

**DECLARATION OF COVENANTS AND RESTRICTIONS  
OF ESTANCIAS ATALAYA SUBDIVISION**

**Stakeout Drive and State Road 68  
Taos, New Mexico**

## **Purpose**

It is the intention of the undersigned owner of all of the Estancias Atalaya Subdivision lots, expressed by the execution of this instrument, that the lands within Estancias Atalaya Subdivision shall mean all of the real estate described within the filed subdivision plat. It is the purpose of these covenants that said real estate be developed and maintained as a highly desirable residential area, and that the present natural beauty of the land shall always be protected in connection with the uses and structures permitted by this instrument.

## **Estancias Atalaya Property Owners Association**

The legal owner(s) of each lot within the subdivision automatically become(s) a member of the Estancias Atalaya Property Owners' Association, a New Mexico nonprofit corporation. Copies of the Articles of Incorporation and Bylaws for the Property Owners' Association are filed of record in the office of the Taos County Clerk in Book \_\_\_\_, Page \_\_\_\_\_. The Association, acting through its board of directors, will administer and enforce these Covenants and Restrictions, and will operate the subdivision's common facilities, if any.

The Association, acting through its board of directors, may impose special assessments against the lots in the subdivision to pay the expenses incurred by the Association. These special assessments will be liens upon the lots, until paid. Because the roads are privately maintained, with each lot owner being financially responsible for a share of the cost of maintenance, including but not limited to regrading and/or resurfacing necessary due to traffic, special assessments will include an appropriate amount for a Road Maintenance Fund, open space trail maintenance if any, and maintenance of fire prevention systems and its surrounding area. In addition, assessments will include an appropriate amount for the accumulation of a Legal Fund, anticipated to be used in the event enforcement of a covenant or restriction requires legal action.

## **Definitions**

1. **Declarant** is the undersigned owner of all of the Estancias Atalaya Subdivision lots.
2. **Approving Agent(s)** shall mean a person or persons duly appointed by the board of directors of the Property Owners' Association to approve of proposed building and plot plans.
3. **Detached Single-Family Dwelling** shall mean a building and related structures customarily appurtenant thereto, erected and maintained in conformance with the requirements of this declaration for private residential purposes and designed for occupancy by a single family or families. It shall not mean or include any flat, apartment, multi-family dwelling, lodging or rooming house, hotel, hospital, sanatorium, or group home, none of which shall be permitted on any lot.
4. **Single Family** shall mean an individual or a family unit comprised of individuals related by blood or by law. This definition is not intended to preclude joint ownership of a lot by more than one single family.
5. **Outbuilding** shall mean an enclosed, covered structure or ramada, garage, or guest house not directly attached to a single-family dwelling to which it is appurtenant, and any building attached to a single-family dwelling by means of a covered walkway, breezeway, or similar structure.

6. **Lot** shall mean a platted parcel of land upon which a detached single-family dwelling and outbuildings may be erected in conformance with the requirements of this Declaration. In no event shall it mean a parcel of land not containing at least one building site.

7. **Building Envelope** is that portion of each lot shown on the subdivision plat within which all improvements and landscaping must be located, and is the only area where alterations to the natural landscape may occur except for the planting of plants, shrubs, grass, and trees indigenous to the immediate area ecosystem for disturbed area reclamation purposes.

8. **Defensible Space** shall mean an area either natural or man-made, where material capable of allowing fire to spread unchecked has been treated, cleaned or modified to slow the rate of intensity of an advancing wildfire and to create an area for fire suppression to occur.

### **Permitted Uses**

Upon each lot in Estancias Atalaya Subdivision there may be erected a principal residence consisting of one detached single family dwelling, together with such structures and outbuildings as are customarily appurtenant thereto including a private garage, studio, workshop, detached solar collectors, one guest house, water well and well house for those lots including a shared well, underground utility and water lines, septic tanks and leach fields, gates, walls, fences and retaining walls to prevent erosion or for re-vegetation. Said dwelling may be used only for private residential purposes and shall be designed and built for use by a single family. In no event shall the private garage, studio, or workshop be utilized as a residential apartment or any other type building for occupancy by a single family as a single family residence. All plans, including site and drainage plans, for every structure, shall be approved by the Approving Agent before construction may begin.

