's compensation and employer's liability insurance as required by law or otherwise prudent if applicable.

- e. **Fidelity Insurance.** The Association shall purchase and maintain fidelity coverage against dishonest acts on the part of officers, directors, employees, volunteers, and managing agents who handle or may handle the funds of the Association. The amount of the coverage shall be at least equal to or greater than 100% of the total sum of the Regular Assessments and Reserves which the Association is anticipated to collect and/or have in its possession or control during any calendar year.

5.4 Insurance Responsibility by Owners. Each Owner, shall have the continuing responsibility to insure their independent interests and purchase at their sole expense:

- a. **Property Insurance.** To the extent not covered by the Association's insurance policy as described above, Owners shall be responsible for independent property insurance appropriate to protect their assets which include, but are not limited to; restoration and repair of interior build-outs, damage to personal property, furniture, furnishings and decorations, fixtures, equipment, building signage (elements beyond the scope of the Associations coverage). This policy shall be made by and at the sole expense of the Owner.

- b. **General Liability Insurance.** Owners shall at their sole expense, purchase and maintain a comprehensive public liability policy for coverage beyond the scope of the Association responsibility for coverage, which specifically includes coverage for specialty uses within the common area. This policy is intended to extend coverage beyond the Association general liability coverage for the common areas as specified above.

* Owners shall be solely responsible for general liability coverage extending into the shared common areas for any special event or utilization of the common areas for any use beyond the scope of traditional vehicular and pedestrian access and parking.

- c. **Glass Coverage.** Glass insurance coverage and replacement costs shall be the sole responsibility of the Unit Owner. Glass replacement shall be coordinated by Owner and shall be replaced in a timely fashion. The Association shall have right to replace glass on Owners behalf as specified herein when necessary.

- d. **Additional Policies.** Owners shall purchase any other policy of insurance which they feel is reasonably necessary to protect their separate interests.

5.5 Increasing Insurance Rates. Nothing shall be done or kept by any Owner which will increase the rate of insurance for any other Unit, the Common Area, or cause the cancellation of any insurance policy. If, by reason of any act or omission by an Owner, the cost of insurance on any policy normally purchased by the Association is increased, that Owner shall be personally liable to reimburse the Association for the cost of any such increase which cost shall become a Special Assessment against their Unit.

5.6 Choice of Insurance Companies. All policies of insurance purchased by the Association shall be obtained from insurance companies qualified to do and doing business in the State of New Mexico and holding a rating of "A" or better in Best's Insurance Reports (or the equivalent rating by another reputable company or agency).

5.7 Waiver by Members. All insurance obtained by the Association shall be maintained by the Association for the benefit of the Association and as trustee for the Owners and the Mortgagees as their respective interests may appear. In the event of damage or injury which is covered by an Association policy, the Owners may pursue collection from such policy and in the event of coverage, the Owners hereby waive and release all claims against the Association, the Board of Directors, Association Consultants, and other Owners with respect to any loss covered by such insurance.

5.8 Payment of Policy Proceeds. Regardless of the nature of the claim, all insurance proceeds paid under a policy purchased by the Association shall be delivered and made payable to the Association only. The Association shall then use those funds for the purpose described in the claim.

SECTION 6

DESTRUCTION OF IMPROVEMENTS

In the event of a casualty or other major event that results in destruction of the development or serious damage to a significant portion thereof, the following regulations will apply:

6.1 Responsibility by Association. In the event that a portion of the common area or portion of the building insured by the Association policy is partially or totally destroyed by fire, earthquake or other casualty, the following shall occur:

- a. **Cost of Reconstruction.** The Board of Directors shall examine the cost of repair and the amount of Reserves and insurance proceeds available for reconstruction. The Membership shall review contractor proposals and shall select a contractor for construction. Construction estimates should be obtained from at least three (3) reputable licensed contractors.
- b. **Automatic Reconstruction.** The Association shall have the responsibility to repair the common area or re-construct the building back to the level of construction as permitted and constructed during the initial construction of the building in 2006 (subject to any increased building standards then in effect). The Reserves and insurance proceeds shall be used for this purpose.
- c. **Membership Approval.** If the circumstances of destruction deem the building a substantial loss the Membership shall have the right to vote not to re-build, subject to the rights of mortgagees or any other guarantors. The decision not to re-build would require a 100% unanimous vote by the Membership as well as approvals for guarantors of all properties.

6.2 Right of Entry to Assess Damage And Make Repairs. If repairs or replacements are required under this Article, Owners shall work with representatives of the Association in allowing access to any Unit to make repairs or assess damage.

6.3 Negotiations with Insurer. The Board of Directors shall have full authority to negotiate in good faith with representatives of the insurer of the totally or partially destroyed within the Association scope of coverage, and to settle with the insurer on the Owners behalf once the Board of Directors concludes a settlement is prudent. Any settlement made by the Board of Directors in good faith shall be binding upon all Owners.

6.4 Responsibility by Owner. In the event that a portion of the common area or portion of the building insured by an Owners policy is partially or totally destroyed by fire, earthquake or other casualty:

- a. Owners shall have the right to determine independently whether they will re-build beyond the Associations scope of insurance coverage. Owners are required to work with the Association to bring their Unit back to 2006 specifications as described above, but have the ability to collect on their independent Owners policy leaving a Unit at the 2006 level of completion (subject to any increased building standards then in effect) if they so desire.

SECTION 7 OCCUPANCY RESPONSIBILITIES & USE RESTRICTIONS

Owners shall comply with the following restrictions in connection with the use and occupancy of their Units and Common Areas. These restrictions are intended to preserve and enhance the safety and security of the Development, the value of the Development and the Units, and the quiet enjoyment of the Tenants.

7.1 Leasing / Use Limitations. No Owner shall be permitted to utilize any portion of their Unit for any purpose specifically excluded in the governing documents. Any proposed use must be consistent with all federal, state and local laws, ordinances, and zoning regulations. The following uses shall be specifically restricted:

- a. **Use Restrictions.** No Owner shall be permitted to lease their Unit for any purpose not provided for in the Association governing documents. Any such use must be consistent with all federal, state and local laws, ordinances, and zoning regulations. Certain commercial uses shall be specifically restricted as follows:
 1. Gambling Operation.
 2. Tattoo.
 3. Liquor Sales.
 4. Animal Sales, Service, Breeding, Veterinary.

* Pet Supplies Store shall be allowed.

5. Smokers Shop.

6. Music or Dance Studio.

7. Recording Studio.

* Excluded use due to acoustical implications.

8. Adult Entertainment, Merchandise, Product Sales.

9. Vehicle Sales.

* Vehicle Accessories sales shall be allowed with no installation services):

7.2 Residential Occupancy Restriction. The maximum number of Persons who may reside in any Unit at any time shall not exceed two (2) Persons per bedroom plus one (1). The Association may require Owners to disclose in writing the names of the Persons residing in a Unit at any time.

7.3 Additional Restrictions. Owners, Tenants and Guests shall be responsible to abide by all federal, state and local laws, ordinances and zoning regulations. Certain activities shall be specifically restricted as follows:

- a. **Barbecues; Exterior Fires.** There shall be no exterior fires whatsoever except for use of barbecues on Balconies.
- b. **Filming Activities.** No Owner shall allow his Unit or any other part of the Development to be used for commercial filming or photography purposes except with the prior written approval of the Board or as otherwise allowed in the Rules.
- c. **Garage Sales.** No rummage sales, garage sales, estate sales, or flea markets of any kind shall be permitted unless otherwise approved in writing in advance by the Board.
- d. **Laundry.** No exterior clothesline shall be permitted in the Development which can be seen from the Common Area or another Owner's Unit or Common Area.
- e. **Obstruction of Common Areas.** No Owner may obstruct or interfere in the Association's management of the Common Area or the right of passage through the Common Area by Owners, Tenants and Guests. No Owner or Tenant shall obstruct any walkway in any way, inclusive of the rear exit walkways.
- f. **Power Tools.** Power tools, welding equipment, or carpentry shops may be used only between the hours of 9:00 a.m. and 5:00 p.m. Use of power tools shall not from creating unreasonable noise that disturbs neighbors.
- g. **Acoustical Limitations.** No Owner shall permit any use that would transfer sound, vibration or the like from one Unit to another without written consent of the adjacent building Owners.
- h. **Nuisance.** No Owner shall conduct any business or provide conditions that shall constitute a nuisance which is prohibited. Nuisance shall be defined as noxious, offensive or illegal activities, and anything which threatens to cause or causes unreasonable embarrassment, disturbance or annoyance to the Association or any other Owners or Tenants.

7.3 Pets. No animal, bird or reptile may live in the Development or in any Unit except for ordinary domesticated household pets including dogs, cats, birds (in cages only), fish in tanks, and hamsters (or like animals) kept in cages. All such pets shall comply with the following restrictions as well as those contained in the Rules.

- a. **Number and Size.** Only three (3) dogs or cats, or a combination of each up to a total of three (3), may reside in any Unit.
- b. **No Commercial Use.** No animal or pet living in the Development may be bred for commercial purposes.

- c. **Removal.** The Membership may cause the removal of any animal or pet which in its subjective opinion is disturbing the quiet enjoyment, health, safety or welfare of any other Owner.
- d. **Liability / Indemnity.** All Owners are strictly liable for any damage or injury to Persons or property caused by their pets. Further, each Owner shall indemnify, defend and hold harmless the Association and its officers, directors, employees, committee members, manager, and agents from all claims, obligations, liabilities, damages, expenses, judgments, attorneys' fees and costs arising from or related to their pets.
- e. **Leash.** Dogs shall be kept on a leash at all times when they are in the Common Areas.
- f. **Litter.** Each Owner shall immediately remove and dispose of any litter left by their pet in the Common Areas or Common Areas.

7.4 Contact Information. Owners shall provide the Association with the name, phone number, and email address for all lessees/occupants who will reside in Units.

7.5 Exclusive Right to Common Area. When any Unit is non-owner occupied the Tenants shall have the exclusive right to use the Common Area and receive whatever services would otherwise be provided to the Owner of that Unit.

7.6 Sanitary Conditions. Each Owner shall maintain their Unit in a clean and sanitary condition in good at all times.

7.7 Unlawful Detainer to Enforce Rules. Any Owner of a non-owner occupied Unit shall be responsible for enforcing compliance by their Tenants and Guests with the Association's Governing Documents. In the event of a breach, the Association shall give notice to the Owner who shall have fourteen days to cause the breach to be fully remedied. If the breach is not corrected within that period, the Owner and Tenant shall be subject to fines and other disciplinary action by the Association.

7.8 Security. If an Owner is delinquent in payment of assessments, they will be deemed to have assigned to the Association the right to collect any rent generated by their Unit until such delinquency is cured. The Association may demand in writing that the Tenant pay their rent to the Association until such time as the delinquency (including interest, late charges, and collection costs) is fully paid. If the Tenant fails to do so, they shall be liable to the Association for the amount of the rent even if they pay such rent to the Owner.

