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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**FOR SANDIA MOUNTAIN RANCH, UNIT 2, PHASE 5**

THIS DECLARATION of Covenants, Conditions and Restrictions is made as of this 10th day of May, 2005, by SMR5, LLC, a New Mexico limited liability company (hereinafter "Grantor").

WHEREAS, Grantor is the owner of the real property described in Article II of this Declaration and desires to create thereon a residential community and to provide for the preservation of the values and amenities in the community by subjecting the property to the covenants, restrictions, and easements hereinafter set forth, each and all of which is and are for the benefit of the property and each owner thereof.

NOW, THEREFORE, the Grantor declares that the real property described in Article II is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions and restrictions hereinafter set forth.

**ARTICLE I**  
**DEFINITIONS**

Section 1. The following words when used in this Declaration shall have the following meanings:

(a) "Lot" means the land identified as Lots 1 through 6, inclusive, Lots 7A, 7B, 7C, and Lots 82-87, inclusive, as shown on the Plat of Unit 2, Phase 5, Sandia Mountain Ranch Subdivision.

(b) "Declaration" means this Declaration of Covenants, Conditions and Restrictions, and any amendment or modification thereto.

(c) "Drainage Report" means the report prepared for the Property by Grantor and approved, and on file with the County of Bernalillo Public Works Department.

(d) "Entranosa Water and Wastewater Association" ("Entranosa") means the nonprofit mutual domestic corporation supplying community water services and wastewater services to the Lots within the Subdivision.

(e) "Grading Plan" means the grading plan prepared for the Property by Grantor and on file with the County of Bernalillo Public Works Department.

(f) "Living Unit" or "Unit" means any building or a portion of a building situated on a building site designed and intended for use and occupancy as a single family residence. Living Unit includes the term Lot, unless otherwise indicated.

(g) "Plat" means the Plat of Unit 2, Phase 5, Sandia Mountain Ranch Subdivision, recorded in the Bernalillo County, New Mexico real estate records on April 6, 2005 in Vol. 2005-C, Folio 103, Document No. 2005046779.

(h) "Owner" means the record owner of the fee simple title of a Lot or unit and shall include a contract purchaser of any Unit or Lot pursuant to an installment sales contract. Owner shall not include a contract seller of a Lot or Unit pursuant to an installment sales contract.

(i) "The Property" means all of the real property described in Article II.

(j) "Setback" means the distance between a front property line and side and rear lot line on any Lot, as set out in Article III, Section 18, hereof.

(k) "Subdivision" shall mean the subdivision created by and subject to this Declaration, including all the Lots created by the Plat, and the internal streets serving the Lots.

## **ARTICLE II**

### **PROPERTY SUBJECT TO DECLARATION**

The following described property situate in the, County of Bernalillo, State of New Mexico, is made subject to all easements, covenants, conditions and restrictions set forth in this Declaration:

Lots 1 through 6, inclusive, Lots 7A, 7B, 7C, and Lots 82 through 87, inclusive, as the same are shown and designated on the Plat of Unit 2, Phase 5, Sandia Mountain Ranch Subdivision, recorded in the Bernalillo County, New Mexico real estate records on April 6, 2005 in Vol. 2005-C, Folio 103, Document No. 2005046779.

## **ARTICLE III**

### **USE RESTRICTIONS**

Section 1. All Living Units and Lots within the Property are hereby restricted to residential dwellings for single family residential use with a minimum of 2000 square feet of enclosed heated living area, exclusive of carports, garages and open porches or patios. The maximum building height shall be twenty-six feet (26'), excluding chimneys, measured from the highest point of the natural ground adjacent to the Living Unit. All construction upon any Lot must be new construction and no existing building or structure may be moved from another site to a Lot. Each Living Unit shall have an appurtenant private garage for at least two cars. No mobile home or manufactured housing shall be permitted within the Subdivision.

Section 2. Notwithstanding any provision herein contained to the contrary, it shall be expressly permissible for the Grantor or home builders building homes within the Property to maintain during the period of construction and sale of the Living Units, such facilities as may be reasonably required, convenient or incidental to the construction and sale of the Living Units, including, without limitation, a business office, storage area, construction yards, signs, model units and sales office.

