

Calle Vista Belva  
Picacho Point

92/1270-1279

PROTECTIVE COVENANTS  
ON

PICACHO HILLS SUBDIVISION NO. 1, REPLAT NO. 1  
LAS CRUCES, NEW MEXICO

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, Las Cruces Venture No. Two, L.L.C. ("Declarant"), being owner of the lots of real property located in Dona Ana County, New Mexico, more particularly described as follows:

7 - Single Family Lots

of PICACHO HILLS SUBDIVISION NO. 1, REPLAT NO. 1 ("Picacho Point"), A SUBDIVISION IN DONA ANA COUNTY, NEW MEXICO, according to the map and plat thereof on file in plat Records Book 18, page(s) 702 of the County Clerk's office of Dona Ana County, New Mexico, in consideration of the mutual interest of the owners of the real property in such subdivision (the "subdivision"), hereby makes the following declarations.

as to the limitations and restrictions placed upon the above described lot ("the Lots") and uses to which the Lots may be put; hereby specifying that said declarations shall constitute covenants to run with all land in the subdivision, and shall be binding upon all parties and all persons claiming under them, and for the benefit of and limitations upon all future owners of said Lots. Nothing herein contained shall limit the right of the undersigned to use other portions of said Subdivision or other lands for purposes other than the uses stated in Paragraph IA herein or to impose restrictive covenants thereon which are less stringent than those stated herein.

I. USE OF THE LAND

(A) No Lot or any portion thereof shall be used for any purpose except single, residential purposes. No structures shall be erected, altered, placed or permitted to remain on any lot other than a single-family dwelling, which may have an attached accessory building such as a garage, garden house, and the like. There shall not exist on any Lot at any time more than one residence, although separate attached quarters for servants or other members of the household will be allowed. The renting of such quarters is hereby prohibited. No trailer, tent, shack, garage, barn or other out-building nor any structure of a temporary character on any Lot shall at any time be used as a residence, either temporarily or permanently. No structure on any lot shall exceed two (2) stories on Lots 1, 2 and

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3B. with a maximum height of twenty-six (26) feet above the highest finished grade elevation of the pad, and no structure on Lots 4, 5 and 6 shall exceed one (1) story with a maximum height of twenty (20) feet above the highest finished grade elevation of the pad, except for chimneys of reasonable size. Private enclosed garage space for no fewer than two (2) cars shall be provided for each residence. Nothing herein shall be construed to prevent the use of one building upon two (2) or more contiguous lots under common ownership.

(B) Dwelling Size: As to all the Lots, no dwelling containing less than One Thousand Eight Hundred square feet of heated living area, exclusive of screened or open porches, garages, carports, accessory buildings or other covered areas, shall be permitted.

(C) Temporary Uses: Any Lot or portion thereof may be used temporarily as a sales office, model home complex, or storage and construction yard during the construction and sales period. Provided, that all temporary uses defined herein must have the prior written approval of the Architectural Control Committee, which shall establish written requirements thereof, and such uses shall also meet all requirements of the City of Las Cruces and the County of Dona Ana, New Mexico.

(D) ARCHITECTURAL STANDARD:

1. No building, garage, enclosure, parking facility, fence, wall, basement, shed, outbuilding or other structure of any kind, whether permanent or temporary, shall be erected, placed or altered on any Lot until construction plans and specifications, and a plan showing the location of the structure, have been approved by the Architectural Control committee as to compliance with these Protective Covenants, quality of materials, harmony of external design with existing structures, style of architectural design and as to the location of the structure with respect to topography, setback requirements and finish grade elevations. No existing building, garage, enclosure, parking facility, fence, wall, basement, shed, outbuilding or other structure of any kind shall be visibly externally altered, remodeled or changed until the plans for such change, alteration, or remodeling have been approved by the Architectural Control Committee. No garage may be used as a residential area, nor may not be used or altered to a size smaller than is necessary to accommodate two (2) full sized automobiles, without the prior written consent of the Architectural Control Committee. No lot shall be used for the storage of any construction or other material except for a period of up to thirty (30) days prior to the start of construction and during the construction period. All lots shall be maintained in a neat, orderly condition at all times.

2. The external design of all residential buildings and enclosures shall be that of an architectural design style generally characterized as a Southwestern style or similar and said design shall be further subject to the approval of the Architectural Control Committee.