7.9 Trash; Refuse. Owners shall comply with all laws with respect to the disposal of trash, refuse, and other rubbish. In utilizing trash receptacles located in the Common Area, Owners shall make sure the trash is deposited inside the receptacle only and that the receptacle is able to be closed, and is fully closed, afterwards. No off-site trash shall be permitted to be deposited into the common trash receptacle unless previously approved by the Board of Directors.

SECTION 8

ARCHITECTURAL CONTROL

It is the Association's duty to exercise architectural control over all Improvements constructed or installed in the Development. In order to meet this duty the Association shall act in accordance with the following regulations as well as those contained in the Rules. These restrictions are intended to preserve and enhance the safety and security of the Development, the value of the Development and the Units, and the quiet enjoyment of the Users:

8.1 No Liability for Approval. By approving any work as described herein, the Board of Directors, or Association are not representing to the Owner that what they plan to build is prudent, safe, or legal. The approval shall not; relieve the Owner of the duty to satisfy the terms of the Governing Documents and of all applicable laws, statutes, regulations, and codes; provide a defense to a legal action by the Association; or give rise to any liability on the part of the Association, the Board of Directors, or their representatives.

- a. **Compliance With Laws.** Owners shall be responsible to ensure that the final product meets all applicable laws and regulations, is free of defects, meets all provisions of the Governing Documents, and does not disturb the quiet enjoyment of any other Owner.

- b. **Mechanic's Liens.** Each Owner shall indemnify, defend, and hold harmless the Association, and its officers, directors, employees, committee members, managing agent, and agents, from and against any damage, loss, attorneys' fees, costs, claims, or injuries caused in whole or in part by the recordation of a mechanic's lien against any part of the Development or another Owner's Unit. In the event a mechanic's lien is filed which affects in any way the Common Area or another Owner's Unit, the Owner shall promptly take all steps needed to cause the removal of the mechanic's lien.

8.2 Appeals. If the decision disapproving an application is made by the Board of Directors, any Owner who wishes to appeal the disapproval may do so by submitting a request, in writing, to the Membership in care of the Tenant which request must be received not later than fifteen (15) days following the date of the notice of disapproval. If such an appeal is requested it will be considered by the Association at a hearing of the membership. In the event an appeal is timely submitted the Board of Directors shall issue a written decision of the membership within fifteen (15) days following the date of the hearing and its decision will be final and binding.

8.3 Right to Decorate. Each Owner shall have the exclusive right (at their sole expense) to furnish and decorate the interior surfaces within their Unit. Each Owner may furnish their Unit as they see fit provided such furnishings do not cause a threat of damage or injury to any other Owner or Unit or violate any noise restrictions contained in the Governing Documents, subject to the following exceptions:

- a. **Holiday Decorations.** Owners shall be allowed to provide seasonal holiday decorations during respective holiday seasons. Exterior decorations must consist of a temporary installation and shall not compromise the integrity of the exterior building systems.
- b. **Special Event.** Owners shall have the right to decorate for special events or promotions. Event decorations shall be temporary as shall be defined as 3 weeks or less.
- c. **Board Discretion.** The Board of Directors shall have the authority to request the removal or replacement of decorations if the decoration, in the Board's opinion, is in violation of any restrictions within these governing documents or appears inappropriate in any way. The Association shall have the right to implement reasonable rules and regulations related to decoration so long as said rules and regulations apply equitably to all Owners.

8.4 Alteration of Common Area. No Owner shall alter, construct, install or remove anything on or from the Common Area, without the prior written approval of the Association Membership.

8.5 Building Modifications. The Building shall not be modified as to color or exterior surfaces without written consent of the Association Membership. The Building extents shall not be extended or altered beyond the existing conditions without written approval of the Association membership.

- a. **Prior Approval.** No alteration, construction, or remodeling may commence as described above until the prior written approval of the Membership has been given, if such work is related to or could potentially affect any of the following;
 - (i) The electrical, HVAC, or plumbing systems of the Building or Development,
 - (ii) the resistance of any Unit or other part of the Development to water intrusion,
 - (iii) the foundation or structural integrity of any Unit, Building, or Common Area,
 - (iv) the exterior uniform appearance of any Unit or Building,
 - (v) the level of noise transference to another Unit, or Common Area,
 - (vi) the right to quiet enjoyment of any other Owner, or
 - (vii) the right of any other Owner to the full ownership, occupancy, and use of their Unit.

- h. **Garage Conversion.** The Owners of Residential / Commercial Units shall not have the right to convert garages into storage or heated commercial space without written approval of the Association Membership.
- i. **Glass Tint.** Window tint shall be allowed per the following restrictions: (i) Tint color is to be grey; (ii) Light transmission reduction cannot exceed 35%; (iii) Exterior reflectance cannot exceed 25%.
- j. **Security Doors.** Owners shall be allowed to install security doors (black in color) at the lower level, East (Rear) side of the building. Security doors shall be provided per local building codes and ordinances.
- k. **Satellite Dish.** No exterior mast, antenna or satellite dish of any size shall be permitted in the Development which can be seen from the Common Area, or another Owner's Unit. Owners may install an antenna or satellite dish (not to exceed 36 inches in diameter) to receive television or radio reception to be located below the level of roof parapets and out of sight from anywhere around the perimeter of the common properties. Wiring is to be run internally and shall not be allowed to be run along the exterior of the building facades and shall be out of sight.
- l. **Electrical Equipment.** No Owner may install, attach or hang any equipment or wiring for electrical installations, machines, air conditioning units or exposed wiring in any portion of the Common Area or on the Building Facades without the prior written approval of the Association Membership.

8.6 Conduct of Construction. During any construction Owner shall use best efforts to minimize inconvenience to other Tenants of the Development.

8.7 Construction Debris. Construction projects within the Units shall either provide (i) an independent dumpster for waste removal or (ii) may coordinate for appropriate trash services if common area receptacle is approved for use by Board of Directors. The Board of Directors may adopt further provisions in the Rules with regard to the subject of construction disposal.

8.8 Balconies. Owners are responsible for waterproofing their Balconies and for any water leakage through the flooring that causes damage to the Common Area or to another Owner's Unit. A Balcony may be furnished as the Owner sees fit though the Board of Directors may cause the removal of any furnishing or decoration that it finds unsightly, inconsistent with the uniform appearance of a Building, or a potential threat to cause damage or injury to others.

8.9 Mechanic's Liens. Each Owner shall indemnify, defend, and hold harmless the Association, and its officers, directors, employees, committee members, managing agent, and agents, from and against any damage, loss, attorneys' fees, costs, claims, or injuries caused in whole or in part by the recordation of a mechanic's lien against any part of the Development or another Owner's Unit. In the event a mechanic's lien is filed which affects in any way the Common Area or another Owner's Unit or Common Area, the Owner shall promptly take all steps needed to cause the removal of the mechanic's lien.

SECTION 9 SIGNAGE DESIGN GUIDELINES

9.1 Purpose. The purpose of these Signage Design Criteria is to inform Building Owners of the framework within which the (Highland Lofts Owners Association) Association Board of Directors will review and approve all signs proposed at the Highland Lofts. There shall be no deviation from or modification of the specific limits or requirements stated herein unless approved by the Association Members. When "general" requirements are mentioned, the Board of Directors reserves the sole right to interpret them in the case of each and every sign. Nothing hereinafter stated shall be construed as limiting Board of Directors's right to require modifications to signs prior to its approving them or to modify these criteria at its sole discretion.

9.2 General Requirements. The following criteria shall be met prior to installation of signage within the Association:

- a. **Number of Signs** – Only one sign is permitted per building unit.
- b. **Location of Building Mounted Signage** – Building Signage shall specifically limited to the following:

- (i) The 8 retail / office suites signage shall be limited to the west facing Building Facade currently accented as a maroon color. The signage shall be centered on the existing electrical outlet in both the horizontal & vertical dimensions.
 - (ii) The 4 live / work units shall be limited to the area directly over the garage door currently accented as a maroon color. Signage shall be centered directly over the garage door opening in both the horizontal & vertical dimensions.
- c. **Size of Sign** – Each party's sign shall be located within the limits of its respective storefront and shall be limited to 3'-0" tall x 7'-0" wide.
- d. **Types of Sign Permitted.** Individual letters & tenant logos if applicable; Script style letters; Channel Letter: A fabricated or formed three-dimensional letter that may accommodate a light source. The following types of Channel Letters shall be permitted:
- (i) **Backlight Letter:** An illuminated reverse channel letter with an open or translucent back so that light from the letter is directed against the surface behind the letter, producing a halo lighting effect around the letter.
 - (ii) **Front-Lighted Letter:** An illuminated channel letter with a translucent face.
 - (iii) **Pan Channel Letter:** A dimensional letter that is constructed with side walls, a back, and a face, making the letter a solid integral unit with the side walls and back having a pan-shaped cross-section.
 - (iv) **Reverse Channel Letter:** A fabricated dimensional letter with opaque face and side walls.
- e. **Colors of Sign Letters.** Illuminated signage may be comprised of any single or combination of colors as approved by the Association Board of Directors; Non-Illuminated signage may be of a natural metals finishes or color as approved by the Association.
- f. **Types of Illumination.** Maximum brightness allowed for signs will be 100' lamberts taken at the letter face and must comply with all governmental codes. Signage illumination shall be limited to the following: (i) Illuminated signage internally illuminated (with opaque or translucent faces and with light source completely concealed); (ii) Back-lighted (with lamps or tubes completely concealed within the depth on the letter).
- g. **Sign Text.** Sign text shall be limited to Tenant's trade name & logo if applicable. Association reserves the right to limit the use of Tenant's customary "logo" at its discretion.

9.3 Additional Signage. The following sign types shall be approved by the Board of Directors prior to installation. These signs shall have a limited timeframe as to their use as determined by the Board of Directors:

- a. **Number of Signs.** Only one sign is permitted per building unit.
- b. **Banner:** A temporary sign of lightweight fabric or similar material that is mounted to a pole or building.
- c. **Real Estate Signage.** For Sale or Lease signage is specifically limited to the interior side of a buildings windows.
- d. **Window Sign:** A sign that is painted on, attached to, or suspended directly behind or in front of a window or the glass portion of a door. Shall be allowed as approved by the Association Board of Directors.
- e. **Freestanding Sign:** A sign that is not attached to a building.
- f. **Temporary Sign:** Any sign not intended for permanent installation.
- g. **Wall Sign:** A building-mounted sign either attached to or displayed or painted on an exterior wall.

9.4 Sign Prohibitions. The following are specifically prohibited:

- a. Flashing, rotating and moving signs.
- b. Exposed neon (except where specifically reviewed and approved by Association) and exposed light sources of any type.
- c. Visible sign company names.
- d. Suspended signs beneath the fascia or recessed entrances.
- e. Paper signs, stickers, banners or flags.
- f. Exposed electrical transformers.
- g. Box Signs (Illuminated or Non-Illuminated).
- h. Awning Sign: A building-mounted sign that provides additional functionality as shelter.
- i. Electronic Message Center: A variable-message sign that utilizes computer-generated messages or some other electronic means of changing copy.
- j. Exterior Illuminated Sign: A sign that is illuminated by a light source that is directed towards and shines on the face of a sign.
- k. Flat Cut-Out Letter: A dimensional letter cut from sheet or plate stock.
- l. Open Channel Letter: A dimensional letter that has no face and, if illuminated, has a visible light source.
- m. Changeable-Copy Sign: A sign or portion thereof on which the copy of symbols change either automatically through electrical means or manually through replacement of letters or symbols.
- n. Pan Face: A plastic sign face molded into a three-dimensional shape.
- o. Message Center: An electronic or mechanical variable-message sign enabling changes to be made from locations other than at the sign.
- p. Projecting Sign: A building-mounted sign with the faces of the sign projecting from and perpendicular to the Building Facade.
- q. Roof Sign: A building-mounted sign erected upon and completely over the roof of the building.