Section 3. No animals, livestock or poultry of any kind shall be raised or bred for any commercial purposes. All dogs, cats and horses shall be kept on the Lot Owner's property in suitable enclosures or pens, in a manner approved by the Animal Humane Association of New Mexico. Any corrals, horse pens or stables erected on any Lot shall be limited to 15,000 square feet in size, and shall be set back a minimum of 100 feet from the front property line of each Lot, and a minimum of fifty feet (50') from any side or rear yard lot line. The Grantor may grant a variances to this setback requirement. All Lot Owners shall restrain all pets and/or horses from trespassing onto other Lots within the Subdivision. No more than four (4) horses are allowed on any Lot at one time, and all horses shall be corralled within the 15,000 square foot enclosures at all times. Horses are not allowed to roam on any Lot, except within the corralled enclosures. Horses are not allowed to graze

on any Drainage Easements within the Subdivision. Except as permitted in this Section 3, no livestock of any kind is allowed in the Subdivision.

Section 4. No advertising signs except customary "for sale" signs or signs for Grantor or Grantor's assigns to market the Lots and/or Living Units, billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on the Property, unless approved, in writing, by the Architectural Control Committee, as hereinafter defined in Article IV, below. The Property shall not be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any Living Unit or any resident thereof.

Section 5. No business activities of any kind whatsoever shall be conducted in any Living Unit or on any portion of the Property, except as permitted by the County as a "home occupation" and so long as there is no external evidence of the business activity. Provided, further, however, the foregoing covenants shall not apply to the business activities, or the construction and maintenance of buildings, if any, of the Grantor, its agents and assigns, during the construction and sale period. This provision does not prevent the conduct of arts and crafts studios, or professional offices, providing the activity does not result in frequent multiple vehicular traffic, noise or other annoyance.

Section 6. No fences, hedges or walls shall be erected or maintained upon the Property except such as are approved in this Declaration, and shall not be erected upon or infringe upon any easements granted to Entranosa for its facilities constructed to supply water and wastewater services to any Lot.

Section 7. On street parking is not permitted. All Lot Owners of shall provide for adequate parking for residents and guests within their Lot. No trailers, recreational vehicles or boats shall be permitted to remain within public view on any part of the Property longer than one (1) day. Nothing in this section shall be construed as limiting use of the Property during the construction and sale phase of the development.

Section 8. No oil drilling, oil development, oil refining, derrick or other structure designed for use in boring for oil or natural gas, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavation or shafts be permitted upon or in any Lot.

Section 9. No temporary house, trailer, tent, garage, or other outbuildings shall be used on any Lot at any time as a residence, either temporarily or permanently, and no residence placed or erected on any part of any Lot shall be occupied in any manner at any time prior to its being fully completed, provided, however, that during the actual construction or alteration of a building on any Lot, necessary temporary buildings for storage of material, etc., may be erected and maintained by the person doing such work.

Section 10. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done, placed, or stored thereon which may be or become an annoyance or nuisance to the neighborhood, or occasion any noise or odor which will or might disturb the peace, comfort, or serenity of the occupants of neighboring properties. Without limiting the generality of the foregoing, permitting disabled vehicles to remain on a Lot or doing mechanical or body work on any vehicle other than work which can be accomplished in a few hours, shall be deemed a noxious or offensive activity.

Section 11. Lots shall be cleared of all weeds, trash and all other detracting impediments and all rubbish, trash or garbage shall be regularly removed from each Unit.

Section 12. Except for access to the Lot, clearing of building sites or establishment of lawns, gardens and landscaped improvements within the immediate vicinity of the Living Units, all remaining natural vegetation will be left undisturbed. All lawns and/or gardens shall not exceed 2,000 square feet in size, and all shall be irrigated to preserve water conservation. Each Lot Owner shall not exceed the use of 2,600 gallons of water per month for all landscaping.

Section 13. Where externally visible air conditioners are erected or installed, they shall be so installed that they will minimize visibility from the front street. Roof mounted units shall be allowed, however, they shall be installed as to comply with this restriction as much as possible.

Section 14. No radio, television, citizens band, HAM, or other aerial antenna or tower, whether for transmitting or receiving, or any support thereof shall be erected, installed, placed or maintained, except those devices which may be erected, installed, placed or maintained and used entirely under the eaves or enclosed within a building or structure which do not extend above the highest point of the roof. However, after written approval of the Architectural Control Committee, a television antenna or satellite dish less than 36" in diameter, may be mounted on the roof provided it is inconspicuously located so as not to be easily visible from the street.

Section 15. Above ground trash and garbage receptacles, ground mounted solar energy collectors and equipment, ground mounted air conditioning compressors and equipment shall be enclosed within a fenced service area or areas so as to conceal them from the streets. Fencing or screening should be harmonious with the overall design of the structures on the Lot and which shield these structures in such a way as not to be visible from streets.

