

**AMENDED DECLARATION
Of
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
ANDALUCIA AT LA LUZ,
an Addition To the City of
Albuquerque, New Mexico
To Run With the Land**

This Declaration of Covenants, Conditions, and Restrictions for Andaluca at La Luz, an Addition to the City of Albuquerque (“Declaration”) is made this ___ day of July, 2006, by Andaluca Development Co., Inc., a New, New Mexico, To Run With the Land (“Mexico corporation (“Declarant”), and supercedes and replaces the prior filed Declaration with reference to the following facts:

Recitals

1. Declarant owns a tract of land located in the City of Albuquerque, County of Bernalillo, State of New Mexico, which is defined in Article II hereof as the “Existing Property,” and Declarant desires to create thereon a planned single family residential community with Common Facilities as defined below, including a Perimeter Wall, Subdivision signs, if any, certain landscaping and other facilities for the benefit of, and use by, the residents of such community.

2. Declarant also desires to provide for the preservation of the values and amenities in the community and for the maintenance of the Common Facilities.. The purpose of this Declaration, therefore, is to subject the Existing Property, together with any additions thereto as may hereafter be made, to the covenants, conditions, restrictions, easements, charges, and liens described below, each and all of which is and are for the benefit of such land and each owner of any part thereof.

3. Declarant also desires to create an entity to which shall be delegated the powers of maintaining the Common Facilities; administering and enforcing this Declaration; and collecting and disbursing assessments and charges which are imposed for such purposes.

4. Declarant has incorporated under the laws of the State of New Mexico, as a non-profit corporation, Andaluca Homeowners Association, for the purpose of exercising the foregoing functions.

NOW, THEREFORE, Declarant declares that the Existing Property and each part thereof, together with any additions thereto as may hereafter be made, shall be owned, held, transferred, sold, conveyed, encumbered, used, and occupied subject to this Declaration.

**ARTICLE
I
DEFINITIONS**

Section 1. The following terms when used in this Declaration or in any Supplemental Declaration (as defined below) shall have the following meanings (unless prohibited by the context):

(a) “Articles” shall mean the Articles of Incorporation of the Association, as filed with the New Mexico Public Regulation Commission, and as they may be amended from time to time.

(b) “Association” shall mean Andalusia Homeowners Association, a New Mexico nonprofit corporation, and its successors and assigns.

(c) “Board” shall mean the Board of Directors of the Association.

(d) “By-Laws” shall mean the By-Laws of the Association, as they may be amended from time to time.

(e) “Common Expenses” shall mean all expenses and obligations of the respective association, including allotments to any reserve fund. Common Expenses shall include all expenses of maintaining Common Facilities, the payment of taxes and insurance thereon, any repairs, servicing, replacements, modifications, and additions thereof and thereto, and for the cost of related utilities, labor, equipment, materials, supplies, operations, management, and supervision thereof. Common Expenses shall include all obligations of the Association under the Easement Agreement. Common expenses shall also include maintaining the landscaping on certain Lots as set out in Article V, Section 2 of this Declaration. The Common Expenses shall also include all other expenses and obligations of the Association, including allotments to any reserve fund, accounting, legal, and other professional fees, landscaping costs, maintenance and operating costs of all areas and facilities which may become Common Facilities before the title thereto is conveyed to the Association, and other operational expenses, and all other expenses associated with the operation and maintenance of the Association’s affairs and assets. Common expenses shall include maintenance and replacement of landscaping on the front yards of Lots 91 through 129 as shown on the Plat.

(f) “Common Facilities” shall mean those areas and facilities of the Subdivision (defined below) which are for the common use and enjoyment of the Owners (defined below). The Common Facilities shall include, without limitation, the Perimeter Wall (defined below), Subdivision signs, Tracts for use as bicycle and any pedestrian trails, any landscape irrigation system within the Tract landscaping, including the irrigation thereof, and any and all other community facilities, which currently are within, or may in the future be erected within the Subdivision, and shall include those areas and facilities designated as “Common Facilities” in this Declaration and in any Supplemental Declaration. The Common Facilities shall not include the storm drainage works easement to the Albuquerque Metropolitan Arroyo Flood Control Authority as shown on the Plat, the streets, street lights, street lighting system, curbs, gutters, and other Public Facilities (defined below) or Park except for such time during which the City or other governmental authority may require the

Owners, the Association or Declarant to maintain the Park. Common Facilities shall specifically include, but not be limited to, Tracts C, E, F, G, J, K, L, M and N as designated on the Plat. Tracts C, E, F, G, J, K, L, M and N as designated on the Plat shall be used solely as open space, pedestrian access and community landscaping. Landscaped areas which are to be maintained by the Association are more particularly indicated on the Landscape Plan attached as Exhibit B to this Declaration. Certain landscaping in areas within the public rights-of-way on the following streets as shown of the approved Site Development/Utility Plan for the Subdivision shall be the responsibility of the Association:

(i) All sides of Sevilla Avenue from the entrance to the Subdivision to its intersection with Tres Gracias Drive and

(ii) The area between Tres Gracias Drive and the Perimeter Wall.

All other landscaping along public rights of way within the Subdivision shall be the responsibility of the owners of the Lots on which the landscaping is located.

Common facilities shall include landscaping between the Perimeter Wall and Coors Boulevard to the North and East of the Subdivision, and between the Perimeter Wall and Namaste Road to the south of the Subdivision and between the Perimeter Wall and La Bienvenida Place on the west and south of the Subdivision up to the Park. Common facilities shall not include any areas located on any individual Lot, including but not limited to landscaping adjoining public rights-of-way or located in any public utility easement upon the Lot. Notwithstanding the foregoing, the maintenance of landscaping on the front yards of Lots 91 through 129 (as shown on the Plat) as provided hereafter in this Declaration shall be a Common Expense.

(g) “Declarant” shall mean Andalucia Development Corp., Inc. a New Mexico corporation, its successors and assigns in interest.

(h) “Declaration” shall mean this Declaration of Covenants, Conditions, and Restrictions for Andalucia at La Luz, an Addition to the City of Albuquerque, New Mexico, To Run With the Land, including its exhibits, as the same may be amended from time to time, and shall include any Supplemental Declaration. It is contemplated that there will be additional phases of the Subdivision, including a gated portion with private streets, and that upon the filing of a Supplemental Declaration, this Declaration shall apply to those phases as well.

(i) “Dwelling Unit” shall mean any structure, or part thereof, situate upon a Lot (defined below) within the Subdivision that is designed and intended for residential use by a single family. Where appropriate, the term “Dwelling Unit” shall include the Lot upon which the Dwelling Unit is placed.

(j) “Easement Agreement” shall refer to the “Dedication and Grant of Road, Trail, Utility, Drainage and Ponding Easements and Termination and Release of Existing Easements” and recorded on November 17, 2005 as document No. 2005171288 at Book A107 Page 820 of the Records of Bernalillo County, New Mexico which agreement pertains, among other things, to a sixty foot (60’) wide easement granted to the City of Albuquerque as described therein.

(k) “Graham Plat” shall refer to the Plat of Tracts A, B, 1, 2, 3, 4, 5, & 6 of the Lands of Ray A. Graham, III, Ovenwest Corp. and City of Albuquerque as the same is designated in the office of the County Clerk of Bernalillo County, New Mexico on April 1, 2002 in Book 2002C, Page 99 as Document No. 2002041698 which includes the lands described in the Plat as well as other property.

(l) “Lot” shall mean any separately numbered or lettered plot of land shown upon any recorded Plat or map of the Subdivision, as amended from time to time, excluding the Common Facilities and the Public Facilities. Where appropriate, the term “Lot” shall include any Dwelling Unit placed thereon.

(m) “Members” shall mean all members of the Association, as defined in the Articles, and the term “Member” shall mean any one of the Members.

(n) “Owner” shall mean the record owner, whether one or more persons or entities, of the fee-simple title to any Lot, but shall not mean or refer to any person or entity who or which holds title merely as security for the performance of an obligation. However, “Owner” shall include a record owner of the fee-simple title to any Lot who or which acquired such title at a judicial sale or by a conveyance in lieu of foreclosure.

(o) “Park” shall mean the area designated as “Tract H” on the Plat, which Declarant shall convey to the City of Albuquerque, New Mexico, which shall be owned by the City as a Public Facility, and on which Declarant shall build the Park Improvements which Park and Park Improvements shall be maintained by the Association for a period of a minimum of five (5) years and until the acceptance of the improvements by the City. Following such acceptance, it is contemplated that the improvements shall be maintained by the City of Albuquerque. The Association shall maintain the Park during any period where the City has not accepted the obligation to maintain the Park.

(p) “Perimeter Wall” shall mean the wall the perimeter of all of the property which is and which is intended to become part of this Subdivision. The perimeter wall may be constructed to enclose the perimeter of future phases of the Subdivision such as areas which include Tracts A, B and D as shown on the Plat and the area designated as Tract 2 of the Graham Plat before those phases are formally included into the subdivision through a Supplemental Declaration. The Perimeter Wall is a Common Facility.

(q) “Plat” shall mean the Plat of Andalucia at La Luz, consisting of eight (8) pages, which was recorded on February 3, 2005, as Document No. 2005016521, in Vol. Bk-2005C beginning at page 44, of the records of Bernalillo County, New Mexico, which plat is a replat of Tract 1 of the Graham Plat. It is contemplated that there will be additional phases of the Subdivision, and that upon the filing of a Supplemental Declaration, the “Plat” as used herein shall include the plats for those phases as well.

(r) “Public Facilities” shall mean the Park, street lights, street lighting system, streets, curbs, gutters, and any other facilities owned by or dedicated to the City of Albuquerque or to the Albuquerque Metropolitan Arroyo Flood Control Authority.

(s) "Retail Purchaser" means a Person other than a builder who purchases a Lot or Parcel in a retail transaction and shall not include Declarant, Skyview Homes, any related entity, any builder, or any other Person who acquired the Lot or Parcel solely for the purpose of development and resale in one or a series of retail transactions.

(t) "Rules and Regulations" shall mean any and all rules, regulations, and design standards adopted and/or amended by the Board from time to time in the manner permitted by the By-Laws. A copy of the initial Rules and Regulations is attached hereto as Exhibit C and made a part hereof.

(u) "Special Meeting" shall mean a special meeting of the Members called for the purpose of considering the action specified for which notice is given in accordance with the Bylaws.

(v) "Subdivision" shall mean the Andalucia at La Luz Subdivision, which includes the Existing Property, as defined in Article II below and any and all additions thereto.

(w) "Supplemental Declaration" shall mean any instrument which amends, modifies, or terminates this Declaration, or which accomplishes some action taken under this Declaration, and which has been executed and acknowledged in the manner required by this Declaration, and recorded in the office of the County Clerk of Bernalillo County, New Mexico, and shall be included in the term "Declaration," unless the context shall prohibit such construction.