9.5 Sign Prohibitions. Approvals of any proposed signage shall be submitted in writing to the Association Board of Directors for approval prior to installation. Any Tenant or Building Owner can appeal any decision regarding signage approvals / rejections to the Association Members by special meeting as defined in these governing documents:

- a. **Approvals Required.** Anything hereinbefore notwithstanding, all exterior signs are subject to approval by the Association; All exterior signs are subject to approval by City of Albuquerque. Tenant shall obtain all necessary permits through their respective sign contractors. Signage permits are to be submitted to the Association Board of Directors upon approvals for verification; Electrical signage is to be UL listed and shall be installed by a licensed electrical contractor.
- b. **Drawings To Be Submitted.** Three (3) complete sets of exterior sign drawings must be submitted for Association Approval. Tenant's sign drawings must include the following:

- (i) Elevation view of the building facade in which the sign is to be located. Height of letters and length of sign must be dimensioned.
 - (ii) Cross Section view through sign, showing details of mounting and dimensioned projection of the face of the letter from the face of the building wall.
- c. **Preliminary Submission.** Tenant / Building Owner may, at its option first submit two (2) copies of its exterior sign drawing to the Association Board of Directors for preliminary review and comment prior to submitting the three (3) sets required for final approval. This procedure is recommended for preliminary feedback.

9.6 Signs. Except as expressly permitted by law, no Owner may display any sign, banner, flag (other than U.S. Flag), notice, painting or advertisement of any kind in the Development that is visible from any location outside the Unit.

9.7 Miscellaneous Signs. Any and all signs which, in Association's opinion, are not covered by the requirements set forth above shall be reviewed on their individual merits. All signs, wherever located within the Demised Premises shall be subject to the provisions of these Sign Criteria.

SECTION 10 PARTITION AND SEVERANCE

10.1 Right of Partition. In accordance with the provisions of NM Civil Code, the right of partition of the Common Area is hereby suspended and no proceeding shall be brought for the partition of said Common Area, except as provided by law or as expressly stated in this Declaration.

10.2 Prohibition Against Severance. No Owner shall have the right, for any purpose, to sever his Unit or Common Area from his undivided interest in the Association.

SECTION 11 AMENDMENTS

11.1 Amendment. This Declaration may be amended or restated by the affirmative vote of a two-thirds (2/3) majority of the total voting power of the Association. Any amendment or restatement adopted under this Article shall be recorded in the office of the Bernalillo County Recorder and shall be effective upon recordation.

11.2 Confirmation of Approval. A certificate signed and sworn to by two (2) Board of Directors of the Association that the requisite number of Owners have either voted or consented in writing to any amendment, when recorded, shall be conclusive evidence of such fact.

SECTION 12 MISCELLANEOUS

13.6 Amendments. This Declaration may be modified, amended or repealed, and new provisions may be adopted, only by the vote or written consent of two-thirds (2/3) majority of the total voting power of the association. Any amendment or restatement adopted under this Article shall be recorded in the office of the Bernalillo County Recorder and shall be effective upon recordation.

12.1 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the use, operation and maintenance of the Development.

12.2 Severability. The provisions of this Declaration are severable from one another. If any provision is found to be invalid, illegal or unenforceable it shall not affect the validity, legality and enforceability of the remaining provisions.

12.3 Reference to Owners. Although restrictions in this Declaration may from time to time refer only to the Owners, each such restriction shall also be binding on all Tenants, Guests, and all other Persons entering the Development.

12.4 Conflicting Provisions. In the case of any conflict between the Governing Documents, the order of priority shall be as follows: (i) Articles, (ii) Bylaws, (iii) Declaration, (iv) Rules.

12.5 Harassment. Owners and Tenants shall not threaten, intimidate, berate, harass, embarrass or act in a menacing manner towards any officer, director, Manager, employee, vendor, agent, Tenant or Member of the Association.

12.6 Successors and Assigns. This Declaration shall inure to the benefit of and be binding upon the Owners, and their respective heirs, personal representatives, grantees, lessees, licensees, successors and assigns.

12.7 Notices. Any communication or notice permitted or required herein shall be delivered as submitted in writing to the applicable party. Any notice sent by certified mail addressed to the mailing address of the contact on file with the secretary shall be deemed appropriate notice. Notice to the association shall be provided to the Association's address on record.

7.10 Indemnity. Whenever a Unit is non-owner occupied, the Owner thereof agrees to indemnify, defend, and hold harmless the Association, its officers, directors, employees, manager, and other Members from any attorneys' fees, expenses, debts, liabilities, damages or injuries caused by the Occupants or arising from the lease/occupancy agreement.

Adoption of Declaration

IN WITNESS WHEREOF, this Declaration has been duly approved and adopted by the Board of Directors of the Association on December 5th, 2012.

By: [Signature]
Devin Cannady, President

12/12/12
Date

By: [Signature]
Jean-Paul de Jager, Secretary

12/12/12
Date

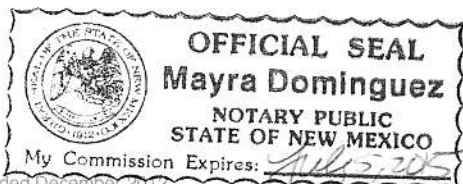
By: [Signature]
Onesimo Vigil, Treasurer

12/12/12
Date

Verification

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

Subscribed and sworn to before me this 12th day of Dec, 2012.



Amended December 2012

[Signature]
Notary Public

**DECLARATION OF EASEMENTS WITH COVENANTS
AND RESTRICTIONS AFFECTING LAND
FOR THE HIGHLAND LOFTS ("ECR")**

WHEREAS, WADE & SANCHEZ ENTERPRISES, LLC, a New Mexico limited liability company ("Declarant") are the owners of the following described real property located in the County of Bernalillo, State of New Mexico, and more particularly described as follows:

Lots numbered Nineteen (19) through Twenty-one (21) and Twenty-four (24) through Thirty-three (33), Block 11, of the VALLEY VIEW ADDITION to the City of Albuquerque, New Mexico, as the same are shown and designated on the map of said Addition filed in the office of the County Clerk of Bernalillo County, New Mexico on September 2, 1911, excepting therefrom the Southwesterly portions of Lots 19, 20 and 21, conveyed to the City of Albuquerque, New Mexico, by Warranty Deed dated February 4, 1961, recorded in Book D 586, page 610, records of Bernalillo County, New Mexico.

(individually designated by lot number and collectively "Lot(s)"); and

WHEREAS, Declarant deeded to Leona G. Calderwood, as Trustee of the Leona G. Calderwood Trust, under Trust Agreement dated October 27, 1993 ("Calderwood") the following described real property prior to the recording of this Declaration, to wit:

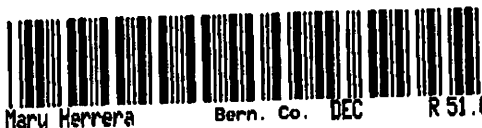
Lots numbered Twenty-two (22) and Twenty-three (23), Block 11, of the VALLEY VIEW ADDITION to the City of Albuquerque, New Mexico, as the same are shown and designated on the map of said Addition filed in the office of the County Clerk of Bernalillo County, New Mexico on September 2, 1911, excepting therefrom the Southwesterly portions of Lots 19, 20 and 21, conveyed to the City of Albuquerque, New Mexico, by Warranty Deed dated February 4, 1961, recorded in Book D 586, page 610, records of Bernalillo County, New Mexico.

(individually designated by lot number and collectively included in the definition "Lot(s)"); and

WHEREAS, Declarant and Calderwood desire to have the Lots developed in conjunction with each other pursuant to a general plan of improvement to form a business and living environment ("The Highland Lofts"), and further desire to make all of the Lots subject to the easements, covenants, conditions and restrictions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the premises, and intending that the following easements, covenants, conditions and restrictions shall be binding upon the parties hereto and their respective successors and assigns and shall attach to and run with the land which is the subject of this ECR, and shall be for the benefit of and shall be limitations upon all future owners of the Lots, and that all easements, restrictions and other covenants herein set forth shall

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be appurtenant to the dominant estates and obligations on the servient estates, and in consideration of the promises, covenants, conditions, restrictions, easements and encumbrances contained herein, the sufficiency of which are hereby acknowledged, Declarant and Calderwood, for themselves and their successors and assigns, do hereby agree as follows:

1. **Definitions.** The following terms shall have the meanings set forth below:
 - a. **"Association"**: means a non-profit corporation consisting of the Owners of the Lots.
 - b. **"Building"**: means the building constructed by Declarant on Lots 22 through 33.
 - c. **"Building Area"**: means all those areas on each Lot which are from time to time covered by the building.
 - d. **"Commercial Lots"**: means Lots 22-24, 27, 28 and 31-33.
 - e. **"Commercial Uses"**: means those uses provided for on Exhibit "A" which is attached hereto and incorporated herein by reference, and accessory uses permitted herein.
 - f. **"Common Areas"**: means all of Lots 19, 20 and 21, together with those areas on each of the other Lots which are not Building Area or which cannot under the terms of this ECR be used for buildings or other commercial structures. Canopies which extend over the Common Areas, together with any columns or posts supporting same, shall be deemed to be a part of the Building or commercial structure to which they are attached and not a part of the Common Areas.
 - g. **"Floor Area"**: means the total number of square feet of floor space in the Building whether or not actually occupied (excluding balconies and decks). Floor Area 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 nonstructural components.
 - h. **"Owner"**: means the person owning the fee simple interest in a Lot and shall include the contract purchaser on a real estate contract for the sale and purchase of a Lot, but not the contract seller.
 - i. **"Party Wall"**: means the structural walls between Lots.
 - j. **"Percentage Interest(s)"**: means the percentage of the annual and other assessments owed to the Association attributable to each of Lots 22 through 33. The specific



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Percentage Interests of each of said Lots is shown on Exhibit "B" which is attached hereto and incorporated herein by reference.

k. **"Person"**: means individuals, partnerships, firms, associations, corporations, limited liability companies, trusts, governmental agencies, administrative tribunals or any other form of business or legal entity.

l. **"Residential/Commercial Lots"**: means Lots 25, 26, 29 and 30.

m. **"Residential Uses"**: means a single housekeeping unit, operating on a non-profit, non-commercial basis between its occupants, cooking and eating with a common kitchen and dining area, and accessory uses as permitted herein.

n. **"Voting Interests"**: means the number of votes the members have in the Association per Lot as shown on Exhibit "B" for the Class I members and as provided for in Paragraph 5a(vii) for the Class II member.