Section 16. In the event that a structure is destroyed, wholly or partially by fire or other casualty, said structure shall be properly rebuilt, repaired or replaced to conform to this Declaration, or all remaining structures, including the debris and foundations shall be removed from the Lot.

Section 17. All buildings and outbuildings erected on any Lot shall be set back a minimum of eighty feet (80') from the front property line, and a minimum of forty feet (40') from the side or rear lot lines. The Grantor may grant a variance to the setback requirements for those Lots in which the useable building envelope is limited.

Section 18. All Living Units erected on all Lots shall be of an architectural design typical of New Mexico and the Southwest, including pueblo, territorial, ranch, adobe and Spanish styles. Exterior and roof colors shall be neutral and blend in with the natural surroundings. Subsequent home additions or any outbuilding construction or fences or walls shall require written approval of the Architectural Control Committee prior to the commencement of any construction pursuant to Article IV hereof. All Lot Owners are required to submit a Request for Design Review Approval and Application as set forth in Article IV, Section 3, below.

Section 19. Propane tanks shall be buried or screened from street view and from the view of adjacent Lot Owners, and shall conform to state regulations.

Section 20. Each Lot Owner shall provide a method of sewage disposal which meets the requirements of the Bernalillo County Environmental Health Department. Garbage and solid waste shall be kept in covered, waterproof containers and shall be stored and disposed of in a manner approved by the Bernalillo County Environmental Health Department.

Section 21. All Living Units shall use water saving toilets, dishwashers, washing machines, and shall have installed water restricting showerheads and faucets. All hot water pipes shall be insulated to prevent energy and water waste.

## **ARTICLE IV**

### **ARCHITECTURAL CONTROL COMMITTEE**

Section 1. An Architectural Control Committee, hereinafter referred to as the "Committee" is hereby established and shall be comprised of three (3) persons to serve until ninety percent (90%) of the Lots within the Subdivision are sold, and until their successors shall be appointed and qualified. The Committee is initially composed of Alex Leonard, Steven P. Jackson and Matthew Fetterman. In the event of death or resignation of any member of the Committee, the Grantor shall have full authority to designate a successor. After 90% of the Lots have been sold, the Committee shall be elected by a majority of the Lot Owners who are present at a special meeting. Each Lot Owner shall be entitled to one vote per lot owned.

Section 2. No member of the Committee shall be entitled to any compensation, other than a design review fee of \$125.00, for services performed on said Committee. A majority of the Committee may designate a representative to act for it.

Section 3. Before the commencement of the construction, remodeling, addition to, or alteration of or removal of any building, swimming pool, wall, fence, out building or any other structure whatsoever, on any Lot, and further to include landscaping and landscaping construction including ponds, water walls, statues, retaining walls or other structural component, which is visible from any street, the Lot Owner shall apply to the Committee for approval. There shall be submitted to the Committee: (a) a Request for Design Approval and Application, copies of which are available at the offices of Grantor, (b) a complete set of plans, including but not limited to, foundations, floor plans, elevations, details, specifications which identify construction material, exterior color scheme, and a site plan showing the location of the structure on the Lot identifying all construction including but not limited to roof overhang lines, all setbacks at point of minimum distance to each property boundary, dimension of Lots, all walks, drives, patios, decks, and walls and/or fences and their construction materials, which set of plans and specifications upon approval will be retained by the Committee to remain on file; and (c) if deemed necessary by the Committee, the following may be required: (1) colors and samples of exterior materials, (2) wall sections, (3) roof plan, (4) details of exterior furnishings, (5) the Owner's proposed construction schedule, and (6) an architect's rendering showing the perspective view of the proposed construction. These renderings may be in pencil or ink line drawings. At the time of submittal of the Request for Design Approval and Application, the Architectural Control Committee shall assess a one-time design review fee of \$125.00 for the review of the primary Living Unit.

Section 4. Prior to commencement of construction of the Living Unit on any Lot, the Lot Owner must have installed culverts that meet current Bernalillo County specifications and a minimum of fifty (50) feet of graveled driveway.

Section 5. No building, structure, or improvements of any kind, including walls and landscaping, shall be erected, altered, placed or maintained upon any Lot unless, and until the complete set of final plans and specifications have been approved in writing by the Committee as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation. Any resurfacing or painting of the exterior wall areas shall be completed in a color texture as close to the original as possible, unless the consent of the Committee is obtained in writing as to a different color and/or texture and except as hereafter provided.