Before beginning any such work, the lot owner and lot owner's builder shall first meet with a representative of the architectural review committee in order to review these restrictive covenants in order that owner and owner's builder understand the review process and their responsibilities under it. Thereafter the owner and owner's builder shall submit to the Approving Agent two complete sets of final building and plot plans and specifications, including the exterior color scheme, plumbing fixture water use specifications, building elevation sketch illustrating building height as measured from the highest elevation point where natural grade would, if undisturbed, touch the structure. Elevation at finish grade must also be shown. In addition, the site plan provided must illustrate terrain management which respects natural drainage, controls site run-off, and implements re-vegetation. Further, a lighting plan as described in the restrictions must be illustrated on the Site Plan document or a separate "Lighting Plan" document.

Approval will be evidenced by written endorsement on both sets of plans, one set to be returned to the lot owner. The approving agent shall approve or disapprove all plans within 30 days. The lot owner shall pay the approving agent, at the approving agent's option, a reasonable fee of not less than \$250 for the initial meeting and for the complete plan review described above as well for the inspections during construction and after completion of construction described below.

Neither the Approving Agent, Property Owners Association, nor Declarant assumes responsibility for plan review of national or local building codes or ordinances, but only plan review to meet the intent of these covenants. The lot owner is responsible for all other local approvals required to place improvements on the lots.

During the construction period the Approving Agent and/or other Property Owners Association representative has the right to enter on the lot for the purposes of verifying compliance of the structure with plans and specifications approved. If the agent or representative finds non-compliance, the owner and owner's builder shall thereupon proceed to make such changes as are required to achieve compliance. Upon completion of construction (issuance of a certificate of occupancy), owner shall notify the agent or representative who has 30 days after receipt of such notice to conduct a final inspection for compliance with plans as approved.

## **Restrictions**

1. Subdivision - No lot shown on the Estancias Atalaya Subdivision survey plat herein referenced shall be further divided or separated into smaller lots and no divided portion less than all of any such lot as shown on said survey may be conveyed, bequeathed, devised, or transferred by any person.

2. Building Height - Excepting the lots designated in this section, no building or outbuilding, or any portion thereof, except chimneys, shall be constructed higher than sixteen (16) feet above the highest point of pre-construction undisturbed natural ground level abutting the building. Chimneys may not exceed five (5) feet in height above the highest point of the roof or parapet.

The intent of these height restrictions is to insure that architecture blends unobtrusively and naturally with the existing topography; to encourage structures that merge with rather than dominate the natural landscape; to protect the view corridors for all lots as much as possible, and to avoid large scale monolithic buildings.

3. Architectural Style - It is the intent of this restriction to insure architectural styling which is compatible with the surrounding neighborhood and terrain. Traditional Northern New Mexico architecture in the so-called Pueblo and Territorial styles, Southwest contemporary styles reminiscent of such architecture, and Southwest Spanish mission styles shall be deemed in conformity with the surrounding terrain and topography.

The parapets, roofs and exteriors of all structures, including canales, metal vents, gutters, stove pipes, mechanical equipment, solar collectors, and the like, shall be painted or plastered with a non-reflective application and shall be earth colored, matching as closely as possible the natural earth upon which a structure is built; provided that "white" or other colors may be used under a portal and/or as an accent color such as on a door or window frame.

Unless otherwise required by applicable building codes, no structure or device may be placed upon a rooftop unless the same is essentially concealed from view by a roof line or parapet; this restriction shall be deemed to be met if the top of a rooftop device is six inches below the roof or parapet line; any device of a height in excess thereof shall not be permitted, with the exceptions of a) chimney structures, provided the top thereof is not in excess of five feet (5') above the parapet line and b) small internet or other antenna, or a television satellite device not in excess of 2' above the parapet line.