2. **Use.** Subject to the requirements of governmental authorities, all Lots may be used for Commercial Uses. In addition, the Residential/Commercial Lots may be used for Residential Uses.

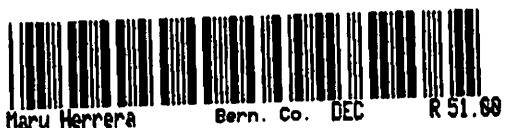
3. **Building; Subdivision; Conversion of Residential/Commercial Lots.** The Building is being constructed by Declarant and shall not be modified as to color or exterior surfaces without the written consent of the Association. The Building may not be extended beyond the Building Area constructed by the Declarant without the approval of the Association. The Association shall maintain the exterior facades of the Building. Declarant and Calderwood hereby declare that each Lot is subject to an easement for any portion of the Building or any structure which may encroach into or over said Lot from the adjoining Lot(s). Adjoining Lots may be combined into one (1) Lot, however, no Lot may be subdivided into multiple parcels (except to undo a previous combining of two (2) or more Lots). The combining of Lots shall result in the new Lot having the Percentage Interests and Voting Interests of the previous Lots. The Owners of the Residential/Commercial Lots shall have the right to convert the first floor garages into heated commercial space and garage doors to commercial store fronts; provided however all such conversions shall be approved in writing by Declarant and the Association and the exterior of any such Lots or improvements on said Lots shall conform to the architecture and color scheme of the remaining portion of the Building. In the event any such Residential/Commercial Lot is so converted, the Association shall measure the additional heated space and reallocate the percentage interest and votes in the Association.

4. **Common Area.**

a. **Grant of Easements.**

(1) **Reciprocal Ingress and Egress.** Subject to the limitations provided for elsewhere in this Paragraph 4, Declarant and Calderwood hereby declare that each Lot is

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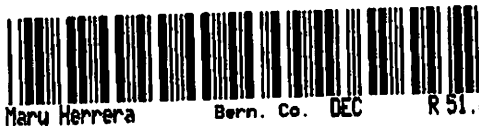
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subject to: a nonexclusive perpetual easement for ingress and egress by vehicular and pedestrian traffic and vehicular parking upon, over and across that portion of the Common Areas located on said Lot, which easement is for the benefit of every other Lot and the Owners, and their tenants, contractors, employees, agents, licensees and invitees.

(2) **Utilities and Drainage.** Declarant and Calderwood hereby declare that each Lot is subject to a nonexclusive perpetual easement under, through and across the Common Areas of said Lot for the installation, operation, maintenance, repair and replacement of water drainage systems or structures, water mains, sewers, water sprinkler system lines, telephones, electrical conduits or systems, gas mains and other public or private utilities for the benefit of every other Lot and the Owners. All such systems, structures, mains, sewers, conduits, lines and other utilities shall be installed and maintained below the ground level or surface of such easements except for ground mounted electrical transformers and such other facilities as are required to be above ground by the utility providing such service. The installation, operation, maintenance, repair and replacement of such easement facilities shall not unreasonably interfere with the use of the improved Common Areas or with the normal use and operation of any of the Lots. The Owner of the dominant Lot utilizing the easement shall bear all costs related to the installation, operation, maintenance, repair and replacement of such easement facilities, shall repair to the original specifications any damage to the Common Areas resulting from such use and shall provide as-built plans for all such easement facilities to the Owner of the servient Lot within thirty (30) days after the date of completion of construction of same. At any time and from time to time the Owner of the servient Lot shall have the right to relocate any utility line or facility installed on its Lot pursuant to the foregoing grant of easement, provided that any such relocation (i) shall be performed only after sixty (60) days' notice of the intention to undertake the relocation shall have been given to the Owner of the dominant Lot, (ii) shall not unreasonably interfere with or diminish utility service to the dominant Lot(s) served by the utility line or facility, (iii) shall not reduce or unreasonably impair the usefulness or function of the utility line or facility, (iv) shall be performed without cost or expense to the Owner of the dominant Lot, and (v) shall provide for the original and relocated area to be restored to the original specifications. The Owner of the servient Lot shall provide as-built plans for all such relocated utility lines and facilities to the Owner of the dominant Lot within thirty (30) days after the date of completion of such relocation. The Owners of each Lot shall execute such additional easements as are reasonably required by any public or private utility for the purpose of providing the utilities described herein provided such easements are not otherwise inconsistent with the provisions of this ECR.

(3) **Signs.** Declarant and Calderwood hereby declare that the only signage for each Lot shall be on the front façade of the Building on each Lot facing Adams Street and on the side facade of Lot 22 facing Zuni Avenue; provided however, and subject to governmental approval, signage may be placed on the north and south facing garage facades, as applicable, on Lots 25, 26, 29 and 30. To the extent permitted by governmental authorities, Declarant shall place monument signage on Lots 19, 20 and 21, or any one of them which shall be shared equally by the Owners of all of Lots 22 through 33. All signage shall be approved by Declarant and comply with the requirements of Exhibit "C" attached hereto and incorporated herein by reference ("Sign Criteria"). Owners may temporarily place typical "For Lease" or "For



Sale" signs within a front window of the portion of the Building on their Lot, provided the sum of the length and the width does not exceed sixty (60) inches. Owners may also place signage for the sale or lease of a Lot on the portion of the monument sign used by said Owner. Without regards to the above, Declarant shall be permitted to display signs for the sale or lease of Lots within the Lots, including the Common Areas so long as Declarant owns one (1) Lot.

b. **Limitations on Use.**

(1) **General.** The Common Areas are hereby reserved for the sole and exclusive use of the Owners, their tenants, contractors, employees, agents, customers, licensees and invitees and the subtenants, contractors, employees, agents, customers, licensees and invitees of such tenants. The Common Areas may be used for vehicular driving, parking, pedestrian traffic, directional signs, sidewalks, walkways, landscaping, parking lighting and utilities and for no other purpose unless otherwise specifically agreed by Declarant or the Association. All improvements placed or constructed in the Common Areas shall be approved by Declarant and after Declarant turns over control of The Highland Lofts to the Association, by the Association. The Common Areas shall be kept and maintained as provided for in Paragraph 5.c. No changes to the Common Areas improvements, including, without limitation, service drives and parking areas, striping, traffic directional arrows and signs, concrete bumpers, parking lighting, and landscaped areas, together with necessary plantings, may be made without the prior written approval of Declarant or the Association.

(2) **Parking.** Declarant shall designate two (2) parking spaces for each Lot within the Common Areas which two (2) spaces shall be for the benefit of each Owner, its employees, tenants, agents, customers and invitees. Each Owner shall have the right to place signage which is approved by Declarant on said Owner's two (2) designated parking spaces. The remaining parking spaces shall be for the benefit of all Owners, their tenants, employees, customers and invitees on a first come first serve basis. The Association shall have the right to implement reasonable rules and regulations related to parking so long as said rules and regulations apply equitably to all Owners. The designated parking spaces may be reallocated or additional spaces designated for exclusive use with the consent of the Declarant or a majority of the Voting Interests in the Association.

c. **No Barriers.** No walls, fences or barriers of any kind shall be constructed or maintained on the Common Areas, or any portion thereof, which shall prevent or impair the use or exercise of any of the easements granted herein, or the free access and movement, including, without limitation, of pedestrians and vehicular traffic between the various Lots; provided however, reasonable traffic controls approved in advance by Declarant or the Association as may be necessary to guide and control the orderly flow of traffic may be installed so long as access driveways to the parking areas in the Common Areas are not closed or blocked. The only exceptions to this provision shall be (1) for changes to the Building Area and Common Areas permitted by this ECR, (2) for incidental encroachments upon the Common Areas which may occur as a result of the use of the ladders, scaffolding, storefront barricades and similar facilities resulting in temporary obstruction of the Common Areas, all of which are permitted hereunder so long as their use is kept within reasonable requirements of construction work being



expeditiously pursued, (3) for temporary blockage of certain areas deemed necessary by the parties to prevent a public dedication of an easement or access right, and (4) Declarant or the Association shall have the right to take such steps as it deems necessary to prevent those Persons not authorized to use the Common Areas from using the Common Areas for ingress, egress and parking. Such steps shall include, without limitation, the construction of fences, walls or barricades along the boundary lines of any portion of The Highland Lofts except along the common boundary line of any Lot with any other Lot.

5. **The Highland Lofts Association.**

a. **Association**

(i) The Association shall be organized to own Lots 19, 20 and 21; to manage and maintain the Common Areas and exterior of the Building; and to enforce the provisions of this ECR. The Association shall be organized as a non-profit corporation under the laws of the State of New Mexico. The Association's affairs shall be governed by this ECR, and the Association's articles of incorporation and bylaws.

(ii) **Board of Directors.** The Association shall be managed by an elected board of directors ("Board"), which shall exercise all the rights and powers and perform all the duties and responsibilities set out in this ECR and the articles of incorporation and bylaws of the Association.

(iii) **Membership.** Each Owner of Lots 22 through 33 shall be a member of the Association for so long as ownership of a Lot continues. Rights, duties, privileges and obligations of an Owner as a member of the Association shall be those set forth in, and shall be exercised and imposed in accordance with, the provisions of this ECR, and the articles of incorporation and bylaws of the Association. The rights and obligations of an Owner and membership in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership to the Owner's Lot and then only to the transferee of ownership of such Lot, or by intestate succession, testamentary disposition, foreclosure of a mortgage of record, or other legal process now in effect or as may hereafter be established. Any attempt to make a prohibited transfer is void and shall not be recognized by the Association.

(iv) **Manager.** The Association may employ the services of a manager to manage and carry out the affairs of the Association.

(v) **Insurance.** The Association shall obtain and maintain in force such policies of insurance, including casualty insurance for the structural improvements within The Highland Lofts, liability insurance for the Common Areas, board of director's liability insurance and other insurance as may be deemed necessary or advisable by the board of directors.

(vi) **Rules and Regulations.** The Association may, from time to time, subject to the provisions of this declaration, adopt, declare, amend, modify and repeal rules and regulations, by a majority vote of the members of the Association. Said rules may relate to any



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matter or thing involving the Association, the Board, any committee thereof, the Common Areas, any property managed or maintained by the Association, the articles of incorporation and bylaws of the Association or this ECR. Said rules shall become effective when passed upon by the members.

(vii) Classes of Member. The Association shall have two (2) classes of voting memberships:

(1) Class I. The Class I members shall be all Owners with the exception of the Declarant and each shall have the Voting Interests provided for herein.

(2) Class II. The Class II members shall be the Declarant who shall be entitled to six (6) votes for each membership, notwithstanding the Voting Interests provided for on Exhibit "B".

The Class II membership shall terminate upon the sale by Declarant of the tenth (10th) Lot to a third party.

b. Assessments.

(i) Declarant, for each of Lots 22 through 33 hereby agrees to pay, and each Owner by the acceptance of a deed or contract of sale for said Owner's Lot, whether or not so expressly provided in any such deed or contract or other conveyance, is deemed to agree to pay to the Association assessments:

- (a) for maintenance of the Common Areas and exterior of the Building;
- (b) utilities for the Common Areas;
- (c) capital improvements to the Common Areas and exterior of the Building;
- (d) insurance;
- (e) operational expenses for the Association and
- (f) all other fees or other monies due to the Association from such Owner.