Section 6. The Committee shall have the right to disapprove any plans, specifications or details submitted to it as aforesaid, in the event such plans and specifications are not in accord with

all the provisions of these restrictions, or if a design or color scheme in the proposed structure is not in harmony with the general surroundings or in harmony with the Lot or adjacent structure, or if the Committee deems the plans and specifications to be contrary to the spirit and intent of this Declaration, or contrary to the interest and the welfare and rights of all or any part of the Property.

Section 7. In the event the Committee shall fail to approve or disapprove the plans, specifications and other such information as may be required within thirty (30) days after submission, then such approval shall not be required, provided that no building or structures shall be erected which violate any of the terms of this Declaration.

Section 8. Neither the Committee, it's members, nor the Grantor shall be responsible in any manner whatsoever for any defect in any plans or specifications submitted or as revised by said Committee or the Grantor, or for work done pursuant to the requested changes by said plans and specifications.

Section 9. A majority of the Committee may, from time to time, grant exceptions or variances not in substantial conflict with this Declaration, without the consent of the Owners.

Section 10. The work of constructing any building on any part of the Property as to the exterior, shall be completed within twelve (12) months from the commencement thereof.

## **ARTICLE V**

### **WALLS AND FENCES**

Section 1. All fencing or walls constructed on any Lot shall be set back fifty feet (50') from the front yard property line. No walls or fences may be erected without first obtaining written approval from the Architectural Control Committee.

Section 2. No barbed wired fencing is allowed within the Subdivision. Chainlink fencing shall not be permitted around the perimeter of any Lots, but may be used for animal enclosures, which enclosures must be set back a minimum of 100 feet from the front property line.

Section 3. Owners shall promptly remove graffiti from all walls and fences on their Lots.

## **ARTICLE VI**

### **DRAINAGE AND EROSION CONTROL**

Section 1. Lots 1, 83, 84, 85 and 87 are encumbered with drainage easements ("Drainage Easements") granted by the Plat and have been dedicated to the County of Bernalillo. The Drainage Easements are restricted to drainage, flood control, conveyance of storm waters, and the construction, operation and maintenance of and access to such facilities. The land located within the Drainage Easements shall not be disturbed and no dwelling or outbuildings shall be placed within the Drainage Easements. Except by written approval of the County Engineer, no fence, wall, building or other obstruction may be placed or maintained in said Drainage Easements, and there shall be no alteration of the grades or contours. The granting of the Drainage Easements to the County of Bernalillo does not obligate the County of Bernalillo to maintain natural arroyos, drainage channels, or facilities that do not meet the standards of the County Engineer for design and construction nor is the County of Bernalillo obligated to provide protection of the property lying outside of the Drainage Easements. Safe locations for structures built on lands adjacent to the Drainage Easements may be substantially outside of the Drainage Easements. Any portion of the Drainage Easements dedicated to the County of Bernalillo by the Plat shall revert to the Lot Owner upon which it is located, its successors and assigns as and to the extent said portion is declared unnecessary for flood control

and drainage by the County Engineer of Bernalillo County. Such reversion will require vacation approval pursuant to the Bernalillo County Subdivision Ordinance.

Section 2. Each Owner shall be responsible for the construction and maintenance of and the handling and disposal of all surface water drainage and storm runoff from their Lot in accordance with the Drainage Plan.

Section 3. Each Lot Owner is responsible for complying with the Drainage Report and Grading Plan and for release or retentions of surface water drainage in accordance with said plans and each Owner shall hold harmless the County of Bernalillo and Grantor from any expense, maintenance and liability connected to the aforementioned.

Section 4. Due to the fragile vegetation and erodibility of soil, any structures, corrals or stables shall be constructed and maintained to prevent any soils erosion and shall be in compliance with the Grading Plan and Drainage Report.

Section 5. All Lot Owners shall become members of Entranosa and conform to its by-laws, rules and regulations.

## **ARTICLE VII ENCROACHMENT EASEMENTS**

Should minor variations between lot lines as shown on the Plat and actual physical lot boundaries (such as walls, including interior party walls, and fences) occur, either due to original construction, reconstruction, repair or due to the settling, shifting or movement of structures, a valid easement shall exist for the encroaching Improvements for so long as the encroachment exists.

## **ARTICLE VIII MISCELLANEOUS**

Section 1. The Grantor may include restrictions, other than these set out herein, in any contract or deed to any Lots without otherwise modifying the general plan as now set forth, and such other restrictions shall inure to the benefit of and bind the respective parties in the same manner as though they had been expressed herein.