(x) "Written Notice" as that term is used in this Declaration includes any notice in writing, but may also include notice by facsimile, electronic mail (Email) or other reliable electronic means, provided the Board shall approve such electronic notice and the parties to receive such notice have furnished addresses or telephone numbers at which they can receive electronic notice. Any notice by electronic mail shall be sent with a receipt requested.

**ARTICLE
II
PROPERTY SUBJECT TO THIS DECLARATION; ADDITIONS**

Section 1. **Existing Property.** The Existing Property shall be the Property Described in Exhibit A, hereto, which shall be owned, held, transferred, sold, conveyed, encumbered, used, and occupied subject to this Declaration, is the "Existing Property."

Section 2. **Additions to Existing Property.** Additional real property may become subject to this Declaration in the following manner:

(a) **Additions in Accordance with a General Plan of Development.** Declarant shall have the right, without the consent any other party, to bring within the scheme of this Declaration additional real property in future stages of the development in accord with a General Plan of Development. General Plan of Development may be in the form of an information sheet or a brochure delivered to each purchaser before closing the sale to such purchaser. The General Plan of Development currently calls for additional phases of development which may

include: (1) those areas indicated on the Plat as Tracts A, B, and D, and (2) Tracts 2 and 5 as described on the Graham Plat. However, such lands shall only become subject to this Declaration at such time as a Supplemental Declaration is filed for those areas. The additions to the property by supplemental declaration may include a phase of the project, to be located approximately on Tract D as shown on the Plat and extending to Tract 2 of the Graham Plat, which will be gated and which will include private streets, gates, street lighting and other private facilities.

The General Plan of Development shall show the proposed additions to the Existing Property and contain (i) a general indication of size and location of additional development stages and the proposed land uses in each; (ii) the approximate size and location of Common Facilities proposed for each stage; (iii) the general nature of the proposed Common Facilities; (iv) a statement that the proposed additions, if made, will become subject to assessment for their just share of Association expenses; and (v) a schedule for terminating Declarant's right under this subsection to bring additional development stages within the scheme. Unless otherwise stated therein, the General Plan of Development shall not bind Declarant to make the proposed additions or to adhere to the General Plan of Development in any subsequent development of the land shown thereon, and the General Plan of Development shall contain a conspicuous statement to this effect. Further, the General Plan of Development shall not bind or affect any of the land described therein which has not actually been added to the Existing Property by a Supplemental Declaration, and Declarant shall, if requested by any owner of any such land, execute and acknowledge an instrument disclaiming and renouncing any right to add such land to the Existing Property while owned by any party other than Declarant.

Unless otherwise stated herein, the existence of a General Plan of Development shall not bind Declarant to make the proposed additions or to adhere to the General Plan of Development in any subsequent development of the land shown thereon, and the General Plan of Development shall contain a conspicuous statement to this effect. Further, the General Plan of Development shall not bind or affect any of the land described therein which has not actually been added to the Existing Property by a Supplemental Declaration, and Declarant shall, if requested by any owner of any such land, execute and acknowledge an instrument disclaiming and renouncing any right to add such land to the Existing Property while owned by any party other than Declarant.

Any addition authorized under this and the succeeding sub-section shall be made by Declarant's filing of record a Supplemental Declaration with respect to the additional property which shall extend all provisions of this Declaration to such property. Such a Supplemental Declaration may contain such additions and modifications of this Declaration as Declarant may deem desirable to reflect the different character, if any, of the added property and as are not inconsistent with the scheme of this Declaration.

(b) **Other Additions Upon Approval of the Association.** Upon approval in writing by the Association pursuant to a vote of its Members as provided in its Articles, the owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association may do so by filing a Supplemental Declaration as described in sub-section (a) above.

(c) **Mergers.** Upon a merger or consolidation of the Association with another association as provided in the Articles, its properties, rights, and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively,

the properties, rights, and obligations of another association may, by operation of law, be added to the properties, rights, and obligations of the Association as the surviving corporation pursuant to a merger.

**ARTICLE
III
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

Section 1. **Membership.** Every person or entity who or which is a record Owner of a fee-simple interest in any Lot which is subject by the terms of this Declaration to assessment by the Association shall be a Member of the Association, including, without limitation, any record Owner who acquired such title at a judicial sale or by a conveyance in lieu of foreclosure. However, any person or entity who or which holds such an interest merely as security for the performance of an obligation shall not be a Member. The rights of membership, including the right to vote, the right to participate in Association affairs, and/or the right to use and enjoy the Common Facilities (but not easements of ingress and egress), may be suspended by the Board for any period during which certain delinquencies continue, as provided in the Articles. Ownership of a Lot shall be the sole qualification for membership. No Owner shall have more than one membership for each Lot owned by such Owner. Membership may not be separated from the ownership of any Lot.

Section 2. **Classes of Membership and Voting Rights.** The Association shall have two classes of voting membership, as provided in the Articles:

(a) **Class A Members.** Class A Members shall be all Members with the exception of Declarant as provided below. On all matters to be voted upon, Class A Members shall be entitled to one (1) vote for each Lot, which may be cast in accordance with the Articles and Bylaws. When more than one person or entity holds such interest in a Lot, all such persons or entities shall be Members, but in no event shall more than one (1) vote be cast with respect to any such Lot.

(b) **Class B Member.** The Class B Member shall be Declarant or a related construction company which Declarant shall designate in writing during the time in which Declarant is a Class B Member. As provided in the Articles, on all matters to be voted upon, the Class B Member shall be entitled to twenty-five (25) votes for each Lot in which it holds the interest required for membership as provided in Section 1 of this Article III. The Class B membership shall cease and become converted to Class A membership when required pursuant to the Articles.

**ARTICLE
IV
PROPERTY RIGHTS IN THE COMMON FACILITIES**

Section 1. **Members' Easements of Enjoyment.** Subject to the provisions of Section 3 of this Article IV, every Member shall have a right and easement of enjoyment in and to the Common Facilities, and such easement shall be appurtenant to and shall pass with the title to every Lot.

Section 2. **Title to Common Facilities.** Declarant hereby covenants, for itself, its successors and assigns, that it shall convey the Common Facilities to the Association, free and clear

of all liens and encumbrances (except for ad valorem taxes and assessments for the year in which the conveyance is made; and except for all patent reservations, conditions, restrictions, restrictive covenants, easements, and rights-of-way of record, if any), when it determines, in its sole judgment, that the Association is financially capable, of paying all costs associated with the Common Facilities. Such conveyance may be by Plat or by metes and bounds description. Before the title to any areas or facilities proposed as Common Facilities is conveyed to the Association, the maintenance and operating costs associated therewith shall be considered as Common Expenses, if such proposed Common Facilities are used by the Association and its Members, and the Association shall pay such maintenance and operating costs thereafter.

Section 3. **Extent of Members' Easements.** The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of Declarant, and the right of the Association in accordance with its Articles and By-Laws, to borrow money for the purpose of acquiring or improving the Common Facilities and, for that purpose, to mortgage or otherwise encumber the Common Facilities; in the event the Association proposes to borrow money for the purpose of acquiring or improving the Common Facilities and, for that purpose, to mortgage or otherwise encumber the Common Facilities, such action must be approved by a simple majority of the Members at a Special Meeting.

(b) The right of the Association to take such steps as are reasonably necessary to protect the Common Facilities against foreclosure;

(c) The right of the Board, as provided in the Articles, to suspend the rights of membership, including the right to vote, the right to participate in Association affairs, and/or the right to use and enjoy the Common Facilities (but not easements of ingress and egress) for any period during which certain delinquencies shall continue, as provided in the Articles;

(d) The right of the Association to dedicate, convey, or transfer all or any part of the Common Facilities to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication, conveyance, or transfer determination as to the purposes or as to the conditions thereof shall be effective unless approved by a two-thirds (2/3rds) majority of the Members at a Special Meeting;

(e) The right of individual Members to delegate their rights and easements of enjoyment in and to the Common Facilities as provided in Section 4 below; and

(f) If an Owner has an easement for ingress to or egress from such Owner's Lot through the Common Facilities, any conveyance or encumbrance of such Common Facilities is subject to that Lot Owner's ingress/egress easement. Such easements for ingress and egress shall not be subject to suspension for delinquency of an Owner.

(g) Any rights to use the easement, or any portion thereof, which is the subject of the Easement Agreement shall be subject to any obligations and restrictions contained in that agreement.

ARTICLE
V
COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. **Creation of the Lien and Personal Obligation for Assessments.** Declarant, for each Lot owned by it within the Subdivision, hereby covenants, and each Owner of any Lot by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association (i) annual assessments in quarterly installments for the Common Expenses of the Association; (ii) special assessments for the construction or reconstruction, repair or replacement of any capital improvement constituting a part of the Common Facilities, for the operation, improvement, and maintenance of the Public Facilities, and for Association-administered repairs, replacements, and maintenance of Dwelling Units and/or Lots, such special assessments to be fixed, established, and collected from time to time as hereinafter provided; and (iii) special enforcement assessments. All such assessments, together with interest thereon and costs of collection thereof as are hereinafter provided, shall be a charge and a continuing lien upon the Lot against which each such assessment is made. All such assessments, together with interest thereon and costs of collection thereof as are hereinafter provided, shall also be the personal obligation of the Owner of such Lot at the time the assessment was made. Any purchaser of a Lot shall be jointly and severally liable with the selling Owner for all assessments which are unpaid at the time the purchasing Owner takes title.

Section 2. **Purpose of Annual Assessments.** The annual assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety, welfare, and recreation of the residents of the Subdivision; for the preservation of the values and amenities of the Subdivision; for the operation, improvement, and maintenance of the Common Facilities and payment of Common Expenses. In addition:

(a) Common Expenses for which assessments may be levied also include assessments for the maintenance of landscaping including, but not limited to, irrigation, replacement of plants and materials, servicing, additional administrative costs or other costs of providing for landscaping on those Lots on the front yards of Lots 91 through 129 as shown on the Plat, but the Association shall only assess the owners of those Lots for the costs associated with such maintenance.

(b) Common Expenses for which assessments may be levied shall include any and all expenses, obligations, indemnities and other liabilities of the Association under the Easement Agreement, including, but not limited to, those described in Section 15 of this Article.

Section 3. **Fixing the Amount of Annual Assessments for Common Expenses.** Until the fiscal year beginning January 1, 2006, the respective annual assessments for Common Expenses to be paid quarterly shall be as follows:

<u>Annual Assessment</u>	<u>Quarterly Installment</u>
\$480	\$120

From and after January 1, 2006, the annual assessment for Common Expenses shall be adopted by the Board, subject to the ratification thereof by the Members, as provided in the By-Laws. Declarant shall be responsible to pay to the Association the shortfall in cash flow, if any, required to pay Common Expenses actually incurred, excluding reserves, as they come due from the date

hereof to December 31, 2006. The limitations of this Section shall not apply to any change in the amount of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles and under Article II, Section 2, hereof.