3. The exterior construction of any dwelling, garage, outbuilding or other building erected on any Lot shall be of brick, stucco, stone, mission stone, fire-resistant wood, or combinations thereof, or any other fire resisting material approved by the Architectural control Committee, and permitted under applicable law.

(E) Use and Occupancy of all portions of the Subdivision shall be subject to zoning, building, health,

sewage disposal and sanitation laws and regulations and all other applicable laws and regulation of the State of New Mexico and/or all government agencies having jurisdiction; the Declarants, its successors or assigns, may also impose rules and covenants regulating such matters from time to time.

(F) No Manufacturing, commercial or business operation (except professionals in businesses engaged in recognized non-manufacturing professions located within the residence) shall be permitted on any Lot. No Lot shall be used in whole or in part for the storage of any property or object that will cause such Lot to appear in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any activity be carried on, or substance kept on any Lot that will emit foul or obnoxious odors, or that will cause unreasonable noise or which may be or become a nuisance to the neighborhood. There shall be no fair, exhibition, festival, show or other activity which attracts or is intended to attract, divert or collect a large number of persons. Such restrictions shall prevent, however, what are commonly know as "garage sales" or "carnivals" or "backyard parties" conducted by residents or their children living in the subdivision, provided such are only occasional and do not cause unreasonable noise, traffic or obstruction of streets and sidewalks.

(G) All construction, whether new construction, alterations, additions or exterior remodeling, shall be completed in accordance with plans approved by the Architectural Control Committee within six (6) months from commencement of construction.

(H) Animals: No animals, livestock or poultry of any kind shall be raised, bred, kept or maintained in any dwelling or on any Lot, except that dogs, cats, or other domesticated, non-exotic household pets may be kept; provided, however, that they are not kept, bred or maintained for any commercial purpose, and further provided they do not disturb other property owners or become a nuisance in any way.

(I) Antennae: No radio, television, satellite dish or similar antenna shall be erected on any Lot or attached to any dwelling, without the prior written consent of the Architectural Control Committee.

(J) No evaporative or refrigerated air cooler(s) shall be erected or maintained on the roof of any premises without written consent of the Architectural control Committee and unless such cooler(s) shall be effectively screened or otherwise hidden from view from the street in front of the home as determined by the Architectural Control Committee. In addition, no elevated tanks of any kind shall be erected, placed, or permitted except where required for the Subdivision water distribution system or public system.

(K) Landscaping:

1. All lots will be required to install landscaping including irrigation systems if required. Landscaping plans shall be submitted as per Section VI herein below. Additional landscaping with desert plantings will be encouraged.

2. All landscaping, such as shrubs, floral plantings, trees, landscape stone, wood and other materials, shall likewise be maintained in a neat and well-kept manner, to the end that the landscaping shall not be permitted to become run-down, deteriorated, disorderly or unsightly.

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(L) Laundry Lines: Laundry poles and lines outside of houses are prohibited.

(M) Mobile Homes; Unconventional Construction: Mobile homes, manufactured or prefabricated home, "A" frame, cubical, Geodesic, and dome structures are not permitted on the Lots. Travel trailers may be parked within the Subdivision only if belonging to bona-fide guests, and may not remain within the subdivision for longer than two (2) weeks for any one visit, and must be parked in an unobtrusive area. Parking of recreational vehicles and trucks on streets within the Subdivision is not permitted. Boats, campers, other trailers, buses, recreational and similar vehicles or equipment, or vehicles under extensive repair, storage piles and construction materials shall be stored only in the garage, or within walls which conceal them from the view from neighboring lots or streets.

(N) Signs; No sign of any kind shall be displayed to the public view on any lot except one non-illuminated sign of not more than four (4) square feet and not to exceed three (3) feet in height, advertising the property for sale, or a name plate of the occupant of any residence upon which such person's professional or occupational title may also be added, and provided no such sign or name plate shall exceed a size of one (1) square foot. Notwithstanding anything herein contained to the contrary, nothing herein shall be construed to prevent Declarant or its successors or assigns as developer of the Subdivision from erecting, placing, or maintaining sign structures and offices as may be determined necessary or desirable by such developer to promote sale and development of Lots within the subdivision.

(O) Site Triangle at Intersection: No fence, wall, hedge, shrub, planting or tree, which obstructs sight lines at elevations between three (3) and eight (8) feet above the roadways in the Subdivision shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street right-of-way lines and a line connecting points on such street lines twenty-five (25) feet distant from the intersection of such street lines (or as in the case of rounded property corners, from the intersection of the street right-of-way lines extended). No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such lines.

