

DECLARATION OF RESTRICTIVE COVENANTS FOR
SAN BLAS SUBDIVISION AMENDED
BERNALILLO COUNTY, NEW MEXICO

This Declaration of Restrictive Covenants is made this 5th day of November, 1985 and supercedes those dated May 2, 1985 and recorded May 3, 1985 in Book Misc 225A, Pages 989-993.

ARTICLE I. DEFINITIONS.

A. Declaration. Shall mean this Declaration and any amendments hereto.

B. Owners. Shall mean Eagle Run Development, Inc., a New Mexico Corporation, also doing business as "San Blas" and "San Blas Partnership", along with its successors and assigns.

C. Association. Association shall mean the San Blas Homeowners' Association.

D. Subdivision. Subdivision means the San Blas Subdivision as shown on the plat thereof filed for record on July 20, 1984, in Volume C-24, Folio 132 of the records of Bernalillo County, New Mexico.

E. Lots. Lots means the numbered Lots shown on the recorded plat of the Subdivision and located within the Subdivision.

F. Holder. Holder shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Subdivision, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

G. Common Area. Common Area means all tracts within the Subdivision designated by the prefix letters "P" and "T" as shown on the plat map of the Subdivision and are not for the use of the general public but are dedicated to the common use and enjoyment of the members of the Association. Tract P is a "private access easement", being a roadway approximately thirty feet (30') in width at its narrowest point and known as San Blas Place NW. Tracts T-1 and T-2 are landscaped strips along the public right-of way 65th Street and Tracts T-3, T-4 and T-5 are three separate landscaped median strips within the "private access easement".

ARTICLE II. CREATION OF THE SAN BLAS HOMEOWNERS' ASSOCIATION.

A. Membership. Every Holder of a Lot within the Subdivision shall automatically be a member of the Association. All rights of membership are appurtenant to ownership of a Lot and run with the land whether or not the deed or conveyance of any said Lot makes specific reference thereto.

B. Voting rights. The Association shall have two classes of voting membership:

Class A. Class A members shall be all the Holders of a Lot, with the exception of the Owners (San Blas Partnership), and shall be entitled

to one vote for each Lot owned. In the event that a Holder owns more than one Lot, each Lot will possess one vote.

Class B. The Class B member(s) shall be the Owners (San Blas Partnership) and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (b) on July 1, 1986.

C. Quorum Necessary for Actions. The quorum required for any action of the Association shall be no fewer than fifty-one percent (51%) of the Lots, either in person or by proxy.

D. Majority Vote. In all matters requiring a vote of the Association, a majority vote of the Lots present (in person or by proxy) and voting shall be required to adopt any resolution or matter.

E. Call of Meetings. The Holders of any six (6) Lots may call a meeting of the Association.

F. Notice of Meetings. No meetings of the Association may be held without at least fifteen (15) days written notice in advance given to every Holder. However, in the event all of the Holders waive such notice, a meeting may be held without the requirement of such notice.

G. Examination of Books and Records. Upon reasonable notice, any Holder shall have the right to inspect, examine and copy the books and records of the Association and any expenditure made by the Association.

ARTICLE III. ACCESS EASEMENT MAINTENANCE ASSESSMENT.

A. Creation of Obligation. Each Holder hereby covenants, with respect to each Lot in the Subdivision owned by him, and each subsequent Holder of any Lot in the Subdivision by acceptance of a deed or entering into a contract for the purchase thereof, whether or not it shall be so expressed in any such deed or contract or other instrument of conveyance, shall be deemed to covenant and agree to pay to the Association the assessments adopted by the Association.

B. Purpose of Assessments. The assessments levied by the Association shall be used for the purpose of promoting the enjoyment, health, safety or welfare of the residents of the Subdivision by constructing, maintaining and improving the Common Area within the Subdivision itself. Without limiting the generality of the foregoing, the Association may pay out of and from such assessment the following:

1. The cost of providing gravel, asphalt or concrete paving, drainage culverts, fencing, signs, resurfacing, cleaning and taxes pertaining to the Common Area.

2. The cost of providing comprehensive public liability insurance to cover the Common Area in such amounts as the Association may determine, as well as a policy of extended coverage on any improvements constructed within the Common Area which the Association may elect to carry.

3. The cost of providing such legal, accounting and other professional services as may be necessary.

4. The cost of funding an adequate reserve fund for the construction, replacement or maintenance of the Common Area.

5. The cost of utilities relating to the Common Area, including, but not limited to, water and electricity.

C. Initial Assessment. The initial assessment shall be \$10.00 per month per Lot for calendar year 1985. Said assessment shall continue until changed by subsequent vote of the Association as provided for below.