Section 4. **Special Assessments for Capital Improvements and Maintenance of Public Facilities.** In addition to the annual assessments for Common Expenses authorized by Section 3 of this Article V, the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of the construction, reconstruction, repair, or replacement, of any capital improvement constituting a part of the Common Facilities, including the necessary fixtures and personal properties related thereto, or the cost of maintaining the Public Facilities, provided that any such special assessment shall have the assent of two-thirds (2/3rds) votes of the Members who are voting in person or by proxy at a Special Meeting at which a quorum is present. Such special assessment shall be a lien upon the Lots effective upon the date, and shall be due and payable, as determined by the Association.

Section 5. **Special Assessments for Association-Administered Repairs, Replacements, and Maintenance of Dwelling Units and/or Lots.** In addition to the annual assessments for Common Expenses and other special assessments as set forth herein, the Association may levy in any assessment year a special assessment against any Owner, applicable to that year only, for the cost of repairs, replacements, and/or maintenance to the Owner's Dwelling Unit and/or Lot, under the circumstances described in Article VI, Section 25, below; provided, however, that any such special assessment shall have the unanimous assent of the entire Board of Directors (other than the affected Owner, if he or she is a Director). Such special assessment shall be a lien upon the affected Owner's Lot(s) effective upon the date, and shall be due and payable, as determined by the Board.

Section 6. **Special Enforcement Assessments.** In addition to the annual assessments for Common Expenses and other special assessments as set forth herein, the Association may levy a special enforcement assessment against any Owner as a result of that Owner's acts or omissions, or the acts or omissions of his, her, or its tenants, family members, or invitees, in violation of this Declaration or the Articles, Bylaws or Rules and Regulations. Such special enforcement assessment shall be a lien upon the defaulting Owner's Lot(s) effective upon the date, and shall be due and payable, as determined by the Board and may be enforceable in the same manner as other assessments.

Section 7. **Change in the Amount of Annual Assessments for Common Expenses.** Subject to the limitations of Section 3 of this Article V, and for the period therein specified, the Association may change the amount of the assessments fixed by Section 3 of this Article V prospectively for any such period provided that any such change shall have the assent of two-thirds (2/3rds) of the votes of the Members who are voting in person or by proxy, at a special meeting duly called for this purpose upon written notice as provided in the Bylaws, and, provided, further, that the limitations of Section 3 of this Article V shall not apply to any change in the amount of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles and under Article II, Section 2, hereof.

Section 8. **Quorum for Any Action Authorized Under this Article.** The quorum required for any action authorized under this Article V shall be as follows: Except as otherwise provided in the By-Laws or the Articles, the presence of Members at the meeting of Members, in person or by proxy, entitled to cast fifteen percent (15%) of the votes of each class of membership

shall constitute a quorum. If the required quorum is not present at any such meeting on the first call therefor, the Members present and entitled to vote thereat shall have 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. A quorum once attained continues until adjournment despite withdrawal of enough members to leave less than a quorum.

Section 9. **Effective Date of Annual Assessments; Due Dates.** The effective date for the annual assessments provided for herein shall be the date (which shall be the first day of a month) fixed by the Board and shall be payable in quarterly installments on the dates fixed by the Board. The first annual assessments shall be made for the balance of the fiscal year commencing January 1, 2006, and shall become due and payable on the date fixed for the payment thereof. No Lot shall be subject to an annual assessment until one of the following occurs: 1) the sale of the Lot to its first retail purchaser (a purchaser other than a builder), or 2) the expiration of 90 days from the sale of the Lot to a builder, whichever occurs first. The assessments for any fiscal year, after the first year, shall become due and payable on the first day of each fiscal quarter of such fiscal year on such other date or dates as the Board shall fix. The amount of the annual assessment which may be levied for the balance remaining in the first year of assessment shall be prorated for the number of months remaining in the first year. The first assessment levied against any Lot which is hereafter added to the Existing Property at a time other than the beginning of any fiscal year shall be similarly prorated for the number of months remaining in such year.

The effective and due dates of any special assessment shall be fixed in the resolution authorizing such assessment.

Section 10. **Duties of the Board.** The Board shall fix the effective date and the amount of the assessment, subject to ratification by the Members, against each Lot for each annual assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the assessment shall be sent to every Owner.

Section 11. **Effect of Non-Payment of Assessment; The Personal Obligation of the Owner; The Lien; Remedies of Association.** If any assessment, or any installment thereof, described in this Declaration or other amount owed to the Association by the Owner pursuant to this Declaration is not paid when due, then such assessment or other charge shall become delinquent and shall, together with interest thereon and cost of collection thereof as hereinafter provided, become a continuing lien on the assessed Lot, which shall bind such Lot in the hands of the then Owner, his, her, or its heirs, personal representatives, successors, and assigns. The personal obligation of the Owner to pay such assessment, however, shall remain his, hers, or its personal obligation, and any purchaser of a Lot shall be jointly and severally liable with the selling Owner for all unpaid assessments as provided in the Bylaws. Mortgagees are not required to collect assessments. Late charges for assessments may be established in the Bylaws.

In the event that any Lot's assessment for Common Expenses or special assessments remains unpaid for more than thirty (30) days after it becomes due, the Board may suspend for any period during which such delinquency shall continue, the rights of membership, including the right to vote, the right to participate in Association affairs, and/or the right to use and enjoy the Common Facilities (but not easements of ingress and egress) by the delinquent Owner and his, her, or its officers, employees, tenants, guests, and invitees.

Further, if the delinquent assessment and any late charges, or other amounts owed by an Owner to the Association pursuant to this Declaration are not paid within thirty (30) days after the due date thereof, the assessment shall bear interest from the due date at the rate set by the Bylaws, and the Association may (i) bring an action at law against the Owner(s) personally obligated to pay the same and/or (ii) foreclose the lien against the Lot. In any action by the Association to foreclose its lien or to otherwise enforce this Declaration, its Bylaws or Rules and Regulations in which the Association prevails in whole or in part, the Association shall also be entitled to costs of such action and litigation expenses, including reasonable attorney's fees. In any foreclosure of a lien under this Declaration, the Owner's right of redemption pursuant to NMSA 1978 Section 39-5-18, or any successor statute, shall be reduced to thirty (30) days.

Section 12. **Subordination of the Lien to Mortgage.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage then or thereafter placed upon the Lot subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such Lot or the Owner thereof from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment. Such transfer shall not relieve the Owner from any personal liability for assessments which accrued prior to the transfer.

Section 13. **Exempt Property.** The following property subject to this Declaration shall be exempted from the assessments, charges, and liens created herein: (i) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority or utility provider and devoted to public use; (ii) all Common Facilities as defined in Article I, Section 1 hereof; and (iii) all properties exempted from taxation by the laws of the State of New Mexico upon the terms and to the extent of such legal exemption.

Notwithstanding any provision herein, no land or improvements devoted to residential use shall be exempt from assessments, charges, or liens duly imposed.

Section 14. **Uniform Rate of Assessments.** Both annual and special assessments (but not special enforcement assessments) shall be fixed at a uniform rate for all Lots, except as expressly provided in this Article. Exceptions to the requirement of uniform assessments are:

(a) **Gated Phases.** The expenses of maintaining or operating any gates, private streets, lighting of private streets, curbs and gutters along private streets and any other common facilities located within any gated portion of the Subdivision, will be assessed solely upon the owners of Lots within the gated portion. Such assessments may be done by the Association through allocations, through a subcommittee, through a sub-association or through a separate corporation which will manage the gate, private streets, lighting, and any other common facilities within the gated areas. The portion of the Perimeter Wall which surrounds the gated area is a Common Facility of the Andalusia Homeowners Association.

(b) **Courtyard Lots.** On Lots 91 through 129 (as shown on the Plat), the Association shall maintain the landscaping on the front yards of the Lots. The cost of maintaining the landscaping, including but not limited to, irrigation, replacement of plants and materials, additional administrative costs or other costs of providing for landscaping on those Lots, shall be assessed

only on owners of the Lots on which the Association maintains landscaping. The assessment shall be uniform among those Lots upon which the Association maintains landscaping.

Section 15. Assessment pursuant to the Easement Agreement.

(a) Insurance. The Association, its successors and assigns, will maintain or cause to be maintained, liability insurance in the amount of not less than \$1,000,000.00 per occurrence combined single-limit for accidents or occurrences which cause bodily injury, death or property damage covering the 60' Easement and the Trail Connection Easement (as those easements are described in the Easement Agreement) as a result of the use of those easements. Without affecting the insurer's obligation to defend La Luz and or Bosque School, as between the City of Albuquerque's acknowledged responsibility and the liability insurance required by this provision, the City of Albuquerque's responsibility shall be primary and the insurance shall be secondary. The Association's insurance will name La Luz, Bosque School, and the City as additional insureds under such policy and will provide each of La Luz, Bosque School, and the City a certificate of such insurance reasonably acceptable to each of them. Any cancellation provision must provide that if the policy of insurance is canceled prior to its expiration date, materially changed, or will not be renewed, the issuing insurance carrier will mail prior written notice to La Luz Landowners Association at 1A Loop One NW, Albuquerque, NM 87120 and to the Bosque School at 4000 Learning Road NW Albuquerque, New Mexico 87120-2546 and to the City at City of Albuquerque, Risk Management Department, Attn. Risk Manager, P.O. Box 470, Albuquerque, New Mexico 87103. Any such prior written notice shall be sent by certified mail, return receipt requested at least ninety-days in advance of the proposed expiration, material change or non-renewal, if such a 90-day provision can be reasonably obtained. If such 90-day provision cannot be reasonably obtained, the Association shall obtain the longest advance notice provision reasonably available, but in no event less than thirty (30) days. All of the expenses of this paragraph shall be Common Expenses of the Association.

(b) Assessments by La Luz to purchase insurance. In the event of (i) dissolution of the Association without a successor or assign, or (ii) the Association's default in the payments required to maintain the liability insurance, and after the expiration of a thirty (30) day opportunity to cure after written notice from the La Luz Landowners Association, all of the enforcement rights of the Association with respect to the obligations under the Easement Agreement shall automatically be transferred to La Luz, and La Luz shall be entitled to enforce all of the charges and liens for the insurance premiums, costs, expenses and reasonable attorneys' fees upon the Lots subject to the Annual Assessment of the Association.

(c) Modification prohibited. Notwithstanding any provision of this Declaration to the contrary, no modification of this Article V, Section 15 or any modification which would affect the rights granted by this Section, including, but not limited to a modification of Article V, Section 2 (b), may be made without the prior written consent of the additional insureds set out in subparagraph (a), above if such entities, or successor entities, are in existence.

Section 16. Initial Assessment at closing of sale to first Retail Purchaser.

At the closing of sale to the first Retail Purchaser, there shall be due and owing the regular assessment for the remainder of the initial quarter during which the first Retail Purchaser shall own the Lot, and an additional assessment of \$100 which shall be retained by the Association as capital reserve.