(P) Trash: Rubbish and garbage must be kept in suitable containers provided by the Lot owner or by New Mexico Disposal Services, Inc., its successors or assigns, and removed from Lots by such in accordance with ordinances, rules and regulations of the City of Las Cruces and the County of Dona Ana, and all regulations promulgated thereunder. No rubbish or garbage may be burned or dumped on Lots or elsewhere in the Subdivision. No open fires shall be permitted.

(Q) Fences and Walls:

1. Owners/Developers of the Lots shall be required to construct rock walls along each side Lot line during the construction of the single family dwelling. Upon commencement of construction of the dwelling the rear and/or side lot walls are constructed, the Owner/Developer of the Lot will be required to reimburse Las Cruces Venture No. Two and/or the adjacent Lot owner for 1/2 of the cost of the construction of the rear and/or side lot walls.

rock walls

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2. Except as prohibited in "O" above, fences less than two (2) feet in height for rear walls and three (3) feet in height for side and front wall providing they are not in violation of any other requirement of these covenants.

3. Except as prohibited in "O" above, or permitted in (3) below, fences six (6) feet in height or less, when measured directly from the highest adjacent ground surface, may be erected on that portion of a Lot situated to the rear of the front wall of the main building.

4. All fences or walls shall be constructed of tan rock or any other material approved by the Architectural Control Committee, except for the particular permission granted herein. Tin or other material approved by the Architectural Control Committee, except for the particular permission granted in (3) above. Tin or other sheet metal, chain link, wire and barbed wire are specifically prohibited, except wire fences may be constructed for dog runs when located within and enclosed by a permitted exterior fence. The fence height for such runs shall be a minimum of one (1) foot lower in height than the exterior fence.

4. All fences and walls shall be maintained in an attractive and safe condition, and all alteration thereto must be approved by the Architectural control Committee.

(R) 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 properties. Any modification shall require written approval of the Architectural Control Committee and other governmental approvals. Each Lot owner shall be responsible for maintaining all drainage ponding sites located within their respective Lot lines.

## II. SETBACK REQUIREMENTS

(A) All buildings erected, placed or permitted to remain on any Lot shall be situated only within that portion of said Lot not restricted from use by easement or right-of-way.

(B) No building shall be located nearer to the front Lot line than the "Minimum Front Setback" distance of twenty (20) feet to the front street line. "Side Lot Line Setbacks" shall be seven (7) feet from any side Lot line unless waived by the Architectural Control Committee by approval of the structure plans or by resolution. No variation from the Side Lot Line Setback shall be approved unless the minimum separation between adjacent building (exclusive of roof overhangs and appurtenances) shall be fourteen (14) feet. The minimum "Rear Setback" for Lots shall be twenty (20) feet. On corner lots or triangular lots the Architectural control committee shall determine the Rear Setback according to the proposed location of the structure. Approval by the Architectural Control Committee of the proposed plot plan shall be interpretation by that Committee of the application of the above.

(C) Notwithstanding the foregoing, from and after such time as any two (2) or more contiguous Lots fronting on the same street are used as a single building site, such contiguous Lots shall be deemed

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to be a single Lot for the purpose of determining the Side Lot Line Setbacks and easements. In the case of swimming pools and swimming pool enclosures, the Architectural control Committee shall have right to waive, modify, or alter the setback requirements herein included.

(D) Tolerance: a ONE (1) FOOT TOLERANCE BY REASON OF MECHANICAL VARIANCE OF CONSTRUCTION IS ALLOWED FOR THE MINIMUM SETBACK DISTANCE REQUIREMENTS. COUNTY AND GOVERNMENTAL REQUIREMENTS SHALL GOVERN OVER THIS CONDITION.

(E) Roof Overhangs, fireplaces, chimneys, decorative walls and the like shall not be considered part of the permanent structure for measurement purposes in determining conformance to these setback requirements. However, in the event of a roof overhang, the overhang may extend no more than twenty-four (24) inches into the seven (7) foot Side Lot Line Setback area.

(F) All waivers from the above recited minimums must be in writing and signed by an authorized representative of the Architectural Control Committee, and a true copy thereof filed for public record with the county Clerk of Dona Ana County, New Mexico.