Section 2. The restrictions herein set out shall be referred to, adopted and made a part of each and every contract and deed executed by and on behalf of the Grantors of said Property, and any part thereof, to all such intents and purposes as though incorporated in full thereof; and each such contract and/or deed shall be conclusively held to have been so executed, delivered and accepted upon the express conditions herein stated.

Section 3. None of the Lots within the Subdivision shall be further subdivided to create two (2) or more building sites, however, two (2) or more Lots may be combined into one (1) building site.

Section 4. Solar energy collectors shall be allowed only if constructed in such a manner that they are built into the basic lines of the parent structure to create an aesthetically pleasing appearance from adjoining properties and streets and provided further, if they are visible from any street within the subdivision, they must be shielded from view. The screening or covering used must match and blend with the improvement or structure to which it is attached, and must be shown in detail on the plans submitted to the Committee.

Section 5. In the event of any conflict between these Restrictions and the Bernalillo County Zoning Ordinance, the more restrictive regulations shall control.

**(Note: there is no ARTICLE IX in original document)**

## **ARTICLE X ENFORCEMENT**

Section 1. All provisions of this Declaration shall be binding on all Lots and the Owners, regardless of the source of title of such Owners, and any breach thereof, if continued for a period of thirty (30) days from and after the date that the Committee or Owner of other property shall have notified in writing the Owner of the Lot upon which such breach has been committed to refrain from a continuance of such action and to correct such breach, shall warrant the Grantor or other Lot owner to apply to any court of law or equity having jurisdiction thereof for an injunction or other proper relief. However, this Declaration shall not be binding on any Owner, except in respect to breaches committed during the time such Owner owns or has an interest in said Lot. If such relief is granted, the court may award to the plaintiff in such action his reasonable expenses in prosecuting such suit, including attorneys' fees.

Section 2. No delay or omission on the part of the Owner or Owners of Lot or Lots in exercising any right, power, or remedy herein provided for in the event of any breach of any of this Declaration shall be construed as a waiver thereof or acquiescence therein.

Section 3. No right of action shall accrue, nor shall any action be brought or maintained by anyone whomsoever against the Grantor for or on account of the failure or neglect of the Grantor to exercise any right, power, or remedy herein provided for in the event of any breach of this Declaration.

Section 4. In the event that any one or more of the provisions of this Declaration herein set forth shall be held by any court of competent jurisdiction to be null and void, all remaining provisions of this Declaration shall continue unimpaired and in full force and effect.

## **ARTICLE XI AMENDMENTS**

Section 1. This Declaration may be amended from time to time by written amendment executed by Owners owning sixty-five percent (65%) of the Lots, which Amendment shall become effective upon recording with the Bernalillo County real estate records.

Section 2. Notwithstanding Section 1 of this Article, Grantor shall have the authority to unilaterally change, amend or modify this Declaration until 90% of the Lots within the Subdivision laws, provided, that such changes, modifications or amendments do not materially change the character and quality of the Lots subject to this Declaration and do not materially increase the number of Lots within the Property and; provided further, that the prior written consent of the Architectural Control Committee has been obtained and does not violate any subdivision laws.

## **ARTICLE XII DURATION**

This Declaration as amended from time to time shall continue to be binding upon the Grantors, their successors and assigns, the Owners, and their heirs, assigns, personal representatives and all parties claiming by, through or under them, for a period of twenty-five (25) years from the date this

instrument is filed for record in the office of the County Clerk of Bernalillo County, New Mexico, and shall automatically be extended for successive period of fifteen (15) years each; provided, however, that at any time within one (1) year prior to the expiration of the first twenty-five (25) year period, or within one (1) year of the expiration of any fifteen (15) year period thereafter, the Owners of the majority of the Lots may provide for the release of any and all of the Lots hereby restricted, from any part of this Declaration, or modifying this Declaration in whole or in part, at the end of the first twenty-five (25) year period or at the end of any successive fifteen (15) year period, by executing and acknowledging a proper agreement or agreements in writing for such purpose and filing the same for record in the manner then required for the recording of land instruments, which election shall require the same procedures as amendment of this Declaration.

IN WITNESS WHEREOF, SMR5, LLC, has caused this instrument to be executed this \_\_\_\_ day of May, 2005.

SMR5, LLC, A New Mexico limited liability company

By: (signed)

Matthew W. Fetterman

Member

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