**ARTICLE
VI
LAND USE**

Section 1. **Antennae, solar collectors.** No antenna (television, amateur radio, citizen's band radio, satellite dish, or other antenna) or solar collector shall be erected upon any Lot unless such antennae are permitted by the Rules and Regulations.

Section 2. **Architectural and Other Standards.** Except for construction of all types performed by or for Declarant, no Dwelling Unit including the garage, wall, accessory dwelling, or other structure of any kind whatever, whether permanent or temporary, shall be erected, placed, or altered on any Lot until (i) a building permit has been issued by the City of Albuquerque; (ii) the plans and specifications therefor contain a certification by the builder confirming their compliance with all applicable federal, state, and local codes, regulations, restrictions, and ordinances; and (iii) construction plans and specifications have been approved in writing by the Architectural Control Committee as to compliance with the design standards set forth herein and in the Rules and Regulations, including without limitation, quality of materials, harmony of external design with existing structures, and location of the structures with respect to topography, setback requirements, and finished grade elevations. These restrictions shall not apply to the Declarant or to construction of all types performed by or for Declarant. Likewise, no existing structure of any kind shall be altered, remodeled, painted, or changed until the plans for such have been approved in writing by the Architectural Control Committee. These restrictions shall not apply to the Declarant or to alteration, remodeling, painting, or changes of all types performed by or for Declarant. Notwithstanding the foregoing, Architectural Control Committee approval shall not be required to repaint, restain, or restucco a structure in a color which the Architectural Control Committee has previously approved. The procedures for obtaining Architectural Control Committee approval are set forth in Article VII. All construction, whether new construction, alterations, additions, or remodeling, shall be commenced within one (1) year of the Architectural Control Committee's written approval thereof, after which such approval shall become void. All exterior construction, including the final stucco color coat, paint, trim, and landscaping shall be fully completed within one (1) year after commencement of such construction. No Lot shall be used for the storage of materials for a period greater than thirty (30) days prior to the start of construction.

Section 3. **Architectural Style.** The architectural style of all dwellings in the Subdivision shall be based upon "Pueblo Revival," "Territorial", "Northern New Mexico", "Spanish Colonial," or "Contemporary Pueblo," style.

Section 4. **Building Location.** No building shall be located on any lot in such a manner as to violate the City of Albuquerque zoning ordinances, subdivision rules or regulations, site plan subdivision and site plan for building permit, or any other public ordinance, rule, or regulation adopted by any governmental authority having jurisdiction over the Lots which might pertain to building construction and/or location.

(a) **Single Family Lots.** For single family lots, the following setbacks shall apply:

- 1) *Front Yard Setbacks.* For front yards, the minimum building setback shall be eight feet (8') for the Dwelling Unit. For garages, the minimum front yard setback shall be eight feet (8') except for twenty feet (20) for or second and third garages facing the street. The two primary garages must meet the

twenty (20) foot set back. No more than three (3) houses in a row with garages facing the street shall may be built with a twenty foot (20') front setback. The minimum offset for garages of adjacent houses is three feet (3'), three (3) in a row of twenty (20). For a three car garage, the third garage must meet the minimum front yard setback;

2) *Side Yard Setbacks.* For side yards, the minimum building setback shall be three feet (3') for the Dwelling Unit if not adjacent to a street and eight feet (8') for any side yard adjacent to a street except for 20 feet for any garage facing the street. Zero lot line construction is permitted, provided there is at least ten feet (10') of separation between the Dwelling Units. There is no minimum side yard setback for a garage.

(b) Courtyard Lots, For lots on Lots 91 through 129 (as shown on the Plat), the following setbacks shall apply:

1) *Front Yard Setbacks.* For front yards, the minimum building setback shall be eight feet (8') for the Dwelling Unit. For garages, the minimum front yard setback shall be eight feet (8') except for garages which face the street for which the minimum building set back shall be twenty feet (20') for garages facing the street.

2) *Side Yard Setbacks.* For side yards, there is no minimum building setback for the Dwelling Unit for lots other than corner lots or lots adjacent to other zones within the Subdivision. There shall be a minimum building setback of eight feet (8') for any side yard adjacent to a street and a setback of three feet (3') from the lot line separating the Courtyard Lots from other single family lots. There is no minimum side yard setback for any type of garage.

(c) Structures of any kind, including but not limited to courtyard walls and party walls, shall conform to setbacks and all other requirements set out in the Site Plan for Subdivision and Site Plan for Building Permit approved by the City. Any Lot owner proposing to build improvements on his Lot must obtain approval from the City of Albuquerque for the proposed plan for compliance with all applicable ordinances, rules, and regulations in effect at that time regarding building height and front and side yard setbacks. For the purpose of the limitations imposed by this Declaration (but not those imposed by municipal ordinances, rules, or regulations if defined otherwise therein), eaves, steps, patios, walkways, and open porches shall not be considered as part of a building. In no case shall eaves, steps, patios, walkways, or open porches encroach upon another Lot.

Section 5. **Certain Structures Prohibited.** No tent, barn, carport, or other outbuilding of more than seven feet (7') in height shall be used, erected, or constructed, as the case may be, on any other than those specifically allowed by the rules and regulations of the Association. In no case shall any of the above-mentioned structures be used as a residence, either temporarily or permanently. The Association may provide in its rules and regulations for approved outbuildings

provided they are consistent in style, color and appearance with the standards of the Subdivision. The Architectural Control Committee shall have the power to grant variances from the standards in this paragraph on a case-by-case basis for good cause.

Section 6. **Courtyard Walls.** Courtyard walls are walls which are not built on the property line of a Lot. Courtyard walls must comply with all requirements of the City of Albuquerque and must have the prior written approval of the Architectural Control Committee. All courtyard walls shall be in colors as approved by the Rules and Regulations.

Section 7. **Destruction of Party Wall by any Casualty.** If any Party Wall as defined herein is destroyed or damaged by any casualty, the restoration cost shall be proportionately shared between or among the Owners of the Lots upon or between which such party wall is located unless caused by one or more of such owners, in which case the cost of restoration shall be his, hers, or theirs.

Section 8. **Drainage.** Surface drainage courses within Lots shall be kept free and clear of debris or other obstruction which might prevent the free flow of storm waters.

Section 9. **Drainage and Utility Easements.** Easements and rights-of-way for installation and maintenance of utilities and drainage facilities are reserved either as indicated on the Plat, or as granted by a recorded document.

Section 10. **Driveways.** All driveways shall be graded and sloped for proper drainage and shall be maintained so as to reduce erosion and eliminate unsightly conditions. Driveways shall be surfaced with concrete acceptable to the Architectural Control Committee. Driveway size may not be expanded beyond that which was originally constructed unless approved in writing by the Architectural Control Committee.

Driveways on Lots 1 through 10, inclusive, and Lots 65 through 76, and Lots 130 and 131, inclusive are sixteen feet in width and shared, with eight feet of the driveway located on each adjoining Lot. Each Lot upon which a shared drive is located is granted an easement in and to the shared drive for ingress and egress by automobile or other similar means of transportation. The location of the shared drive easements are indicated on the Plat. No owner shall block the drive, park vehicles or trailers in the driveway, store items in the driveway, install play equipment in the driveway or use the driveway in any manner which would interfere with ingress or egress to the adjoining Lot.

Section 11. **Dwelling Unit Size.** The heated floor area within the structure of any Dwelling Unit, exclusive of porches, garages, or other appurtenant structures, shall not be less than 1,200 square feet. In the case of a residence of more than one story, not less than 1,000 square feet shall be within the ground floor area. In cases of multiple-level Dwelling Units, the Architectural Control Committee shall conclusively determine what constitutes ground floor area as distinguished from the basement or other non-ground floor areas.

Section 12. **Exterior Lighting.** All exterior lights must be situated so as not to be directed toward surrounding Lots and shall be installed in compliance with the Rules and Regulations. The Architectural Control Committee has the authority to require the relocation or

removal of any fixtures, including the wattage and type of bulb or other illuminating element therein, which adversely affect neighboring properties.

Section 13. **Exterior Materials, Colors, and Finishes.** The exterior building materials, paints and stains for each Dwelling Unit shall be selected to complement, coordinate, and harmonize with the overall existing architectural design of Andalucia at La Luz as deemed appropriate by the Architectural Control Committee as shall be further described in the Rules and Regulations.

Section 14. **Garages.** All Dwelling Units shall have a minimum of a two (2)-car garage and in the case of three (3) car garage no more than two (2) garage doors are allowed. Carports are not permitted. No Garage shall be erected with a door taller than eight (8) feet. Garages shall not be used for habitation. Any modification or addition to an existing garage shall require specific prior written approval by the Architectural Control Committee and shall be considered on a case-by-case basis in relation to design, placement, Lot, street visibility, etc.

Section 15. **Gates, Generally.** Wall gates in front yard courtyard walls shall be decorative in design and construction as approved in writing by the Architectural Control Committee. Back yard access gates shall be constructed of wrought-iron as approved in writing by the Architectural Control Committee. No gates shall be permitted in the Perimeter Wall except at the Subdivision entrances.

Section 16. **Grading.** No Lot may be landscaped or regraded in such a manner as to cause the drainage characteristics of the Lot to differ materially from the approved grading plan; and in no case shall the drainage characteristics be modified in such a way as to cause damage to adjacent property.

Section 17. **Grading and Drainage Modifications.** Applicants shall not make modifications to the grading or drainage improvements installed by the builder without written approval of the Architectural Control Committee. The Association will not assume any responsibility whatsoever for any damage brought about by the grading, drainage, or other improvements or modifications thereto made by a builder or a Lot Owner.

Section 18. **Gutters and Downspouts.** Gutters and downspouts shall conform to the colors and other standards set out in the Rules and Regulations.

Section 19. **Identical Front House and Rear House Elevations, Massing.** No more than three (3) identical, or substantially identical, front house elevations shall be constructed next to each other. Not more than three (3) identical, or substantially identical, rear house elevations on Dwelling Units constructed on Lots where the rear faces streets or open space shall be constructed next to each other. All Dwelling Units shall include at least two distinct masses which must be visible on each side of the house which faces a street. Each mass must be distinguished by horizontal and vertical offsets of at least 6 inches.

Section 20. **Land Use and Building Type.** No lot or any portion thereof shall be used except for single-family residential purposes. No building shall be erected, altered, placed, or permitted to remain on any lot other than one (1) single-family detached Dwelling Unit plus one (1) accessory dwelling, e.g., a guest house or an employee dwelling. For Lots numbered 1 through 7, inclusive, 9, 10, 20 through 22, inclusive, 30 through 35 inclusive, 93 through 110, inclusive, 114

through 127, inclusive, and, and for Lots 130, no portion of any building shall exceed the lesser height of (a) twenty-four and one-half feet (24½') above the highest finished grade of the residential lot, except for chimneys and antennae of reasonable size, or (b) the building height limitations provided in the ordinances, rules, and regulations of the City of Albuquerque. For lots 139 through 164, inclusive, no portion of any building shall exceed the lesser height of (a) twenty-six feet (26') above the highest finished grade of the residential lot, except for chimneys and antennae of reasonable size, or (b) the building height limitations provided in the ordinances, rules, and regulations of the City of Albuquerque. For all other Lots, no portion of any building shall exceed the lesser height of (a) nineteen feet (19') above the highest finished grade of the residential lot, except for chimneys and antennae of reasonable size, or (b) the building height limitations provided in the ordinances, rules, and regulations of the City of Albuquerque. For purposes of this section, a garage shall be considered to be part of the Dwelling Unit of which it is attached. The provisions of this paragraph shall not supercede any provision contained in a deed which is more restrictive as to height of structures than these covenants.