### III. EASEMENTS

(A) Utility easements and rights-of-way designated on the plat of the Subdivision, as amended from time to time, are hereby reserved unto the Declarant, and/or the City of Las Cruces, the County of Dona Ana and all public and private utility companies (as specifically shown as such plat or assigned by the Declarant) for the construction, installation and maintenance of any and all supply lines, drainage channels, telephone and telegraph lines of the like, necessary or desirable for public health, welfare and convenience. Such easements and rights-of-way shall be confined to a five (5) foot width along the rear and side lines of every Lot and along every street, road or highway abutting the Subdivision unless otherwise designated on the plat.

(B) All easements shall be kept free from alteration, and owners of Lots containing such easements shall keep them free from permanent structures and shall provide access without trespass by maintenance personnel for the installation, upkeep, repair, removal and replacement of such facilities which may be constructed within those easements.

(C) Sale of any Lot shall include all rights of Declarant in and to the street, road or highway fronting the same, subject however to the rights of all others to use the same as public or private thoroughfares, Declarant reserves the right to dedicate to the public all streets, roads, and highways within or abutting the Subdivision without the consent of any owner within the Subdivision.

(D) All public and private rights-of-way, including streets and roads dedicated to the City of Las Cruces or to the County of Dona Ana, shall also be measured perpendicular (or radial on curves) from the front property corners of all lots to the centerline of such street or road.

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#### IV. UTILITY SERVICE

(A) Lines, wires and other devices for the transmission of electric current or power, and telephone, telegraph or television lines and service utilities shall be placed underground, except where existing prior to recording of these Covenants.

(B) Principal location for all such utilities mentioned above shall be within the easement along and within the dedicated streets and roads as described in Article III.

#### V. OIL, GAS, AND MINERAL RIGHTS

All oil, gas and minerals and rights in, to and under the entire Subdivision are reserved to declarant, and its successors in interest and assigns as developer of the Subdivision, if any. No oil drilling, oil development operations, oil refining, quarrying, mining or thermal operations of any kind shall be permitted, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted on, under in or upon any Lot or elsewhere in the Subdivision. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted on any Lot, or elsewhere in the Subdivision.

#### VI. ARCHITECTURAL CONTROL COMMITTEE

The Architectural Control Committee is composed of Las Cruces Venture No. Two L.L.C.. Upon the death, resignation or removal of any member of the Committee, the remaining members shall have full authority to designate any successor(s). Neither the members of the committee nor its designated representative shall be entitled to any compensation for services rendered pursuant to this covenant. Any members of the Committee may be removed at any time by Declarant or by a majority of the Committee, with or without cause.

The Architectural Control Committee shall be authorized to designate an individual or individuals to take any action which should be taken by the Committee as a whole.

All requests for approval or disapproval as required in these covenants shall be in writing. In this event the committee or its designated representative fails to approve or disapprove within thirty (30) days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction of projects previously submitted to the Architectural Control Committee has been commenced prior to thirty(30) days after completion thereof, approval will not be required for such construction. The review of any plans submitted to the Architectural Control Committee, and any approval thereof, is intended and shall be construed solely as review and approval of compliance with these Protective Covenants, and shall not be deemed or construed in any way to include review and/or approval of compliance with applicable laws, codes or regulation, nor of safety, habitability, stability or any other matter, all of which are the responsibility solely of the

architect, builder and/or owner of the improvements for which plans are submitted.

Each individual member of the Architectural Control Committee employed by or associated with Las Cruces Venture No. Two shall become disqualified to serve on the Architectural Control Committee upon termination of such individual's relationship with Las Alturas Bellas Subdivision, and shall thereafter have no further rights or obligations thereto; and each such person shall conclusively be deemed to have resigned from the Committee one hundred eighty (180) days after the date Las Alturas Bellas Subdivision conveys title (legal and equitable) to its last remaining Lot affected by these restrictions.

The Las Alturas Bellas Subdivision shall endeavor to give notice of such resignations by recording in the county record in which these restrictions are filed, a notice of such resignation; and shall cause the same to be published as a legal notice in a newspaper of general circulation in the county in which the Subdivision is located. Such notice shall be given as soon as practicable after the conveyance of the last Lot, as specified above; however, failure to give such notice shall not extend the term of any member of the Committee, nor shall Las Alturas Bellas Subdivision be liable therefor.

In the event no member remains on the Architectural Control Committee, new members to the Committee can be chosen in the following manner: upon the written request of the owner(s) of twenty percent (20%) of the Lots within the Subdivision, a meeting shall be held for the purpose of selection one or more members to the Committee. Reasonable diligence shall be used to notify all persons owning Lots within said Subdivision of the time and place of the meeting, and the purpose thereof.