4. Storage and Dumping - No lot shall be used in whole or in part for the storage or dumping of rubbish of any character whatsoever, or for the storage of any property or thing that will cause such lots to appear in an unclean or untidy condition or that will be obnoxious to the eye. No substance, thing or material may be kept upon any lot that will emit foul or obnoxious odors, or that will cause any noise that will disturb the peace, quiet, comfort or serenity of the occupants of surrounding property.

5. Alarm Systems - Silent security alarms are encouraged, but if not silent, a timer must be installed to stop the alarm signal within a reasonable amount of time.

6. Lighting Plan and Restrictions - The purpose of this restriction is to establish standards for minimizing the unintended and undesirable side effects of outdoor lighting while encouraging the intended and desirable safety and aesthetic purposes of outdoor lighting. Further, it is the purpose of this restriction to preserve the integrity of the night sky by reducing the light pollution created by artificial lights. Exterior lighting shall be designed and located in a manner to minimize impact of lighting upon living areas within a proposed project, upon adjacent structures and properties, and upon the sky.

Taos County passed a lighting ordinance No. 2006-9, known as the Night Skies Protection Act, in order to reduce or prevent light pollution. This ordinance must be adhered to, and where the ordinance is in conflict with this restriction, the more restrictive of the two will prevail.

A lighting plan shall be included with each site plan cited in the "Permitted Uses" section of this declaration. The "lighting plan" shall show the location, the height above ground, the type of illumination (such as incandescent, high pressure sodium, etc.), the source lumens, and the luminous area of each light source which is proposed.

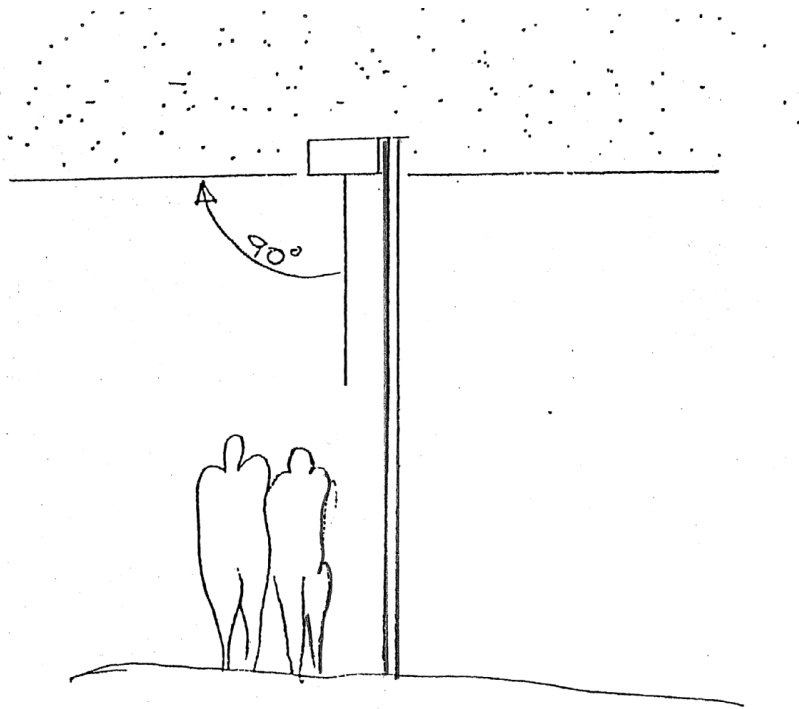
Frequency: The maximum number of exterior light sources per lot shall be limited to one light source per 500 square feet of built structure (including covered portals and porches). Please note that in no event shall this restriction prevent compliance with Federal, State, and County building codes.

Height Limits: For all exterior light sources, the maximum mounting height for light sources on a pole or vegetation shall not exceed eight (8) feet.

Light sources affixed to structures: Light sources may be affixed to any wall of a structure. Light sources shall not be affixed to a roof structure.

Lighting Source: Quartz iodide, halogen, metal halide, and mercury vapor exterior lamps are prohibited. Incandescent lighting cannot exceed 150 watts.