No business, even businesses which may be permitted under applicable zoning, shall be operated from any Dwelling Unit or on any Lot, except for a home office occupying not more than fifteen per cent (15%) of the floor space of the Dwelling Unit, for which there is no external evidence of the activity, including, but not limited to, signs, customer or commercial vehicles, outside storage, noise, odors, noxious fumes, or other nuisances. No storage of merchandise or manufacturing uses of any kind shall be permitted

Section 21. **Landscaping.** In addition to the landscaping requirements of the City of Albuquerque with which each Lot owner must comply, each Lot must be landscaped to meet the following requirements set out in the rules and regulations of the Association and on the Site Plan for Subdivision and the Site Plan for Building Permit.

Section 22. **Landscape Plan Approval.** The landscaping must be compatible with the overall subdivision streetscape, and must conform to and meet or exceed the minimum standards listed above. Maintenance of the minimum landscape standards for the front yard of each Lot is required. The Architectural Control Committee may require the relocation or removal of any landscape materials which adversely affect neighboring properties.

Section 23. **Livestock, Poultry, and Pets.** No animal, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except for a reasonable number of dogs, cats, or other non-exotic household pets. No animal, livestock, poultry, fish, or reptile of any kind may be kept, bred, or maintained for any commercial purpose.

Section 24. **Lot Division.** No lot shall be split or further subdivided except as necessitated by encroachments or boundary deficiencies caused by errors in surveying and/or construction.

Section 25 **Building Height.** Once built, a dwelling unit can not be changed to increase the height of the building

Section 26. **Maintenance of Lots and Dwelling Units.** All Lots and Dwelling Unit exteriors shall be maintained by the respective Owner thereof in a neat, orderly condition and in a good state of preservation and cleanliness at all times and shall be maintained as provided in the Rules and Regulations. For the sole purpose of performing the repair, replacement, and/or

maintenance authorized by this Section, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot at reasonable hours.

Section 27. **Miscellaneous.** The Board and the Architectural Review Committee may, by rule and regulation, regulate or prohibit other uses which are reasonably deemed to be inconsistent with the architectural style of the Subdivision or detrimental to the use of Lots by other Owners.

Section 28. **Modifications, Additions, or Extensions of Dwelling Units.** All modifications, additions, or extensions of Dwelling Units including the garages, accessory dwellings, or other structures shall require the prior written approval of the Architectural Committee and shall meet the requirements of all applicable federal, state, and local codes, regulations, restrictions, and ordinances, this Declaration, and the Rules and Regulations.

Section 29. **Nuisances.** No noxious or offensive activity or use contrary to the laws of the United States of America or the State of New Mexico, or the ordinances, rules, or regulations of the City of Albuquerque, or any other governmental authority having jurisdiction, shall be carried on upon any Lot; nor shall any activity or use be carried on upon any Lot which is, or may become, an annoyance or nuisance to the Subdivision.

Section 30. **Occupancy.** No Dwelling Unit erected within the Subdivision shall be occupied in any manner while in the course of construction. No Dwelling Unit erected within the Subdivision shall be occupied until a Certificate of Occupancy shall have been issued by the appropriate governing agency.

Section 31. **Parking and Vehicles.** No mobile home, motor home, camper, trailer, recreational vehicle, motorcycle, boat, truck over $\frac{3}{4}$ ton, or any commercial vehicle shall be stored, kept, or maintained on any portion of the Subdivision, except within a garage, or except where customary or required for the limited purpose of building, repairing, refinishing, or maintaining a Dwelling Unit or Lot, or any other structure thereon, or for the limited purpose of moving household goods or furnishings, equipment, or supplies to or from the Lot. Parking and vehicles shall be further regulated by the Association through its Rules and Regulations.

Section 32. **Party Walls and Costs Related Thereto.** With the exception of the Perimeter Wall, any wall on the common property line of two or more Lots shall constitute a Party Wall, and to the extent not inconsistent with the provisions of this Section, the general rules, laws, and ordinances regarding party walls and of liability for property damage due to negligent or willful acts or omissions shall apply thereto. The cost of original construction and of reasonable repair and maintenance of a party wall shall be proportionately shared between or among the Owners of the Lots upon or between which such party wall is located. The right of any Owner to contribution from any other Owner for repair and maintenance shall be appurtenant to the Lot owned by such Owner and shall pass to such Owner's successors in title. All party walls must be constructed utilizing colored concrete block as in colors as prescribed by the Rules and Regulations.

Section 33. **Perimeter Wall.** The Perimeter Wall, once constructed, shall remain in place, shall not be defaced, altered, or removed, and shall be subject to the following:

(a) Entry through the wall shall not be permitted except for the Subdivision entrances;

(b) The Owners of Lots upon which the Perimeter Wall may be located shall not remove or alter the wall.

Section 34. **Play Structures.** Play structures, including but not limited to swing sets, trampolines, play houses, climbing structures and basketball hoops shall be located only in the rear yard. Such play structures shall be regulated, restricted or even prohibited by the Board pursuant to Rules and Regulations imposed by the Board.

Section 35. **Refuse.** No garbage; clippings, or other refuse may be thrown, dumped, or allowed to accumulate, on any portion of the Subdivision, other than that which is contained in compost piles. All such refuse, trash, and waste products shall be disposed of in appropriate containers, which containers shall remain screened and concealed from view at all times (other than when being placed for pickup).

Section 36. **Rentals.** The Board may, through the Bylaws or Rules and Regulations, impose fees, procedures, lease forms, requirements and restrictions upon the rental of Dwelling Units. Any Owner who rents a unit shall have appointed the Association as attorney in fact with the right, but not the obligation, to enforce, at the Owner's expense, any of the requirements of that Owner's lease, this Declaration or any laws pertaining to the rental of residential property. Any lease shall incorporate the requirements of this Declaration.

Section 37. **Retaining Walls.** Retaining walls shall be party walls if placed on the common property line of two or more Lots and shall not be removed, painted, or altered in any respect by any Lot Owner.

Section 38. **Roofing Materials.** Roofing materials for any sloped roof area shall be non-reflective and of a color and material approved in writing by the Architectural Control Committee. Except as expressly allowed in this Declaration, no metal roofs except for metal accents approved by the Architectural Control Committee, or asphalt shingle roofs or wood shingle roofs shall be permitted.

Section 39. **Rooftop-Mounted Equipment.** No evaporative coolers or HVAC units shall be constructed on a pitched roof of a Dwelling Unit but must be placed on a concrete pad on the ground and screened and not visible from any street. On flat rooftops evaporative coolers and HVAC units may be placed on the roofs or on concrete pads on the ground. If constructed on the flat rooftop they shall be screened by a structure of the same color of stucco as the Dwelling Unit and shall not protrude above the screening structure.

Section 40. **Roofs.** Roof Pitch, Form, and Material – Roofs may take on a variety of forms; however, gables or hipped roofs are preferred. Mansard, gambrel, and other types of non-standard roof forms are not permitted, except as may be approved in writing by the Architectural Control Committee before construction thereof is commenced. Flat roofs must be constructed with a positive slope to ensure proper drainage

(a) Only roof tiles made of clay or manufactured-colored concrete are allowed, provided they complement the architectural style and color of the Dwelling Unit. Painting of roofing materials is prohibited. The color, material, and type of roof tiles must be approved in writing by the Architectural Control Committee.

(b) **Exposed Roof Metal.** Since roofing material is an integral part of a home's exterior appearance, all roof stacks, attic ventilators, plumbing vents, flashing, and other penetrations shall be painted to match the synthetic stucco color. All stacks, attic ventilators, plumbing vents, flashing, and other penetrations shall be placed on the rear slope of a home's roof where possible, and must be mounted perpendicular to the ground plane. The use of copper or prefinished metal roofing on select accent areas may be permitted with the prior written approval of the Architectural Control Committee.

(c) **Rooftop Decks.** No rooftop decks shall be allowed on any single story unit. Balconies are allowed only on two story Dwelling Units which can be accessed from the interior of the Dwelling Unit.

Section 41. Screening of Ground-Mounted Mechanical Equipment. All ground-mounted mechanical equipment, including, but not limited to, evaporative coolers and HVAC units, and pool and any other mechanical equipment, shall be placed on concrete pads and screened from public view by being placed in one of the side yards to the rear of the cross wall (the wall separating the front and back yards). Screening may consist of architectural or planting elements approved in writing by the Architectural Control Committee.

Section 42. Signs. No sign of any kind shall be displayed to the public view on any Lot except as permitted in the Rules and Regulations.

Section 43. Storage Tanks. No storage tank of any kind, other than tanks associated with water harvesting, shall be erected or placed on any portion of the Subdivision without the prior written approval of the Architectural Control Committee

Section 44. Stored Items. No wood piles (except an orderly stacks of fire logs less than one (1) cord in size) or storage piles of any other kind shall be maintained on any portion of the Subdivision, except where such piles or storage cannot be seen from any street or other Lot.

Section 45. Temporary Uses. Any Lot or portion thereof may be used by Declarant as a sales office, model home, storage area, or construction yard during the construction and sales periods. Any other temporary use by any party must have the prior written approval of the Architectural Control Committee.

Section 46. Utilities. All extensions of utilities on any portion of the Subdivision shall be underground. No electrical or telephone lines shall be maintained above ground except during construction unless such lines are already present at the time this Declaration is recorded.

Section 47. Wall Construction Standards. All walls exterior to the Dwelling Unit shall be constructed of concrete block and have a thickness of at least six inches (6") in colors as prescribed by the Rules and Regulations with matching grout and on concrete footings, which shall extend to at least sixteen inches (16") below finished grade. In no event shall footings be visible. Return walls in front of the Dwelling Units shall be tan colored, split-face concrete block as set out in the

Rules and Regulations. All side yard walls must be at least four feet (4') in height. With the exception of courtyard walls, retaining walls or as necessary to avoid enclosing utility equipment, all walls shall be constructed on the property lines, unless a deviation therefrom is granted by the Architectural Control Committee in writing.

Section 48. **Wood Fences and Exteriors.** No wooden fences other than Coyote Fences approved by the Architectural Control Committee constructed of natural timber shall be permitted. Coyote fence timbers and latillas shall be constructed of unpeeled cedar. Coyote fences must be maintained for structural soundness and must have structural posts and stringers on the interior of the fence. No wooden exteriors of structures other than trim, decks or pergolas approved by the Architectural Control Committee shall be permitted.