D. Assessment Procedure. The Association, by a majority vote as provided elsewhere in this Declaration, may, from time to time, levy assessments for the purposes described above. Said assessments shall commence on the first day of the month immediately following the date on which the assessment is adopted by the Association.

E. Lien for Non-payment of Assessments. If any assessment is not paid when due, such assessments shall, together with interest at the rate of twelve percent (12%) per annum and the cost of collection, including reasonable attorneys' fees, become delinquent and constitute a continuing lien on the Lots against which the assessment was levied, which shall be appurtenant to and run with the Lot and shall bind the Holder of the Lot, his heirs, devisees, personal representatives, successors and assigns. The Association may elect to bring a suit to collect a money judgment without thereby waiving its rights to subsequently seek foreclosure of the lien.

F. Subordination of Liens to Mortgages. Notwithstanding any provision to the contrary contained in this Declaration, the lien of any assessment created by this Declaration shall be subordinate to any first mortgage now or hereafter placed on any Lot in the Subdivision.

ARTICLE IV. GENERAL PROVISIONS.

A. Duration. The restrictive covenants contained in this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association or the Holder of any Lot within the Subdivision, their respective legal representatives, heirs, successors and assigns, until December 31, 2035, after which time said covenants shall be automatically extended for successive periods of ten (10) years each unless an instrument signed by the then Holders of twenty-five (25) of the Lots in the Subdivision has been recorded which expressly terminates the operation of the restrictive covenants.

B. Amendments. These restrictive covenants may be amended by the

vote of sixty-five percent (65%) of the Lots.

C. Notices. Any notices required to be sent to any Holder under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person who appears as Holder on the records of the Association at the time of such mailing.

D. Enforcement. The Association or any Holder of a Lot within the Subdivision shall have the right to enforce these restrictive covenants by any proceeding at law or in equity against any person or persons violating or attempting to violate any provision contained herein, to restrain violation, to require specific performance and/or to recover damages; and against any Lot to enforce any lien created by these covenants; and, further, any failure by the Association or any Holder to enforce any restrictive covenant herein contained shall in no event be deemed a waiver of the right to do so thereafter. The expense of the enforcement by the Association, including reasonable attorneys' fees, shall be chargeable to the Holder of the Lot violating these restrictive covenants and constitute a lien on the Lot, collectible in the same manner as set forth above.

E. Severability. Invalidation of any of these restrictive covenants by judgment or court order shall in no way affect the validity of any other provisions which shall remain in full force and effect.

ARTICLE V. PARTY WALLS.

A. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Lots and placed on the dividing line between the Lots shall constitute a party wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

B. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Holders who make use of the wall in proportion to such use.

C. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Holder who has used the wall may restore it, and if the other Holders thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Holders to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

D. Weatherproofing. Notwithstanding any other provision of this Article, a Holder who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

E. Right to Contribution Runs with Land. The right of any Holder to contribution from any other Holder under this Article shall be appurtenant to the land and shall pass to such Holder's successors in title.

F. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

G. Right of Access. If a party wall needs to be repaired, maintained, restored or otherwise affected by the provisions under this Article, Holder or Holder's agent shall have the right of entry to adjacent Lots for these purposes for work by hand or by machine. In addition will be the obligation of Holder or Holder's agent to restore any affected Lot premises to former condition, including but not limited to grading, loaming, and seeding, and the responsibility to restore trees, shrubs, and/or flowers.

ARTICLE VI. ARCHITECTURAL CONTROL.

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Lots, nor shall any exterior addition to or change or alteration therein be made until the plans and specification showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. In addition, any resurfacing or painting of the exterior walls shall be completed in a color and texture as close to the original as possible, unless all Holders of a Lot shall mutually agree in writing to a different color and/or texture.

IN WITNESS WHEREOF, the Owners named above have executed this agreement as of the date first written above.

-EAGLE RUN DEVELOPMENT, INC.-

By: J. Graham Findlay
Vice President

STATE OF NEW MEXICO)
) SS.
COUNTY OF BERNALILLO)

The foregoing instrument was acknowledged before me this 5th day of November 1985 by J. Graham Findlay, Vice President of Eagle Run Development, Inc.

My commission expires:
Oct. 11, 1988

JANE E. JENSEN
NOTARY PUBLIC

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STATE OF NEW MEXICO
COUNTY OF BERNALILLO

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JAMES C. WELLS
COUNTY RECORDER

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