(collectively sometimes "Common Expenses").

The assessments, plus interest, late charges, costs and attorney's fees, shall be a charge against each of Lots 22 through 33 and shall be a continuing lien upon each such Lot against which each such assessment is made, and shall also be the personal obligation of the Owner or Owners of such Lot on the assessment date. The personal obligation to pay assessments shall not pass to successors in title unless expressly assumed by them.

(ii) Annual Assessments.



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(a) Within thirty (30) days prior to the commencement of each calendar year the Association shall budget for the costs and expenses to be incurred by the Association for Common Expenses and a reasonable provision for contingencies, and reserves for major repairs and replacements. Said amount shall be assessed against the Owners as an annual assessment. The amount of each Lot's share of the annual assessment shall be determined as follows:

Total annual assessments, times the Percentage Interest of each of Lots 22 through 33.

(b) If, at any time and from time to time, during any calendar year, the annual assessments prove or appear likely to be inadequate for any reason, including non-payment of any Owner's share thereof, the Association may levy a further assessment in the amount of such actual or estimated inadequacy, which shall be assessed to all Owners and apportioned as provided in subsection (i).

(c) Annual assessments shall be due and payable to the Association when levied or in such installments during the year, and on such due dates as the Board shall designate. Initially the annual assessments shall be due monthly on the first day of each month.

(iii) Capital Assessments.

(a) The Association may also levy in any year an assessment for paying or returning, in whole or in part, the cost or proposed cost of acquisition and construction of a described capital improvement (whether the improvements constitute real or personal property), in an amount greater than can be included in the annual assessments, provided it has been approved by a majority of the Voting Interests in the Association, which assessment shall be assessed to Owners in the same manner as provided for in Paragraph 5b(ii)(c).

(b) Initially, on the closing of the sale of each Lot by Declarant, Declarant shall collect from each purchaser a capital assessment equal to one (1) month's annual assessment ("Initial Capital Assessment") and pay said amount over to the Association to help capitalize the Association. If Declarant has not sold all Lots within one (1) year of the filing of this ECR, Declarant shall pay an Initial Capital Assessment for each Lot owned by Declarant.

(iv) Payment Obligations; Liens.

(a) Each assessment under this Paragraph 5 shall be the separate, distinct and personal debt and obligation of the Owner against whom it is assessed. Any assessment provided for in this Paragraph, which is not paid when due, shall be delinquent. With respect to each assessment not paid within fifteen (15) days after its due date, the Association may, at its election, require the Owner to pay a late charge of 10% of the delinquent amount, interest at eighteen percent (18%) per annum, plus the reasonable costs of collection,



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including attorney's fees. Such charges shall be considered an additional assessment and collectible with the assessment for which it was charged. If any such assessment is not paid within thirty (30) days after its due date, the Association may, at its option, file in the real property records of Bernalillo County, New Mexico, a notice of delinquent assessment specifying the particulars thereof, including (i) name of Owner, (ii) date and amount of assessment and (iii) the description of each Lot as to which the assessment is delinquent, and bring an action at law against the Owner or Owners personally obligated to pay the same, and upon compliance with the provisions of this subparagraph to foreclose the lien against the Lot, and there shall be added to the amount of such assessment the late charge, the costs of preparing and filing the lien and complaint in such action, and in the event a judgment is obtained, such judgment shall include interest at the rate provided for herein and a reasonable attorney's fee, together with the costs of the action. Each Owner vests in the Association, or its assigns, the right and power to bring all actions at law or lien foreclosure against such Owner or Owners for the collection of such delinquent assessments.

(b) No action shall be brought to foreclose an assessment lien less than thirty (30) days after the date a notice of claim is deposited in the United States Mail, certified or registered, postage prepaid, to the Owner of said Lot, and a copy thereof is recorded by the Association in the office of the Bernalillo County Clerk; said notice of claim must recite a good and sufficient legal description of the Lot, the record Owner or reputed Owner thereof, the amount claimed (which shall include the interest and late charges, costs and attorney's fees recoverable by an action at law) and the name and address of the Association.

(c) Any such sale provided for above is to be conducted in accordance with the customary practice of the courts of the State of New Mexico, applicable to the foreclosure of mortgages, or in any other manner permitted or provided by law. The Association, through its duly authorized agents, shall have the power to bid on the Lot at the foreclosure sale, and to acquire and hold, lease, mortgage, and convey the same.

(d) Upon the timely curing of any default for which a notice of claim of lien was filed by the Association, the officers of the Association are hereby authorized to file for record, as the case may be, an appropriate release of such notice, upon payment by the defaulting Owner of a fee, to be determined by the Association, in an amount sufficient to cover the actual costs of preparing and filing or recording such release, together with the payment of such other costs, interest or fees as shall have been incurred.

(e) The assessment lien and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

(f) The Association shall, upon demand, furnish to any Owner liable for assessments, a certificate in writing signed by an officer of the Association, setting forth whether the assessments on a specified Lot have been paid, and the amount of the delinquency, if any. A reasonable charge may be made by the Board for the issuance of these



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certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

(g) The assessments provided for in this Paragraph 5 shall commence on the effective date of closing on the sale, transfer or other conveyance of a Lot from Declarant to a third party and as to Lots 22 and 23 on the date of the recording of this Declaration.

(h) The lien for assessments shall be subordinate to the lien of any first mortgage placed upon a Lot in good faith and for value; however, such subordination applies only to the assessments 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 does not release the Lot from the liability or lien for assessments thereafter becoming due.

c. **Maintenance.**

(1) **By Association.** The Association shall maintain or cause to be maintained the Common Areas and exterior of the Building at all times in good and clean condition and repair, said maintenance to include, without limitation, the following:

(a) Maintaining, repairing and replacing the exterior facades and structural portions of the Building, except signage;

(b) Maintaining, repairing, replacing and resurfacing, when necessary, all paved surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal or superior in quality, use and durability; and restriping, when necessary;

(c) Removing all snow, papers, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;

(d) Maintaining, repairing and replacing, when necessary, all traffic directional signs, markers and lines;

(e) Operating, maintaining, repairing and replacing, when necessary, such artificial lighting facilities as shall be reasonably required;

(f) Maintaining all landscaped areas (including, without limitation, those on the perimeter of The Highland Lofts); maintaining, repairing and replacing, when necessary, automatic sprinkler systems and water lines; and replacing shrubs and other landscaping as is necessary;



(g) Maintaining, repairing and replacing, when necessary, all storm drains, sewers and other utility lines and facilities not dedicated to the public or conveyed to any public or private utility which are necessary for the operation of the buildings and improvements located in The Highland Lofts;

(h) Operating, maintaining, repairing and replacing, when necessary, signage in the Common Areas (except for the sign fascia and cans which shall be supplied and maintained by the businesses designated thereon); and

(i) Performing itself or contracting with a third party or parties to perform any of the services described herein.

(2) **By the Owners.** The Owners shall maintain or cause to be maintained the exterior signage for said Owner's Lot and all non-structural portions of the Building on said Owner's Lot which are not the responsibility of the Association. The Owner of each Lot shall not commit waste or damage to any portion of the Common Areas or the exterior of the Building on said Owner's Lot or any other Lot.

(3) **Good Condition.** The Association and the Owners shall maintain The Highland Lofts, as to their respective responsibilities, in good and clean condition at all times commensurate with a comparable first class project in Albuquerque, New Mexico.

6. **Indemnification/Insurance/Waiver of Subrogation.**

a. **Indemnification.** Each Owner 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 personal injury, death or property damage and occurring on or from its Lot, 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.

b. **Insurance.**

(1) The Association shall maintain casualty insurance on the Building and structural components thereof and improvements within the Common Areas in amounts and coverages as determined by the Board of Directors of the Association and as provided for in the Bylaws of the Association. The Association shall also maintain general liability insurance with broad form coverage endorsement (including broad form property damage endorsement) covering claims for personal injury, bodily injury or death, and property damage or destruction within the Common Areas. Initially, the amount of said general liability insurance shall not be less than \$1,000,000.00 for personal injury, death or property damage in the aggregate. The Association shall not be required to insure the contents of the Building. The Association shall also carry insurance on the Board of Directors and fidelity insurance as deemed appropriate by the Board of Directors. The cost of insurance shall be apportioned among the Owners of the Lots based upon the Percentage Interests.



(2) Each Owner shall provide and maintain general liability insurance for claims arising within the portion of the Building on said Owner's Lot, unless otherwise covered by the insurance maintained by the Association and shall maintain insurance on the contents of the portion of the Building on said Owner's Lot, together with all other improvements thereto which are not insured by the Association.

c. **Waiver of Subrogation.** Neither Declarant, the Association nor the other Owners, their successors and assigns shall be liable to the other or to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage to any building, structure 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 party, its agents or employees if any such loss or damage is covered by insurance benefitting the party suffering such loss or damage or was required to be covered by insurance pursuant to this ECR. Declarant and the other Owners, their successors and assigns shall require their respective insurance companies to include a standard waiver of subrogation provision in their respective policies.

7. **Eminent Domain.**

a. **Owner's Right to Award.** Nothing herein shall be construed to give any Owner any interest in any award or payment made to any other Owner in connection with any exercise of eminent domain, condemnation or transfer in lieu thereof. In the event of any exercise of eminent domain, condemnation or transfer in lieu thereof of any part of the Common Areas, the award attributable to the land and improvements of such portion of the Common Areas shall be payable only to the Owner thereof, and no claim thereon shall be made by the Owners of any other portion of the Common Areas.

b. **Collateral Claims.** All Owners may file collateral claims with the condemning authority for their losses which are separate and apart from the value of the land area and improvements taken from another Owner as it relates to the Common Areas taken, including, but not limited to access and parking.

8. **Restoration of The Highland Lofts - Casualty or Eminent Domain.** In the event all or any portion of the Building or the other improvements in The Highland Lofts are damaged or destroyed by fire or other insured casualty, or are taken or damaged as a result of the exercise of the power of eminent domain, condemnation or any transfer in lieu thereof, the Association shall promptly restore or cause to be restored the remaining portion of the Building and improvements as nearly as practicable to the condition of the same immediately prior to such casualty or eminent domain, condemnation or transfer in lieu thereof. The Owners of each Lot hereby assign any proceeds of insurance or eminent domain to the Association which relate to the portion of the Building and Common Areas so damaged or taken for the purpose of rebuilding same.



9. **Obligation of and Conditions to Release from Liability as to Successors and Assigns.** Declarant and all Owners, their tenants, occupants, successors and assigns shall be bound by this ECR, but only during the period such Persons own a fee or leasehold interest in such Lot or portion of the Lot, except as to obligations, liabilities or responsibilities that accrue during said period.

10. **Breach.** In the event of a breach or threatened breach of this ECR, only the Declarant, the Association or all record Owners of each Lot as a group shall be entitled to give written notice of the alleged default and to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach. The unsuccessful party in any such action shall pay to the prevailing party all costs of enforcement and/or recovery of damages, including reasonable attorneys' fees. The failure of the Declarant, the Association or the Owners of any of the Lots to insist in any one or more cases upon the strict performance of any of the promises, covenants, conditions, restrictions or agreements herein, shall not be construed as a waiver or relinquishment of any future breach of the same or other provisions hereof.