Section 49. **Zoning; Development.** The Subdivision is zoned Special Use SU1 for Single Family Residential by the City of Albuquerque, and all development, use and occupancy thereof shall comply with the Plat, Site Development Plan for the Subdivision, Site Development Plan for the Building Permit, City Zoning Rules or Regulations, this Declaration, and the Rules and Regulations for the Subdivision (Exhibit B), and any applicable ordinance, rule, or regulation adopted by any governmental authority having jurisdiction.

ARTICLE VII ARCHITECTURAL CONTROL COMMITTEE

Section 1. **Review by Architectural Control Committee.** No Dwelling Unit including the garage, wall, accessory dwelling, or other structure of any kind whatever, whether permanent or temporary, except those constructed by or for Declarant, shall be erected, placed, or altered on any Lot, until the construction plans and specifications have been approved by the Architectural Control Committee as to compliance with the design standards set forth herein and in the Rules and Regulations, including without limitation, quality of materials, harmony of external design with existing structures, and location of the structure with respect to topography, setback requirements, and finished-grade elevations. Likewise, no existing Dwelling Unit including the garage, wall, accessory dwelling, or other structure of any kind whatever, shall be altered, remodeled, painted, or changed, except those altered, remodeled, painted, or changed by or for Declarant, until the plans for such alteration, remodeling, painting, or change have been approved in writing by the Architectural Control Committee. The Architectural Control Committee shall be appointed by the Board. The Chairman of the Committee and the other members may, but need not, be Board members. The Board shall appoint the Chairman and the two or more other members of the Architectural Control Committee prior to each Annual Meeting of Members to serve from the close of that annual meeting until the close of the next annual meeting of Members, and such appointments shall be announced at that annual meeting of Members. The Chairman and the other members of the first Architectural Control Committee shall serve from the date of their appointments until the close of the first annual meeting of Members.

All requests for approval hereunder shall be submitted to the Architectural Control Committee in writing, together with any additional documentation reasonably necessary for the Architectural Control Committee to act on the request in so many copies as the Committee shall prescribe. The Architectural Control Committee may request additional information should the same be deemed necessary. Submissions shall also comply with this Declaration and the Rules and Regulations of the Association.

Section 2. **Procedure and Variances.** The Architectural Control Committee's approval or disapproval as required hereunder shall be in writing. In the event the Architectural Control Committee or its designated representative fails to approve or disapprove a request within thirty (30) days after complete plans and specifications have been properly submitted to it, then the Architectural Control Committee shall be deemed to have disapproved the same. If the plans and specifications for construction or modification of any construction requiring approval by the Architectural Control Committee are not submitted and approved, then this Declaration may be enforced by any party as provided below, before or after commencement and/or completion of construction.

The Architectural Control Committee shall have and retain the power to grant variances from the provisions of this Declaration on a case-by-case basis for good cause. The Architectural Control Committee may charge a reasonable fee for processing applications for approvals and variances.

These restrictions, limitations, and the required approvals by the Architectural Control Committee shall not apply to Declarant or to construction, alteration, remodeling, painting, or change by or for Declarant.

Section 3. **Participating Master Builder Program.** The Architectural Control Committee may establish a Participating Master Builder Program for approving contractors who may build in the Subdivision or any portion thereof. If such a program is in effect, no contractor may build a Dwelling in the Subdivision unless approved by the Architectural Control Committee.

ARTICLE VIII GENERAL PROVISIONS

Section 1. **Duration.** All Lots will be owned and, if transferred, shall be transferred, subject to this Declaration. All of the provisions of this Declaration are and shall be considered as "covenants running with the land." All of the provisions of this Declaration will run with and bind the land, Members, and Owners, will inure to the benefit of, and will be enforceable by and against the Association, any Owner, or any Member (unless a Member be then suspended, in which case the provisions of this Declaration shall be enforceable against but not by such suspended Member), and each of their respective heirs, personal representatives, successors, and assigns, for a term of twenty-five (25) years from the date on which this Declaration is recorded in the office of the County Clerk of Bernalillo County, New Mexico, after which date this Declaration shall be automatically extended for successive periods of ten (10) years each unless a Supplemental Declaration executed and acknowledged by the President and any other one (1) officer or member of the Board with the approval of the then-Owners of two-thirds (2/3rds) of the Lots has been recorded in the office of the County Clerk of Bernalillo County, New Mexico, amending, modifying or terminating this Declaration, which Supplemental Declaration shall be effective upon such recordation following the proper execution and acknowledgement thereof.

Section 2. **Amendments of Declaration.**

(a) **Amendments Before Close of First Sale to a Retail Purchaser.** Before the close of the first sale of a Dwelling Unit to a retail purchaser, this Declaration and all

Supplemental Declarations may be amended, modified, or terminated by an instrument entitled "Supplemental Declaration" which amends, modifies, or terminates this Declaration or any Supplemental Declaration, and which has been executed and acknowledged by Declarant unilaterally, and recorded in the office of the County Clerk of Bernalillo County, New Mexico, which Supplemental Declaration shall be effective upon such recordation.

(b) **Amendments After Close of First Sale to a Retail Purchaser.**

After the close of the first sale of a Dwelling Unit to a retail purchaser, this Declaration and all Supplemental Declarations may be amended, modified, or terminated by the Members of the Association, with the affirmative vote of two-thirds (2/3rds) of the votes (as allocated by this Declaration and the Articles and Bylaws) of the Members entitled to vote, who are voting in person or by proxy at a Special Meeting duly called for this purpose, by an instrument entitled "Supplemental Declaration," which amends, modifies, or terminates this Declaration or any Supplemental Declaration, and which has been executed and acknowledged by the President and any other one (1) officer or member of the Board, and recorded in the office of the County Clerk of Bernalillo County, New Mexico, which shall be effective upon such recordation.

Section 3. **Amendments to Plat.** Declarant shall have the authority unilaterally to change, amend, or modify the Plat from time to time provided such changes, modifications, or amendments do not materially change the character or quality of the Lots. Declarant reserves and is hereby granted the right and power to record a replat or replats or lot line adjustments from time to time to reflect such changes, amendments, or modifications to the Plat, provided such changes do not modify the property boundaries of lots which have been sold to parties other than the Declarant. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to make or consent to a replat or replats or lot line adjustments on behalf of each Owner affected thereby. Each deed, mortgage, or other evidence of obligation, or other instrument affecting a Lot and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to, the reservation of the power of Declarant to make, execute, and record a plat, replat, or lot line adjustment as provided herein

Section 4. **Enforcement.** This Declaration and the Articles, By-Laws, and Rules and Regulations of the Association, may be enforced by the Association or by any Owner or any Member, except then-suspended Members, in any proceeding at law or in equity, against any person or entity, violating or attempting to violate any provision of this Declaration, the Articles, the By-Laws, or the Rules and Regulations of the Association, either to restrain such violation or to specifically enforce any such provision, or to recover damages, and to enforce any lien, assessment, or charge now or hereafter imposed by the provisions of this Declaration. The failure by the Association, any Owner, or any Member to enforce any provision, restriction, condition, or covenant contained in this Declaration, or in the Articles, By-Laws, or Rules and Regulations of the Association, shall not constitute a waiver of the right to do so thereafter.

Section 5. **Severability.** Invalidation of any one or more of the provisions, restrictions, conditions, or covenants of this Declaration by judicial determination or otherwise shall in no way affect any other provision, restriction, condition, or covenant of this Declaration, all of which shall be and remain in full force and effect.

Section 6. **Provisions Obligatory on All Owners.** All of the provisions, restrictions, conditions, and covenants of this Declaration, the Articles, the By-Laws, and the Rules and

Regulations, shall apply to all Owners, except where any such provision expressly exempts an Owner therefrom, e.g., where such provision is inapplicable to Declarant.

Section 7. **Actions by Owners and by Members.** Unless otherwise provided for in this Declaration, or in the Articles or Bylaws of the Association, the method for Owners and for Members to take action, and the evidence thereof, shall be as follows: Whenever any action is required or permitted to be taken by the Owners or Members, such action shall be taken (i) at a meeting duly called for such purpose after thirty (30) days' written notice of such meeting and such purpose has been mailed to each Owner at the address reflected in the records of the Association at the time of such mailing, at which meeting a quorum is present in person or by proxy, and such action is assented to by the majority required for such action, as, for example, a simple majority or a two-thirds (2/3rds) majority, as specified for the particular action; or (ii) without holding any meeting by obtaining the execution and acknowledgment of a Supplemental Declaration by the then-Owners of the required majority of Lots. Thereupon, the President and any other one (1) officer or member of the Board shall execute and acknowledge any required Supplemental Declaration, which shall become effective upon its recordation in the office of the County Clerk of Bernalillo County, New Mexico.

IN WITNESS WHEREOF, Andalucia Development Co., Inc., A New Mexico corporation, has caused this Declaration of Covenants, Conditions, and Restrictions to be executed on this _____ day of December, 2005.

ANDALUCIA DEVELOPMENT CO., INC
a New Mexico corporation

By _____
Scott Schiabor
President

ACKNOWLEDGEMENT

STATE OF NEW MEXICO)
(ss.

COUNTY OF BERNALILLO)

This instrument was acknowledged before me on December _____, 2005, by SCOTT SCHIABOR, as President of Andalucia Development Co., Inc., a New Mexico corporation.