Cutoff shields: All light sources shall exhibit a full cut-off shield. Full cut-off refers to a light source in which no more than 2.5% of its total output is emitted above 90 degrees as measured from nadir as shown in the following diagram. Note that an exterior portal roof can serve as a cut-off shield when the light fixture is appropriately placed so that upward travel of the resulting light is prevented by the portal roof.



### **Lighting Diagram**

Security Lighting: Two motion sensor security/entrance/convenience lights are additionally allowed although not required or encouraged. Said lights, if installed, must be timer regulated to deactivate within 12 minutes of illumination due to motion. Cutoff shields as described are encouraged for this type of lighting but not required.

Exemptions: The restrictions shall not apply to Christmas lighting on vegetation or on buildings of a temporary nature which are illuminated only between December 1 and January 10 of each year. Also exempt from these lighting restrictions are low lumen, amber colored, solar battery powered garden lights.

7. Derricks and Other Structures - No derrick or other structure designed for use in boring for oil or natural gas, and no transmission towers shall be erected, placed or permitted upon any part of said property; and no oil, natural gas, petroleum asphaltum or hydrocarbon product or substances shall be produced or extracted therefrom. This paragraph shall not prohibit home-type television antennas, television satellite devices, or home type CB antennas addressed in para. 3 above.

8. Fuel Storage Tanks - Any tanks for use in connection with any residence constructed on said property, including tanks for the storage of liquefied petroleum gas and fuel oil, must be buried or walled sufficiently to conceal them from the view of other lots, roads, and streets. Any buried fuel tank must comply with State of New Mexico and Federal regulations regarding such tanks. The storage of gasoline, oil, or other petroleum products not specifically used in connection with the residence and its occupation are prohibited.

9. Building Envelope (Homesite Area) - All lots are subject to a designated building area (Building Envelope) shown on the Estancias Atalaya Subdivision plat. No structures may be located outside an indicated Building Envelope, nor may any construction activity in connection with any permitted structure occur outside the Building Envelope. Excepted from this requirement is the installation of underground utilities and water lines, well, underground well house, as necessary, and construction of a single access drive.

10. Chimneys and Outdoor Fires - High desert climates and terrain can sometimes create extreme fire danger. Therefore, all chimneys and outdoor fireplaces must be equipped with a U. L. or I.C.B.M. approved spark arrestor. Open outdoor fire pits are prohibited. Barbecue grills are permitted, provided they have a functional lid. Each owner that has a home with a wood based fuel burning fireplace or stove is required to have a sealable metal container for disposal of ashes from the fireplace.

11. Wall and Fence Height - No freestanding wall or fence, at any point, shall exceed seven (7') feet in height. This restriction excludes arched entryways which may have a maximum height of nine (9') feet. The reader should note a permit from the Taos County Planning Department is required for walls over four feet (4') in height and for fences in excess of 6 feet (6') in height.

12. Signs - With the exception of address identification signs, property identification or ownership signs, and signs excepted in this paragraph, no signage of any kind is permitted within Estancias Atalaya Subdivision. The following are the only exceptions.

- a) Real estate sale signs may be placed at the entrance to the subdivision. Lot owners affected by the sign placement must consent, in writing, to their placement.
- b) Trade signs indicating the architect and/or contractors may be placed at the construction site only during the construction period.

13. The exterior construction of any house shall be fully completed within two years of the date construction commences.

14. Vehicles - All motorized vehicles shall be permitted only on roads and driveways. All Terrain Vehicles, whether wheeled or tracked, are specifically prohibited within Estancias Atalaya Subdivision. Snowmobiles are also prohibited within the subdivision.

All lot owners are encouraged to keep vehicular traffic within the subdivision at a minimum due to increases in maintenance necessary due to heavy traffic and to preserve the serenity, peace and quiet of the subdivision.

15. There shall be absolutely no hunting or shooting within Estancias Atalaya Subdivision at any time.

16. Indoor and outdoor water conservation measures shall be encouraged. At a minimum, fixtures and appliances must comply with the Uniform Plumbing Code. The following restrictions are imposed on the structures constructed.