11. **Remedies for Default; Claim of Lien; Waiver.** If the Owner of any Lot shall default in the full, faithful and punctual performance of any obligation hereunder and if at the end of thirty (30) days after receipt of written notice from the Declarant, the Association, an Owner or group of Owners authorized under Paragraph 10 to give notice of default, stating that: (i) the defaulting Owner has failed to cure a monetary default ("Monetary Claims"), the amount due shall bear interest at eighteen percent (18%) per annum; or (ii) the defaulting Owner has failed to cure a non-monetary default, or diligently commence a cure, then the Declarant, the Association or an Owner or group of Owners who gave the written notice of default shall, in addition to all other remedies available at law or in equity, have the right to perform such obligation of this ECR on behalf of such defaulting Owner and be reimbursed by such defaulting Owner for the cost thereof ("Reimbursement for Non-Monetary Claims") and the amount due shall bear interest at the rate of eighteen percent (18%) per annum. Any Monetary Claims or Reimbursement for Non-Monetary Claims, together with interest as aforesaid, shall be a secured claim and a lien shall attach and take effect upon recordation of a claim of lien by the claimant in the office of the Bernalillo County Clerk. The claim of lien shall include the following: (1) the name of the claimant or group of claimants, as the case may be; (2) a statement concerning the basis of the claim of lien; (3) the last known name and address of the Owner or reputed Owner of the Lot against which the lien is claimed; (4) a description of the Lot against which the lien is claimed; (5) a description of the monetary amount or work performed and reimbursement sought which has given rise to the claim of lien hereunder and a statement itemizing the amount thereof; and (6) a statement that the lien is claimed pursuant to the provisions of this ECR. The claim of lien shall be duly verified, acknowledged and contain a certificate that a copy thereof has been served upon the party against whom the lien is claimed, either by personal service or by mailing (first class, certified, or return receipt requested) to the defaulting Lot Owner, at the address for mailing of tax statements with respect to the property against which the lien is claimed. The lien so claimed shall attach from the date of recordation in the amount claimed thereby and it may be enforced in any manner allowed by law for the foreclosure of liens in New Mexico. Notwithstanding the foregoing, such claims of lien Monetary Claims and Reimbursement for Non-Monetary Claims shall be subordinate to any

first mortgage or deed of trust given in good faith and for value now or hereafter encumbering The Highland Lofts or any portion thereof, and any purchaser at any foreclosure or trustee's sale (as well as any grantee by deed in lieu of foreclosure or trustee's sale) under any first mortgage or deed of trust shall take free and clear from such then existing lien but otherwise subject to the provisions of this ECR. The failure of the Declarant, the Association or Owners of any of the Lots insist in any one or more cases upon the strict performance of any of the promises, covenants, conditions, restrictions or agreements herein, shall not be construed as a waiver or relinquishment of any future breach of the same or other provisions hereof.

12. **Assignment of Declarant's Right.** All of Declarant's rights provided for herein shall automatically pass to the Association at the earlier of:

- (a) the date Declarant sells the last Lot to a third party;
- (b) the date Declarant formally assigns all of Declarant's right by a recorded document to the Association recorded in the real estate records of Bernalillo County, New Mexico; or
- (c) three (3) years after the date of the recording of this ECR in the real estate records of Bernalillo County, New Mexico.
- (d) Declarant may partially assign any rights of Declarant to the Association at any time.

13. **Rights of Successors.** The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the land. This ECR shall bind and inure to the benefit of the parties hereto, their respective successors and assigns.

14. **Document Execution, Modification and Termination.** This ECR may be executed in multiple counterparts, each of which shall constitute a duplicate original, but all of which together shall constitute one and the same agreement. If this ECR is executed in multiple counterparts, the parties shall each execute and acknowledge said execution on counterpart signature pages and a manually executed counterpart signature page for each party shall be attached to a counterpart of this ECR and that counterpart, and only that counterpart to which are attached all of the manually executed counterpart signature pages, shall be filed of record with the County Clerk of Bernalillo County, New Mexico. This ECR (including exhibits) may be modified or terminated in whole or in part at any time seventy-five percent (75%) or more of the Voting Interests in the Association by written instrument, duly executed by the President and Secretary of the Association, and recorded, either modifying or terminating this ECR.

15. **Duration.** The provisions, conditions, covenants and restrictions in this ECR 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 ECR 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



Mary Herrera

Bern. Co. DEC

R 51.00

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extension period by the President and Secretary of the Association, seventy-five percent (75%) or more of the Voting Interests in the Association by written instrument, duly executed and recorded, shall declare a termination of this ECR. Any such termination shall become effective upon the date the automatic extension would otherwise have taken effect.

16. **Limitation on Indemnities.** No indemnities contained herein shall extend to those matters for which indemnification is prohibited pursuant to Section 56-7-1 N.M.S.A. 1978, as amended.

17. **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 ECR 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 Lot, 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, the Owners of the Lot 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 parties in occupancy within The Highland Lofts, and shall be approved by Declarant or the Association.

18. **Headings/Singular/Plural.** The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof. The singular number includes the plural and vice versa. The use of either masculine, feminine or neuter includes the other two.

IN WITNESS WHEREOF, the parties have executed this ECR the day and year first written above.


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WADE & SANCHEZ ENTERPRISES, LLC,
a New Mexico limited liability company

By: _____

~~Joseph Sanchez, Member~~

By: _____

Katherine Wade, Member

STATE OF NEW MEXICO)

COUNTY OF BERNALILLO)

This instrument was acknowledged before me on May 19, 2006, by JOSEPH SANCHEZ and KATHERINE WADE, Members of WADE & SANCHEZ ENTERPRISES, L.L.C., a New Mexico limited liability company.

MY COMMISSION EXPIRES:

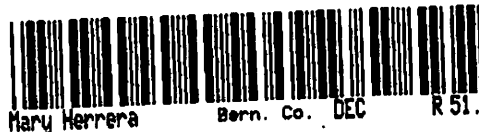
12/14/06

NOTARY PUBLIC

CAROL LEA RODGERS

NOTARY PUBLIC STATE OF NEW MEXICO

My commission expires:



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SIGNATURE PAGE NO. 2 TO ECR

Leona G Calderwood Trust, Under Trust Agreement Dated October 27, 1993

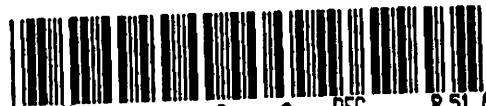
By: Leona G. Calderwood
LEONA G. CALDERWOOD, Trustee

STATE OF NEW MEXICO)
)
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on May 22, 2006, by Leona G. Calderwood, as Trustee of the Leona G. Calderwood Trust, Under Trust Agreement Dated October 27, 1993.

MY COMMISSION EXPIRES:
5-7-2008

Linda A. Martin
NOTARY PUBLIC

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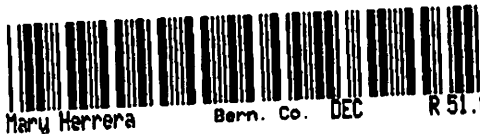
"EXHIBIT A"

Commercial Uses

Antique Sales and Repair
Architect, Engineer
Art Gallery
Art Supply Store
Bakery/Confectionary Shop – Retail Only
Barber shop
Beauty Shop
C.B. Sales and Service
Chiropractor
Medical clinic – doctor/dental office
Coin Shop
Doctor's Office
Dog Obedience School – inside only; no boarding
Dressmaking/Tailor
Dry Goods Store
Employment Agency
Engineer
Florist Shop
Furniture Store (boutique, retail)
Delicatessen
Hardware Store
Health Facilities such as yoga/pilates studio; low volume fitness gym such as "Curves"
Hypnotherapy
Income Tax Service
Insurance Agency
Interior decorating Shop
Jewelry Manufacturing – boutique, custom
Jewelry Store
Lawyer
Locksmith
Massage
Maternity Clinic
Medical/Dental lab
Moped Sales – Inside showroom only; no exterior demo or show lot
Mortgage Broker
Musical Instrument shop
Newsstand
Office – general, professional, counseling, consulting



Office Machines Sales and Repair
Palm Reader
Pet Grooming
Pet Shop
Pharmacy
Photo Equipment Shop
Photo Studio
Photography Study
Physiotherapy Office
Picture Framing Shop
Plumber- retail
Prosthetic or Corrective Devices Shop
Printing, publishing, lithography
Real Estate Broker
Record Shop
Religious Articles Supply Store
Restaurant - Café – no drive-in, no liquor or beer/wine, limited evening hours
Retail
Sales and Display for wholesalers
Saving and Loan Assn; no "Pay-Day" or cash outlets
Shoe Store – boutique
Shoeshine and repair
Smokers Shop
Spa – day only
Sporting Goods shop
Studio for instruction in music and dance
Title Company
Upholstery shop
Wholesaler of jewelry



Mary Herrera

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EXHIBIT "B"

Percentage Interest(s) & Voting

<u>Lot Number</u>	<u>Percentage Interest(s)</u>	<u>Class I Voting Interest in Association</u>
22	7%	1
23	7%	1
24	7%	1
25	11%	1½
26	11%	1½
27	7%	1
28	7%	1
29	11%	1½
30	11%	1½
31	7%	1
32	7%	1
33	7%	1

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EXHIBIT "C"

Signage Proposal

SignArt of New Mexico, Inc.

117 Veranda Rd. NW
P.O. Box 6391
ALBUQUERQUE, NEW MEXICO 87107
(505) 344-0671 FAX (505) 345-3908
License #822953

To: The Highland Lofts
312 Adams S.E.
Albuquerque, N.M. 87108

CLIENT: Joe Sanchez -Kay Ward

ADDRESS:

PHONE: 292-2021

FAX:

e-mail: jpsan@sandia.net

Description:

Manufacture and install (12) 3'-0" x 7'-0" single faced interior illuminated signs. Price per sign is \$1,200.00 + Tax 81.00 = \$1,281.00

- * It is the customer's responsibility to bring power to the signs location.
- * Price does not include permits.

WE PROPOSE hereby to furnish signage - complete in accordance with the above specifications, for the sum of: \$ 0.00
Tax 0.00
dollars (\$ total) 0.00

Payment to be as follows: 50% down = \$ 0.00 to start, with the balance due upon completion.

Terms & Conditions

SKETCH DEPOSIT: The sketch deposit covers minimal costs involved in developing property of the designer.

PRICE QUOTATION GOOD FOR 30 DAYS.

PRICES as indicated above, are minimum estimates for art sign work only. Photographs, typography, photographs, overruns, changes and/or time additions, delays caused by the client, special consultations and all other work expenses that cannot be estimated accurately in advance will be billed extra unless otherwise specified herein.

FINISHED art, mechanicals, and signs will be released for use by the client only. Mechanicals, original art, sketches and materials other than signs originated by the designer are the property of the designer, and will be held for the client, unless otherwise shown.