(SEAL)

My commission expires:

Notary Public

EXHIBIT A

DESCRIPTION OF “EXISTING PROPERTY”

All of the numbered Lots (whether or not such Lots bear the additional designation “P-1”), and Tracts C, E, F, G, H, I, J, K, L, M and N, but excluding Tracts A, B and D, and including the following named streets:

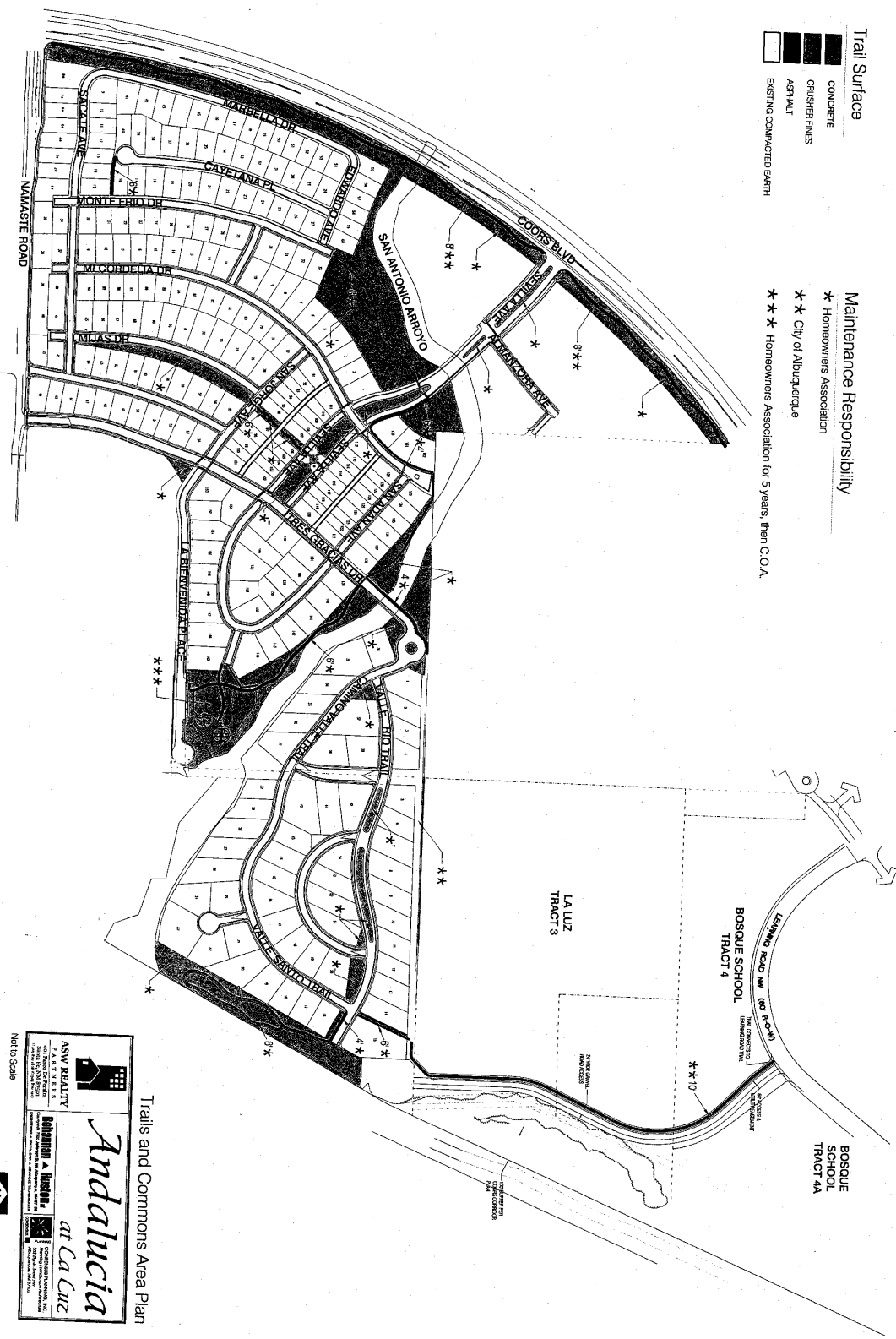
- Almeria Drive
- Mi Cordelia Drive
- Mijas Drive
- Monte Frio Dirve
- Sacate Avenue
- San Adan Avenue
- San Jorge Avenue
- Sevilla Avenue

Tres Gracias Drive

All as the same are shown on the Plat of VALLE PARAISO SUBDIVISION AT ANDALUCIA DE LA LUZ which was filed on March 21, 2006, as Document No. 2006038107, and recorded in BK-2006C at Page 66, of the records of Bernalillo County, New Mexico.

EXHIBIT B

LANDSCAPE PLAN



Trail Surface

- CONCRETE
- CRUSHER FINES
- ASPHALT
- EXISTING COMPACTED GRAIN

Maintenance Responsibility

- * Homeowners Association
- ** City of Albuquerque
- *** Homeowners Association for 5 years, then C.O.A.

Trails and Commons Area Plan

Andalucia
at Ca Cuz

ASPI REALTY
A.S.P. REALTY
COMMERCIAL REAL ESTATE
RESIDENTIAL REAL ESTATE

SAATCHI & SAATCHI
COMMERCIAL REAL ESTATE
RESIDENTIAL REAL ESTATE

Not to Scale

EXHIBIT C

Andalucia at La Luz

Initial RULES AND REGULATIONS

In addition to the provisions of the Declaration and By-Laws, the following Rules and Regulations, together with such additional Rules and Regulations as may hereafter be adopted by the Board from time to time, shall govern the conduct of all persons occupying any part of the Subdivision. Capitalized terms used herein without definition shall have the meanings specified for such terms in the Declaration.

1. **Design Principles.**

The Declaration of Covenants, Conditions, and Restrictions for Andalucia at La Luz, Unit 1 (the "Declaration"), and these Rules and Regulations establish the criteria for designing and creating a harmonious neighborhood. The goal is to make Andalucia at La Luz a desirable place to live, a neighborhood which balances the needs of the homeowner with a concern for the Subdivision as a whole.

The Declaration and this document are to be used by homeowners, lot owners, designers, and builders. They describe the design objectives for Andalucia at La Luz and prescribe the requirements for site planning, architecture, and landscape architecture that apply to new construction and future alterations or remodeling. Owners should review carefully the Declaration of Covenants, Conditions, and Restrictions for Andalucia at La Luz, Unit 1, the Articles of Incorporation of the Andalucia Homeowners Association (the "Articles of Incorporation") and By-Laws of the Andalucia Homeowners Association (the "By-Laws").

The Declaration and these Rules and Regulations are the criteria which must be met in order to build or remodel in Andalucia at La Luz. Neither the Declarant, the Architectural Control Committee, the Association, nor the Board shall be liable or bear any responsibility for any injury, damages, or loss arising out of the manner or quality of construction on any property within Andalucia at La Luz, or of any modifications thereto or for any failure to meet the stated objectives of the Rules and Regulations.

2. **Address Numbers.** Address numbers shall not exceed four inches (4") in height and shall be located on the Dwelling Unit, preferably near the front door, and shall be illuminated if possible.

3. **Antennae.** No antenna (television, amateur radio, citizen's band radio, satellite dish, or other antenna) larger than twenty-four inches (24") in diameter shall be erected upon any Lot without the prior written approval of the Architectural Control Committee. Notwithstanding any such approval, such equipment shall be installed so as to minimize its visibility from any street or other Lot.

4. **Chimneys.** All chimneys shall be stuccoed with the same color stucco as the exterior wall finish of the Dwelling Unit. Any modification to or addition of a chimney shall

require prior Architectural Control Committee approval, which approval, if granted, shall specify the material, finish, and color to be used.

5. **Dog Runs.** Dog runs shall require the prior written approval of the Architectural Control Committee as to location, fencing, and other aspects of construction. Dog run fencing shall be (a) lower than the property line wall in height; and (b) not visible from any street or other Lot.

6. **Exterior Lighting.** Exterior lights will be subject to prior written Architectural Control Committee approval.

Bright, glaring lights shall not be installed, maintained, or permitted to remain, on any portion of the Subdivision. Mercury vapor, sodium halide, or fluorescent lights are prohibited. Any “security” or “flood” lighting shall be of a wattage or lumen count which does not indiscriminately illuminate neighboring property. The lighting fixtures shall be mounted onto a Dwelling Unit so that they are screened from public view and painted to match the primary color of the Dwelling Unit.

7. **Glazing.** The glazing of all trim less windows shall be recessed into the wall a minimum of one and one-half inches (1 ½”) from the exterior plane.

8. **Irrigation Systems.** Irrigation systems will not require approval by the Architectural Control Committee. The systems should be designed to ensure that indiscriminate watering does not occur on streets, sidewalks, or neighboring yards. Screening of any above ground valves or controllers will be required.

9. **Landscaping.** In addition to any requirements imposed by the City of Albuquerque, including any requirements included in the Site Plan for Subdivision and the Site Plan for Building Permit, each Lot must be landscaped to meet the following minimum requirements:

a. Lots with Frontage of Fifty (50) Feet or Greater.

1) Front yard:

- Not less than one 1.5” caliper tree
- Not less than one 15-gallon accent tree or one 8-10 foot evergreen tree
- Not less than seven 5-gallon shrubs
- Not less than twelve 1-gallon shrubs and/or groundcovers
- Not less than three 3’ x 3’ landscape boulders
- Steel headers as required between turf and other landscaped areas
- Santa Fe brown rock mulch, if gravel is used, over filter fabric
- Landscape irrigation system with automatic timer

2) Parkway area:

- Not less than one 1.5” caliper deciduous street tree
- Not less than seven 1-gallon shrubs

b. Lots with Frontage of Less than Fifty (50) Feet.

1) Front yard:

- Not less than one 1.5” caliper tree or one 15 gallon accent tree or one 8-10 foot evergreen tree
- Not less than five 5-gallon shrubs
- Not less than seven 1-gallon shrubs and/or groundcovers
- Not less than three 3’ x 3’ landscape boulders
- Steel headers as required between turf and other landscaped areas
- Santa Fe brown rock mulch, if gravel is used, over filter fabric
- Landscape irrigation system with automatic timer

2) Parkway area:

- Not less than one 1.5” caliper deciduous tree
- Not less than five 1-gallon shrubs

c. Accent Materials.

1) Lot owners on all lots are permitted to utilize the following accent materials:

- Turf grass (sodded, no greater than 20 percent of the front yard landscaping)
- River rock or cobble (maximum of 20 percent of the total front yard landscape)

d. Plant Palette.

1) Street trees

- North-South Roadways (Tres Gracias Dr., Cayetana Pl., Marbella Dr.):
Raywood Ash, Golden Raintree, Purple Robe Locust
- East-West Roadways (Sacate Ave., Rafael Cruz Ave., San Jorge Ave., San Adan Ave. Eduardo Ave.):
Honeylocust sp., Modesto Ash, London Planetree
- View Lot Roadways (Monte Frio Dr., Mi Cordelia Dr., Mijas Dr., Almeria Dr.):
Vitex, New Mexico Olive, New Mexico Locust, Smoke Tree

2) Yard trees

- Ash sp., Golden Raintree, Honeylocust sp., Chinese Pistache, London Planetree, Austrian Pine, Pinon Pine, Bosnian Pine

3) Accent trees

- New Mexico Olive, Vitex, Chitalpa, Desert Willow, Golden Raintree, Screwbean Mesquite, Smoke Tree, Redbud, Hawthorn, Flowering Pear

4) Ornamental grasses

- Muhly grass, Thread grass, Purple Threeawn, Miscanthus, Mexican Feather grass, Blue Avena

5) Shrubs (1 and 5 gallon)

- Juniper species, Potentilla, Chamisa, Artemesia sp., Fourwing Saltbush, Red Yucca, Apache Plume, Dwarf Butterfly Bush, Desert Spoon, Cotoneaster sp.,

Cherry Sage, Russian Sage, Three-Leaf Sumac, Caryopteris, Nandina, Scotch Broom, Rosemary sp., Santolina, Littleleaf Mock Orange, Mugho Pine, Bird of Paradise, Barberry sp., Sotol, Agave, Dwarf Turpentine Bush, Golden Currant

6) Groundcovers and vines (1 and 5 gallon)

- Juniper species, Trumpet Vine, Carolina Jessamine, Honeysuckle, Wisteria, Virginia Creeper

7) Turf grass (sod)

- Fescue, Buffalo grass, Blue Grama

Lot Owners on all lots are permitted to utilize the following accent materials:

Turf sod, in compliance with the City of Albuquerque Water Conservation Ordinance;
Santa Fe brown crusher fines/arroyo gravel to a maximum extent of twenty-five percent (25%) of the total landscaped area; and
Oversized gravel to a maximum extent of twenty-five percent (25%) of the total landscaped area.