- a. Indoor plumbing fixtures must be of a water-saving type. All faucets shall be washerless and have a maximum capacity of 2.5 gallons per minute. Shower heads must have a capacity of no more than 2.5 gallons per minute. Toilets must have no more than 1.6 gallons per flush. Automatic dishwasher and clothes washers shall be of a type which permits "small-load" or "short cycle" settings.
- b. Swimming pools are prohibited.

c. Wells servicing only one lot are prohibited. Each participant sharing a well must utilize a water meter in accordance with New Mexico State Engineer requirements, and is subject to and required to participate in a Well Sharing Agreement. The domestic water for each lot cannot exceed 0.50 acre-foot or 162,922 gallons. Domestic use is permitted for a combination of household or other domestic uses and irrigation of not to exceed 1/6<sup>th</sup> acre of non-commercial trees, lawn, and garden. In the event that the permitted amounts are reduced by a governmental authority, or the aquifer capacity or the well and/or pump efficiency diminishes, the gallonage of each share shall reduce or diminish accordingly. Similarly, if government permitted amounts are increased, the gallonage of each share shall increase accordingly.

Quarterly or monthly meter reading reports, as required by the Office of the New Mexico State Engineer, are to be completed in a timely fashion, and in the manner described in the Well Sharing Agreement. All lot owners within Estancias Atalaya Subdivision are required to be a signator and participant of the Well Sharing Agreement that governs their particular lot.

Appropriate submission of the water use reports is to be made by the Property Owners' Association and/or the lot owners. Individual water use meter data, as well as the totalizing master meter data, via the filed reports for the same, are to be maintained in the files of the Property Owners' Association. Further, copies of every report submitted to the Office of the State Engineer are to be provided to the Property Owners' Association for this purpose. If a violation of the 0.5 acre foot per year water limitation occurs, the Property Owners' Association is to immediately notify the Taos County Planning office and the notice must include a point of action by the Property Owners' Association of how the violation is to be addressed.

d. Trees and Landscaping - Irrigated turf area shall not exceed 1,500 square feet. All other grass areas shall be native grama grasses or grasses that consume water at the same or lower rates than grama grasses. No common Bermuda grass is allowed. Drought resistant (Xeriscape) plantings and landscaping designs are encouraged.

17. Driveways - Any and all driveway installations must respect existing drainages and not interrupt existing drainage flows, and where necessary, culverts of appropriate diameter must be installed. As per instruction from the Taos Volunteer Fire Department, a driveway on any lot within the Estancias Atalaya shall be eighteen feet (18) in width of driveable area. All shoulders and other areas of soil disturbance not within the driving surface must be properly graded and reseeded within eight (8) months of the disturbance. Lot owners are strongly encouraged to follow Soil and Water Conservation District recommendations to reduce soil erosion. Any access drive must be located in a manner to reasonably preserve natural features, including vegetation. Installation of underground utilities, where practical, is encouraged to be within the cited drive-way right-of-ways.

Driveway Culverts – At the time of driveway construction, each lot owner is required, at the lot owner's expense, to install a corrugated metal pipe at the ditch location adjacent to the subdivision road, passing underneath the driveway. The culvert is to be appropriately sized for expected water flow in this location. At a minimum, a 12 inch culvert is required.

18. Fences, Walls, and Gates - With the exception of a security gate at the driveway entrance, no fencing is allowed outside of the Building Envelope. Perimeter wire or metal mesh fencing is prohibited except as follows: Wire or metal mesh fencing is allowed only around garden areas, or as part of mesh fencing surrounding tennis courts or other similar facilities. All other permitted fencing must be either "Coyote Fences" or constructed of adobe or masonry stuccoed in an "earth color". Any driveway security gate must be constructed in an architectural style conforming to the restrictions stated herein. Gate mechanisms must be painted in a non-reflective color and conform as much as reasonably possible with the earth colors suggested by these restrictions in paragraph 3.

19. Renting of Properties - In the absence of the owner, a lot within Estancias Atalaya Subdivision, including the primary residence and all ancillary structures, may be rented for periods of not less than six months. In no event shall the residence, guest house, or other buildings on the lot be rented separately. The intent of this restriction is to prevent multiple tenants on the same lot. A single family is the only allowed tenancy.