SPECIAL conditions on client's purchase orders in no way negate the above Conditions of Sale. In ordering the work described above, the client accepts all of these conditions whether noted on his purchase order or not.

IF UNUSUAL DIGGING conditions (i.e., ledge, water, etc.) are encountered in ground installation, this contract is binding; however, an additional cost based on our labor, plus 10% on sub-contract labor and materials, will be added to the above price.

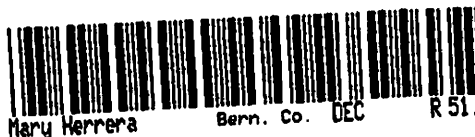
THE CLIENT agrees to pay all costs of collection in the event of default of payment by the client, including a reasonable attorney's fee. In the event of delinquent payments, the client will be charged a rate of 1.7% interest for every month after the first 30 days.

Quoted By: Dan Jones Date: 2/25/06

Acceptance of Proposal

The above prices, specifications, and conditions are satisfactory and are hereby accepted. You are authorized to do the work above as specified. Payment will be made as outlined above.

Signature _____ Date _____



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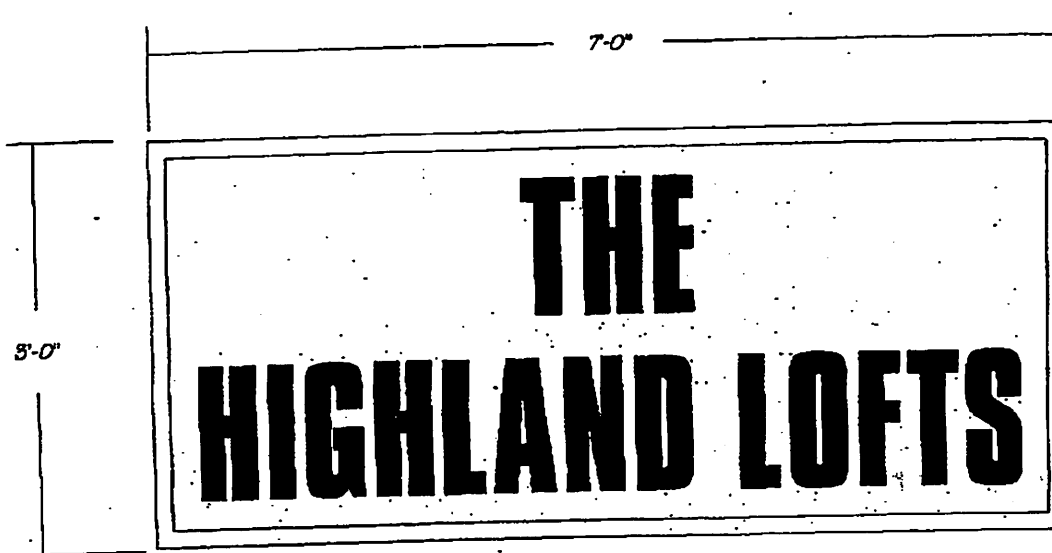
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S/F DISPLAY - INTERIOR ILLUM.
WHITE LEXAN FACE WITH VINYL OVERLAY
USE CALONOS IVORY, 49 BURGUNDY

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Mary Herrera

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LMs

4-24-06

COLORS SHOWN ARE REPRESENTATIONAL ONLY. SEE MATERIAL SAMPLES FOR ACTUAL COLORS.

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SignArt

OF NEW MEXICO INC.

505-244-0872

SCALE: 1"=1'

SKETCH NO: 12524 02/11/06

SALES: D. JONES

REVISIONS:
02/16/06

Correct: Robert Mc Lister
Right of Way Engineer

Approved: _____
State Plant Engineer

Approved: _____
State Plant Superintendent

RECEIVED OF THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH CO.
AND THE PUBLIC SERVICE COMPANY OF NEW MEXICO
Certain valuable considerations Dollars, in consideration of which: We hereby grant unto said Company, its successors and assigns, the right, privilege and authority to construct, operate and maintain its lines of Telephone and Telegraph, including the necessary underground conduit, poles, cables, wires and fixtures upon, over and across the property which we own, or in which we have any interest, in the All of Blocks No. 2, 3, 8 and 9;
all of Block No. 10 except lots 1, 2, 3, 4, 23, 24, 27 and 32; All of Block No. 11
except lots 29 thru 36 inclusive; All of Block No. 16 except Lot No. 6; All of
Block No. 17; All of Block No. 20; All of Block No. 21 except Lots 33, 34, 35 and 36;
All of Block No. 22 except Lots No. 1, 2, 3, 4; All of Block No. 23 except Lots
19, 20; All of Block No. 25 except Lots No. 15, 16, 17, 18 and 26; All of Block No.
26 except Lots No. 15, 16, 17, 18, 31 and 32; (Continued on reverse side)

in the County of Bernalillo and State of New Mexico
and upon and along the roads, streets or highways adjoining the said property, with the right to permit the attachment of the wires and fixtures of any other company, and the right to trim any trees along said lines so as to keep the wires cleared at least forty-eight inches; to erect and set the necessary guy and brace poles and anchors and to attach thereto the necessary guy wires.

Said sum being received in full payment therefor.

Witness our hand and seal this 11th day of June A. D. 1948 at Albuquerque, N.M.
(Postoffice Address)

Witness:
ATTEST: George D. Jackson
Secretary

VALLEY VIEW LAND COMPANY
BY John F. McQuinn
Vice President (SEAL)

(Copy of)

(Land Owner)

ALBUQUERQUE EXCHANGE

36 All of Block No. 27 except Lots No. 1, 2, 5, 6, 7, 8, 19, 20, 21, 22, 23, 24 and 25; Lots No. 13 and 14 of Block No. 28; All of Block No. 29 except Lots No. 6, 7, 8, 9, 10, 22 and 23; All of Block No. 30 except Lots 1 thru 10 inclusive; All of Block No. 32 except lots No. 1 thru 10 inclusive; All of Block No. 33 except Lots No. 6, 7, 8, 9 and 10; All of Block No. 34 except Lots No. 1, 2, 3, 4, and 5; All of Block No. 35; and lots No. 1 thru 13 inclusive of Block No. 36 of the Valley View Addition to the City of Albuquerque.

Albuquerque, N.M.
RIGHT OF WAY

39068

From

Section No.

Township No.

Range No.

Letter File No.

Date

St. of New Mexico
County of Bernalillo
This instrument was filed for record on

4 JUN 19 1948

Block 36. Recorded in Vol. 180

Records of said County File 35

Chas. E. Record

6-17-48

MAILED TO

The Mountain State Telephone and Telegraph Co.

TOWN

SECTION

RANGE

COMMON ACCESS EASEMENT GRANT AND MAINTENANCE AGREEMENT

THIS COMMON ACCESS EASEMENT GRANT AND MAINTENANCE AGREEMENT (hereinafter referred to as Agreement) is made and executed this 15th day of September 2005, by Sanchez and Wade Enterprises, LLC (hereinafter referred to as "Owner").

WHEREAS, Owner owns that certain real property located in Bernalillo County, New Mexico, more particularly described as follows:

Lots numbered Nineteen (19) through Thirty-three (33), Block 11, of the VALLEY VIEW ADDITION to the City of Albuquerque, New Mexico, as the same is shown and designated on the map of said Addition filed in the Office of the County Clerk of Bernalillo County, New Mexico on September 2, 1911, excepting therefrom the Southwesterly portions of Lots 19, 20, and 21, conveyed to the City of Albuquerque, New Mexico, by Warranty Deed dated February 4, 1961, recorded in Book D 586, page 610, records of Bernalillo County, New Mexico, hereinafter referred to as "Property."

WHEREAS, Owner constructed driveways for access to and from the street abutting the Property.

WHEREAS, Owner, by this instrument, grants Common Access Easement to the Property.

WHEREAS, Owner executes this agreement as a means of setting forth his understanding of the use, repair, and maintenance of the Common Access Easement;

NOW THEREFORE, Owner agrees as follows:

1. Owner grants Common Access Easement of Lots 19 through 33 (Property) for the purpose of providing access for the Property residents, their guests and clients, fire fighting and emergency entities to the Property from Adams Road S.E.
2. Repairs and maintenance of the Common Access Easement shall be the responsibility of Owner, or upon sale of the Property, the lot owners, or the homeowners association, if applicable.
3. This Agreement pertaining to Lots 19 through 33 (Property), the Common Access Easement, and the obligations created hereby, shall be perpetual and binding upon the lot owners, their heirs, personal representatives, and assigns in all respects, or a homeowners association, if applicable, and shall be deemed to run with the land forever.

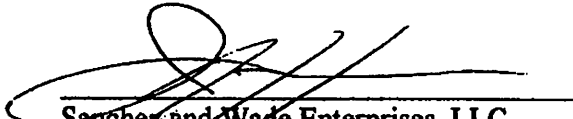


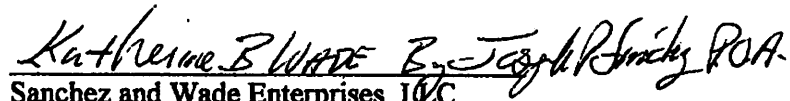
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Bern. Co. EASE

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Sanchez and Wade Enterprises, LLC
By: Joseph P. Sanchez


Sanchez and Wade Enterprises, LLC
By: Katherine B. Wade
By Joseph P. Sanchez, Power of Attorney

ACKNOWLEDGEMENT

STATE OF NEW MEXICO)s
COUNTY OF BERNALILLO)s

This instrument was acknowledged before me on September 15, 2005
by Joseph P. Sanchez.

Notary Public 

My commission expires: 08/14/05



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WARRANTY DEED

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Maru Herrera Bern. Co. EASE R 17.00

WADE PROPERTIES LLC, a New Mexico Limited Liability Company, for consideration paid, grants to SANCHEZ AND WADE ENTERPRISES, L.L.C., a New Mexico Limited Liability Company, whose address is 916 Parkland Circle, S.E., Albuquerque, New Mexico 87108, the following described real estate in Bernalillo County, New Mexico:

Lots numbered Nineteen (19) through Thirty-three (33), Block 11, of the VALLEY VIEW ADDITION to the City of Albuquerque, New Mexico, as the same are shown and designated on the map of said Addition filed in the office of the County Clerk of Bernalillo County, New Mexico on September 2, 1911, excepting therefrom the Southwesterly portions of Lots 19, 20 and 21, conveyed to the City of Albuquerque, New Mexico, by Warranty Deed dated February 4, 1961, recorded in Book D 586, page 610, records of Bernalillo County, New Mexico.

Subject to patent reservations, restrictions and easements of record and to taxes for the year 2005 and years thereafter and all other matters of record.

with warranty covenants.

WITNESS its hand and seal on March 30, 2005.

WADE PROPERTIES LLC, a
New Mexico Limited Liability Company

By: [Signature]
KATHERINE B. WADE,
Managing Member

ACKNOWLEDGMENT

STATE OF NEW MEXICO)
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on March 30, 2005, by KATHERINE B. WADE, Managing Member of WADE PROPERTIES LLC, a New Mexico Limited Liability Company.