The front yard landscaping must be completed no later than one (1) month after completion of the construction of the Dwelling Unit, or the date of occupancy of the Dwelling Unit, whichever is earlier.

10. **Maintenance of Lots and Dwelling Units.** All Lots and Dwelling Unit exteriors shall be maintained by the respective Owner thereof in a neat, orderly condition and in a good state of preservation and cleanliness at all times. Lot Owners shall be responsible for keeping their Lots tastefully landscaped, and free of all weeds, trash, debris, and other detracting conditions. Every Owner shall perform promptly all maintenance and repair work required to his, her, or its Lot or Dwelling Unit, as well as any utility serving such Lot, and shall be responsible for the damages and liabilities that failure to do so may cause. In the event an Owner fails to perform such maintenance and/or repair work, including landscaping, after being provided reasonable written notice by the Association, the Association may perform such repair, replacement, maintenance, and/or landscaping and, in such event, may assess the Owner for any charges incurred in order to reasonably effect such repair, replacement, maintenance, and/or landscaping.

11. **Nuisances.** No noxious or offensive activity or use contrary to the laws of the United States of America or the State of New Mexico, or the ordinances, rules, or regulations of the City of Albuquerque, or any other governmental authority having jurisdiction, shall be carried on upon any Lot; nor shall any activity or use be carried on upon any Lot which is, or may become, an annoyance or nuisance to the Subdivision. No Lot shall be used for storing any substance, item, or article, including a junk car (an inoperable motor vehicle or one in disrepair or a vehicle whose registration is more than six months out of date), that may cause such Lot to appear in an unclean or untidy condition or that is visually offensive, obnoxious, toxic, dangerous, or unhealthful; and no substance, item, or article may be kept upon any portion of the Subdivision that may emit foul or obnoxious odors, or that may cause any noise

that may disturb the peace, quiet, comfort, or serenity of any occupant of the Subdivision. No devices emitting unreasonably loud noise levels shall be operated within the Subdivision. During or after construction of improvements on any Lot, no concrete slurry or other refuse shall be left on any portion of the Lot.

12. **Play Structures, Swing Sets, and Basketball Hoops.** Play structures, swing sets, and basketball hoops shall be located only in the rear yard. They shall be screened from public view to the maximum extent possible by permanent structures such as the Dwelling Unit including the garage, or a wall. Play structures shall be commercially constructed and shall be made of materials resistant to rust or decay and should be either painted to match the color scheme of the Dwelling Unit or allowed to attain a natural weathered finish. Roofing of a play structure shall either match the material used on the Dwelling Unit or be a durable canvas that is securely attached to and made a part of that play structure. If a canvas cover is proposed, the color scheme should be solid with no initials, logos, words, or stripes. Canvas covers should be blue, green, tan, brown, or another solid color to complement the surrounding improvements. Play structures shall not exceed 120 square feet in size and eight feet (8') in height. Play structures and swing sets located on lots which back to or adjoin streets, Common Facilities, or Subdivision entries will be required to be further screened from view. All play structures and swing sets shall be properly maintained so as not to detract from the neighborhood. Maintenance shall include the repair or replacement of any worn, broken, missing, torn, or discolored materials, as well as painting of any rusted or discolored parts.

13. **Reflective Materials.** No reflective material shall be used where it would cause a nuisance or annoyance to any other Dwelling Unit within the Subdivision. If such reflection does occur, the reflective material shall be painted a subdued, neutral color, and must be approved by the Architectural Control Committee.

14. **Rental of Dwelling Units.** Dwelling Units may only be rented, subject to the following restrictions and requirements:

- (a) No Dwelling Unit may be rented under an agreement for a term of less than six (6) months without prior written approval of the Board;
- (b) The Rental Agreement form shall be a form approved by the Board.
- (c) Rentals shall not violate the requirements of the City of Albuquerque Crime Free Multihousing program and Nuisance Abatement program.
- (d) If the owners do not reside within the City of Albuquerque, the property shall be managed by a licensed broker whose name shall be furnished to the Board.
- (e) All tenants shall fully comply with the rental agreement, New Mexico laws, and the covenants, Bylaws, and Rules and Regulations of the Subdivision.

Should the Owner fail, after seven days written notice from the Board or its officers, to take reasonable action to obtain compliance by a tenant, the Association may take appropriate legal action to obtain such compliance. The Owner will be responsible for any legal expenses incurred by the Association to obtain compliance by the tenant.

15. **Solar Equipment.** No solar equipment shall be allowed if it is at all visible from the outside of the Dwelling unit. Any Solar equipment must be approved by the Architectural Review Committee.

16. **Submittals to Architectural Review Committee.** Any submittal to the Architectural Review Committee shall minimally include the following:

(a) Detailed plot plan for each construction phase (minimum scale: 1"=20') showing the building footprint; driveway placement; trees in front of the Dwelling Unit; wall locations; and adjacent streets.

(b) Floor plans (minimum scale: 1/4"=1') for each Dwelling Unit showing the location of all walls, openings, fixtures, and dimensions.

(c) Elevations (minimum scale: 1/4"=1') depicting each side of all structures and showing all heights, offsets, materials, openings, and other visible items.

(d) Typical wall section showing all window construction.

(e) Any questionnaire or other form which the Committee may reasonably require.

17. **Parking and Vehicles.**

(a) No mobile home, motor home, camper, trailer, recreational vehicle, motorcycle, boat, truck over 3/4 ton, or any commercial vehicle shall be stored, kept, or maintained on any portion of the Subdivision, except within a garage, or except where customary or required for the limited purpose of building, repairing, refinishing, or maintaining a Dwelling Unit or Lot, or any other structure thereon, or for the limited purpose of moving household goods or furnishings, equipment, or supplies to or from the Lot. No vehicle of any type may be repaired on any Lot except while parked in an enclosed garage.

(b) No large equipment or machinery shall be permanently or temporarily kept or maintained on any portion of the Subdivision in a manner which makes it visible from any other part of the Subdivision, except such as may be used for construction by or for Declarant.

(c) Except for the Association's or the City of Albuquerque's maintenance vehicles, no motor vehicle shall be driven or permitted within any portion of the Subdivision, except on access streets specifically constructed for motor vehicular use and in driveways and garages. No person who is not licensed to operate motor vehicles by the State of New Mexico or another state shall be permitted to operate any motor-driven vehicle on any street within the Subdivision. Any Owner responsible for damage to any area of the Subdivision may be assessed for such damage by the Association.

Note: The foregoing initial Rules and Regulations may be amended, and any and all other rules, regulations, and design standards may be adopted and/or amended, by the Board from time to time in the manner permitted by the By-Laws.

18. **Exterior Materials, Colors, and Finishes.**

(a) General. Each application for Architectural Control Committee approval will be evaluated on its own merit, after (i) the plans and specifications for the proposed Dwelling Unit including the garage, wall, accessory building, or other structure contain a certification by the builder thereof confirming their compliance with all applicable federal, state, and local codes, regulations, restrictions, and ordinances; and (ii) construction plans and specifications have been approved in writing by the Architectural Control Committee as to compliance with the design standards set forth herein and in the Rules and Regulations, including without limitation, quality of materials, harmony of external design with existing structures, and location of the Dwelling Unit and other structures with respect to topography, setback requirements, and finished grade elevations.

(i) Exterior colors that, in the opinion of the Architectural Control Committee, would not be in harmony with the overall existing architectural design of Andalucia at La Luz shall not be permitted. Bright colors as the dominant exterior color scheme are prohibited. Trim shall be painted the same color as the exterior or no more than one shade in difference from the Dwelling Unit. Trims shall be complementary of the main stucco color and not contrasted. The use of pastel colors is prohibited.

(ii) Each applicant must submit samples of all colors to be used on exterior improvements, along with the written application to the Architectural Control Committee, unless the exterior is to be repainted with the same color.

(b) Exterior Materials and Finishes. The following exterior materials and finishes only are permitted for use on Dwelling Units in Andalucia at La Luz.

(i) Synthetic Stucco. Only synthetic stucco shall be used as an exterior wall finish for all Dwelling Units. Permitted Stucco colors are DryVit Suede, Buckskin, Torreón, Hacienda, Pueblo, Cream, Ash, Sandalwood, Tumbleweed, Sandia, Chocolate Mousse, Pure Cream and Fawn. Equivalent colors from other manufacturers shall be acceptable if approved the Architectural Review Committee.

(ii) Stone or synthetic stone accents may be used with the prior written approval of the Architectural Control Committee. Entries, windows, and portals may be emphasized by the use of accent colors. Painting of the exterior of structures with bold repetitive patterns is prohibited.

(iii) Wood Trim. Wood trim shall receive a paint or stain finish. Application of a high gloss finish, such as varnish or high sheen enamels, is prohibited. Nonreflective finishes shall be used on all exterior wood surfaces. No wood siding shall be used on any Dwelling Unit. It is required that all wood trim be smooth, high quality, finished-grade stock, stained or painted, as approved in writing by the Architectural Control Committee. The use of rough cut wood trim is prohibited, except for exposed beams and lintels.

(iv) Changes in Materials. All proposed changes in materials from that used on the existing structure must receive the prior written approval of the Architectural Control Committee.

(c) Exterior Wall Colors. All walls exterior to the Dwelling Unit shall be constructed of Southwest Tan colored concrete block manufactured by Southwest Block Company (or equivalent). Courtyard walls may also be stuccoed in a color to match the stucco exterior of the Dwelling Unit.

19. Gutters and Downspouts. Gutters and downspouts shall be painted or have a factory-applied color to match the approved house or trim color of the Dwelling Unit. Any addition of gutters from those originally constructed shall require prior written approval of the Architectural Control Committee. If a Dwelling Unit experiences damage or deterioration to gutters or downspouts, they will be replaced by the Owner.

20. Clothes Lines. No clothes lines or other paraphernalia for outside drying of clothes shall be permitted.

21. Signs. Signs are prohibited except one (1) non-illuminated sign comprising not more than five (5) square feet advertising the Lot or Dwelling Unit for sale or rent, without the prior written approval of the Architectural Control Committee, which consent shall not be granted except in extraordinary circumstances. Subject to regulation by the Board, non-illuminated signs of not more than five (5) square feet which advocate a political party, candidate or candidates may also be displayed, provided such signs are promptly removed following the election. Signs reasonably necessary for subdivision identification and direction, and/or for marketing purposes by Declarant or by any builder, may be constructed, erected, or placed upon any Lot by Declarant or any builder without the approval of the Architectural Control Committee or any other Lot Owner or other party.