20. Utility Pipes/Lines and Roads - All utility pipes and lines must be code conforming and must be buried beneath the ground surface. Ground areas disturbed during construction of utilities must be re-graded and reseeded after completion of construction, or within a period not to exceed eight (8) months from the date of disturbance. Any disturbance of the subdivision roads must be repaired immediately after disturbance or as soon as practical if weather delays are present. Repair will include replacement of existing road surface materials (pit-run gravel and base course gravel, and/or paving should paving exist) and compaction of trenched areas to 95%, as well as reshaping and grading as necessary to bring any road, shoulder, or ditch to a pre-disturbance condition. It will also include reseeded of all disturbed areas out-side of any driving surface within 8 months of repair.

21. Farming, Commercial Ranching, Agricultural Activities - No farming, commercial ranching, or other agricultural activity shall be permitted anywhere upon the Property. Small vegetable gardens and orchards for personal consumption, however, shall be permitted within the designated Building Envelope area.

22. Drainage and Wildlife Right-of-Way Areas - Within Estancias Atalaya Subdivision, all areas which are not within the boundaries of a Building Envelope, as depicted on the Estancias Atalaya Subdivision plat, have been reserved as drainage and wildlife right-of-way areas. These areas are intended to provide natural drainage flows in an undisturbed fashion. In addition, some of these areas include travel routes for several species of wild animals. With the exception of good forest management practices, soil conservation practices, and the development of hiking and bicycling trails, there shall be no alteration of these areas in any way.

23. Trail Easements: The pedestrian and bicycling easements as shown on the Plat for Estancias Atalaya Subdivision are for the benefit of and use of lot owners and their guests, for hiking and bicycle riding. No motorized vehicles of any type are permitted on those trails. Each owner shall use the trails at his or her own risk. Any Owner using a trail (the "Indemnifying Owner") shall indemnify the Declarant and the Owners whose lots are traversed by the trail ) (the "Indemnified Owners") against, and hold them harmless from, all claims, demands, liability, loss and costs, including attorney's fees, asserted against or incurred by the Indemnified Owners, and each of them, in connection with the use of the trail by the Indemnifying Owner.

24. Animals - House pets shall be permitted on the Estancias Atalaya lots. House pets shall be confined within the building envelope area unless under the control of their owner, shall not be allowed to create excessive noise or odor, and shall be restrained from interfering with other lot owners' quiet and peaceable enjoyment of their respective lots.

Importantly, carnivorous animals such as dogs, cats, and raptors shall be trained or restrained from injuring, chasing, or killing wildlife found within the Estancias Atalaya Subdivision.

No other animals or livestock of any kind may be kept on any lot or road within the subdivision.

25. Generators - Electrical generators, whether free standing or as part of a recreational vehicle, driven by combustion engines, are prohibited within Estancias Atalaya Subdivision. This restriction specifically excepts generators required during construction of the residence, generators situated within an interior workshop or similar space.

26. Fire Defensible Space – Lot owners within Estancias Atalaya are required to create 30 feet of defensible space around all building structures. Trees are allowed within the defensible space, provided the horizontal distance between crowns of adjacent trees and crowns of trees and structures, overhead electrical facilities or unmodified fuel is not less than ten feet (10'). Deadwood and litter shall regularly be removed from trees.

Maintenance of fire defensible space shall include keeping non fire-resistant vegetation or growth, leaves, needles and other dead vegetative materials clear of any buildings or structures; tree crowns extending to within ten feet (10') of any buildings or structures pruned to maintain a minimum horizontal clearance of ten feet (10'); tree crowns pruned to remove limbs located less than six feet (6') above the ground surface adjacent to the trees in a manner so as to provide a clear area for fire suppression.

27. Recycling of Solid Waste – At the time of this writing no recycling service is available within Estancias Atalaya or the surrounding area. When and if such a service becomes available, lot owners within Estancias Atalaya are encouraged to recycle solid waste materials.