At such meeting, up to three (3) persons may be selected as members of the Committee. Each Lot appearing as such record in the office of the County Clerk of Dona Ana County, New Mexico at the time of voting shall have one (1) vote for each such Lot, in addition, each owner having a residence or home completed or substantially under construction shall be entitled to an additional vote; and the three (3) persons receiving the most votes shall be selected as members of the Committee.

#### VIII. DURATION OF COVENANTS.

These protective covenants and reservations are to run with the land and shall be binding on all parties and all persons owning any interest in any Lot or other property within the Subdivision for a period of thirty (30) years from the date these covenants are recorded; after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by then-owners of a majority of the Lots has been recorded, agreeing to terminate said covenants. These covenants may be revoked at any time only upon the written agreement of Declarant and the owners of all Lots, which shall be effective only upon recording in the real property records of Dona Ana County, New Mexico.

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#### IX. ENFORCEMENT

Enforcement to restrain violation of these covenants or to recover damages shall be by proceedings at law or in equity (including suit for injunction) in a court of competent jurisdiction against any person or persons violating or attempting or threatening to violate any covenant herein, and may be brought by the Declarant, the Architectural Control Committee, or the owner or owners of any Lot or having any interest therein, whether acting jointly or severally. Neither the Declarant nor the Architectural control committee shall be obligated to enforce any covenant through legal proceedings.

#### X. SEVERABILITY

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

#### XI. AMENDMENTS AND EXCEPTIONS

Until the Architectural Control Committee is deemed to have resigned pursuant to Article VII hereof, Declarant shall have the authority to unilaterally change, amend or modify these covenants; provided such change, modification or amendment does not materially change the character or quality of the Lots or the uses thereof or construction thereon, and does not materially increase the number of Lots within the Subdivision, without the written consent of the owners of sixty percent (60%) of the Lots. In addition, amendments and/or exceptions to those restrictions, covenants and reservations may be made upon written approval the owners of sixty percent (60%) of the Lots appearing as such of record in the office of the County Clerk of Dona Ana County, New Mexico, with the owner(s) of each Lot being entitle to one (1) vote.

Declarant hereby reserves, and each later owner of any interest in any Lot shall be deemed to have granted to declarant the right and power to record a Special Amendment to these Protective Covenants at any time and from time to time, which amends these Protective Covenants to comply with any requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban development, the Federal Housing Administration, the Veteran Administration, or any other governmental agency or public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities to make, purchase, sell, insure, or guarantee first mortgages on any Lot covered by these covenants.

In furtherance of the foregoing, a power coupled with an interest in hereby reserved and deemed granted to Declarant to make or covenant to a Special Amendment on behalf of each owner of any interest in any Lot. Each deed, mortgage, trust deed, other evidence of obligation, or other

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instrument affecting title to a lot and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of the power of Declarant to make, execute and record Special Amendments. No Special Amendments made by Declarant shall affect or impair the lien of any first mortgage in order to induce any of the above agencies or entities to make, purchase, insure or guarantee first mortgages on Lot.

**XII DEFINITION**

The term "Declarant", as used herein, means Las Cruces Venture No. Two, L.L.C. a New Mexico Limited Liability company, and its successors or assigns as developer of the Subdivision. Any such successor or assign intended to become the "Declarant" hereunder shall be designated as such in the instrument of conveyance from the then Declarant to such successor or assign.

**XIII. EFFECTIVE DATE**

These restriction, covenants and reservations, and any amendments or exceptions thereto shall be effective as of the date of their filing with the County Clerk of Dona Ana County, New Mexico.

Dated at Las Cruces, New Mexico, this <sup>7<sup>th</sup></sup> day of June, 1997.

Las Cruces Venture No. Two, L.L.C.  
limited liability company  
Troy Bathman, Managing Partner

By: Troy Bathman

STATE OF NEW MEXICO )  
                                  ) ss.  
County of Dona Ana     )

Subscribed to and sworn before me this <sup>7<sup>th</sup></sup> day of <sup>June</sup> 1997, by Troy Bathman, Managing General Partner of Las Cruces Venture No. Two L.L.C.

*Umarion B. [Signature]*  
NOTARY

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Commission Expires

JUN 11 1997

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*[Signature]*