MY COMMISSION EXPIRES:

9-27-06

[Signature]
NOTARY PUBLIC



OFFICIAL SEAL
TERI LARA
NOTARY PUBLIC

commission expires

OF MEXICO



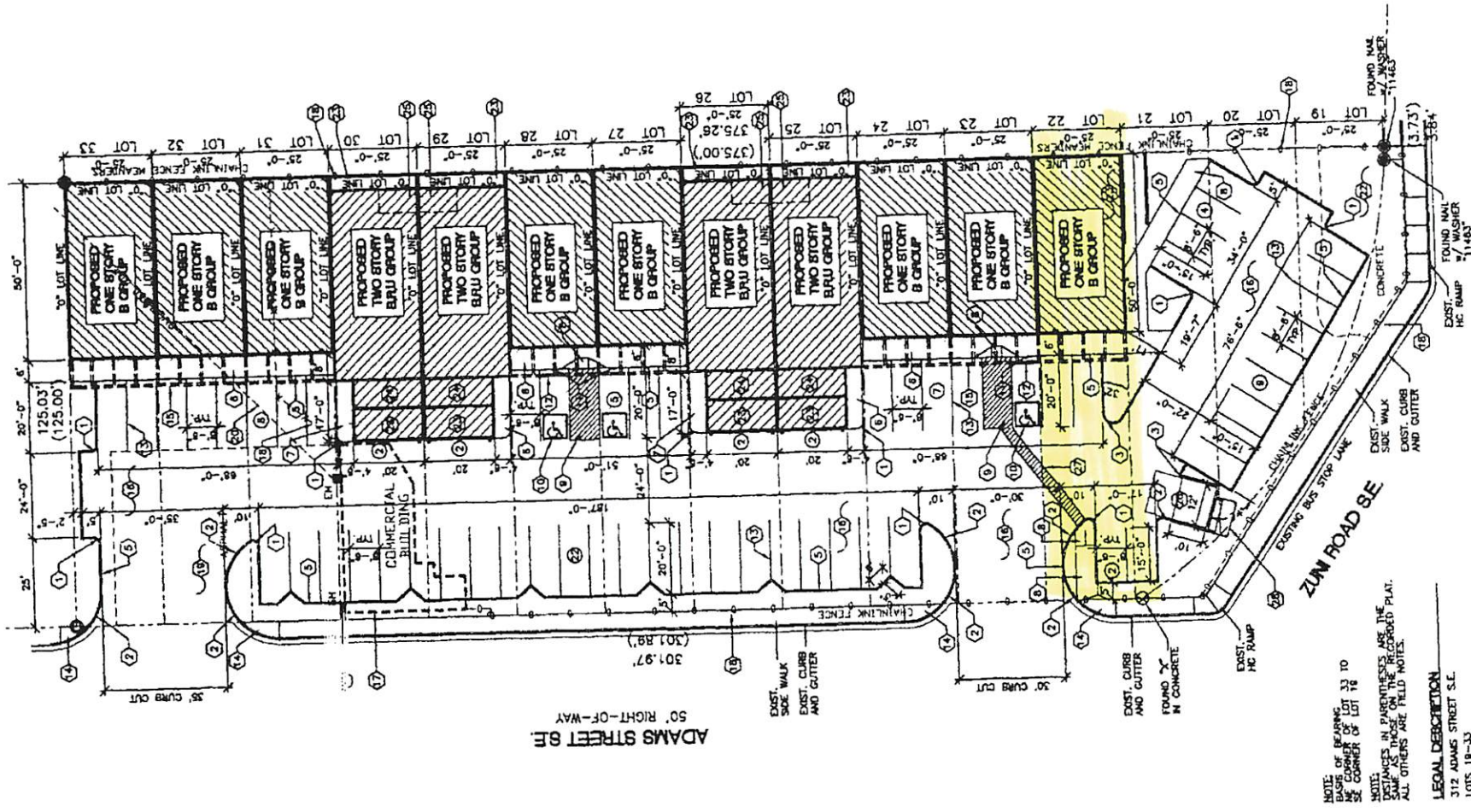
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Bern. Co. NO

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 Bern. Co. EASE
 R 17.00
 Mary Herrera



NOTE: BASIS OF BEARING
 THE CORNER OF LOT 33 TO
 SE CORNER OF LOT 18
 NOTES:
 DIMENSIONS IN PARENTHESES ARE THE
 EXISTING THICKNESS ON THE RECORDED PLAT.
 ALL OTHERS ARE FIELD NOTES.

LEGAL DESCRIPTION
 312 ADAMS STREET S.E.
 LOTS 18-33
 BLOCK 11
 VALLEY VIEW ADDITION
 AC=1.01152
 ALBUQUERQUE, NEW MEXICO

1 SITE PLAN
 20'-1"



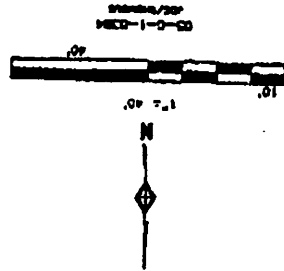
JOHN L. MIERS
NMPIS #12447



DATE
03-22-09

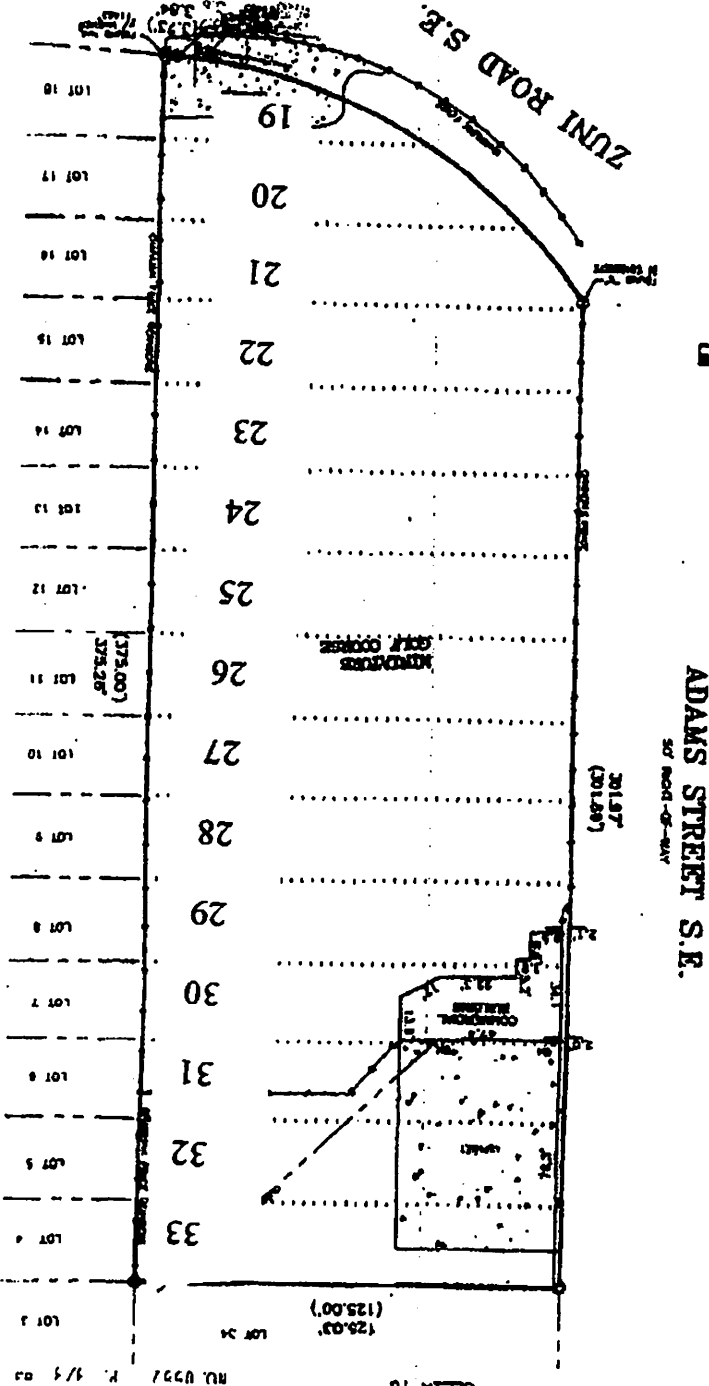
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NOTES
BY RECORDS PROVIDED
RE RECORD OF LOT 12 TO
BE SHOWN IN PLANNING AND THE
RECORD OF LOT 12 TO
BE SHOWN IN FIELD WORK
ALL OTHERS ARE FIELD WORK



312 ADAMS STREET S.E.
BLOCK 11
R-107154
NEW SECTION

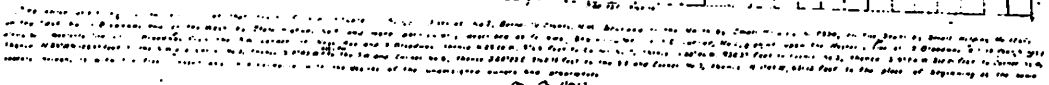
- LEGEND
- FOUND IR
 - FOUND CAP
 - FOUND PLS 1003
 - GAS METER
 - ELECTRIC METER



25

NEW MEXICO

□



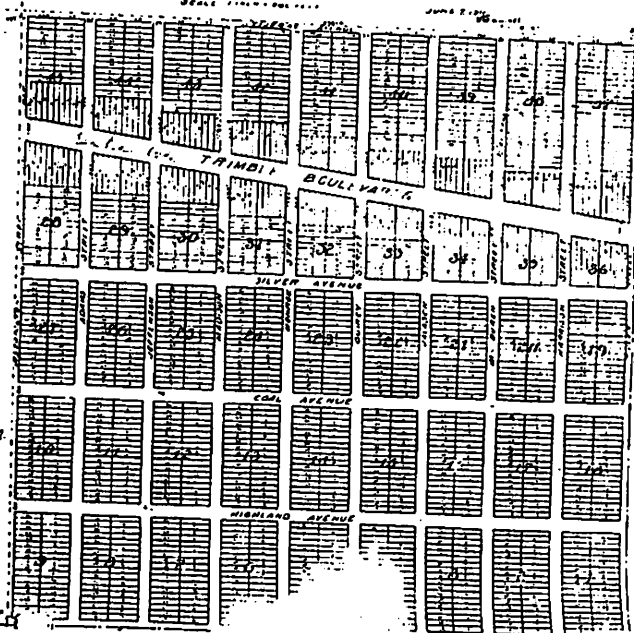
State of New York
 County of Syracuse
 On the 24 day of September, 1920 before me came JOHN A. HENNING and JOHN A. HENNING, his wife, to me known to be the persons described in and who executed the foregoing and acknowledged my commission and the due execution of the foregoing and the contents of the same.

In Witness Whereof I have hereunto set my hand and the seal of my office at Syracuse, New York, this 24th day of September, 1920.

J. A. HENNING
 J. A. HENNING

Notary Public
 John A. Henning

ALBUQUERQUE, NEW MEXICO

[illegible]

S. J. H. & Co.

For story of how Mexico }
lands of interest }

Filed in my office this 2nd day
of September, 1911, at 9:00 o'clock A.M.
Attest
Probate Clerk

7-10
TION, K.