28. Duration and Amendment – The duration of these restrictions is perpetual. These restrictions may however be amended by written recordable amendment(s) executed by the owners of 75% (33) of the 44 lots except that amendments to building envelopes may be made by a majority of the board of directors of the Property Owners Association. No amendment shall allow the division of any Estancias Atalaya lot, nor shall any amendment other than an adjustment of building envelope boundaries as approved by the board of directors, apply to less than all of the lots within the subdivision.

29. Severability - A determination by a court of competent jurisdiction that any restrictive covenant or any part thereof is illegal or unenforceable shall not cancel or invalidate the remainder of such restrictive covenants which shall remain in full force and effect.

## **Estancias Atalaya Property Owners' Association**

### **1. Membership and Voting Rights**

Every owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from the ownership of any Lot. The Association shall have two classes of voting memberships.

**Class A.** Class A members shall be all owners with the exception of the Declarant and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

**Class B.** The Class B member shall be the Declarant and shall be entitled to two (2) votes for each Lot owned by the Declarant. The Class B membership shall cease and be converted to Class A membership when the total votes outstanding in the Class A membership equals sixty-seven percent (67%) of the total votes.

### **2. Assessments.**

The owners of each lot shall pay to the Association:

- 1) annual assessment or charges, and

2) special assessments for capital improvements, and fines for violation of any provision of this Declaration, such assessments and fines to be established and collected as hereinafter provided. The annual and special assessments and fines, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made until payment. Each such assessment and fine, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot(s) at the time when assessment fell due. The personal obligation for delinquent assessment shall not pass to his successors in title unless expressly assumed by them, and in any such event, same shall be paid at the time of transfer of title of such Lot(s).

### **Purpose of Assessments**

The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents of the Property and for the improvement and maintenance of the roads, vegetation clearing for fire suppression, easements, or other facilities (if any). Other facilities include but are not limited to regular maintenance and testing of the fire suppression systems, such as the three 10,000 gallon water tanks and all water works associated with this system. Further, the assessments may also be used to purchase casualty and liability insurance as it relates to the property and Property Owners Association, and to establish a legal fund for the enforcement of Covenants and Restrictions.

### **Maximum Annual Assessment**

The current annual assessment of \$200 may be increased by the Property Owners' Association by up to 30% per year in order adequately to fund the road maintenance and legal fund accounts.

### **Special Assessment for Capital Improvements**

In addition to the annual assessment authorized above, 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 any construction, reconstruction, repair or replacement of a capital improvement within the road right-of-way or any easement areas existing or created by the Estancias Atalaya Property Owners' Association in the future, provided that any such assessments shall have the assent of the owners of three-fourths (75%) of the lots.

### **Annual Assessments: Due Dates**

The Board of Directors shall recommend the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall vote on the annual assessment and therefore confirm the same at each annual meeting. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

### **Effect of Nonpayment of Assessments: Remedies of the Association.**

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date until the date paid in full at the rate of five percent (5%) per annum above the prime interest rate then being charged by Centinel Bank of Taos, or another selected bank if this bank is not in existence, to its largest and most credit-worthy Commercial Borrowers, such rate to be adjusted on the first (1st) day of each month. The Association may bring an action at law against the Owner personally obligated to pay the same, including to foreclose the lien securing the assessments. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of any of the facilities constructed or maintained with assessment funds.

These covenants and restrictions touch, concern, and run with the lands and bind and benefit the owners of all lots within Estancias Atalaya Subdivision. In the event of an action for breach or interpretation of any of these covenants and restrictions, the prevailing party shall be entitled to a reasonable attorney fee in addition to such other remedies as the court awards.

The effective date of this declaration of covenants and restrictions is the date it is recorded with the Taos County Clerk. Any future modification of these restrictions, as allowed by vote of 75% or more of the members, may be completed and acknowledged by counter-part signatures.

KLAUER MANUFACTURING COMPANY, INC.

By: \_\_\_\_\_

James F. Klauer  
Vice President

STATE OF IOWA            )  
  ) ss.  
COUNTY OF DUBUQUE    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of May, 2009 by James F. Klauer, vice president of Klauer Manufacturing Company, an Iowa corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public

My commission expires: