

WHEN RECORDED, RETURN TO:
Ventana West LLC
ATTN: Tony Sciarrillo
10 Tramway Loop, NE
Albuquerque, NM 87122

**CERTIFICATE OF AMENDMENT
AMENDING DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS, ASSESSMENTS, CHARGES, SERVITUDES,
LIENS, RESERVATIONS AND EASEMENTS FOR
VENTANA RANCH WEST**

THIS CERTIFICATE OF AMENDMENT is made this 10 day of January, 2005 by VENTANA WEST LLC, a New Mexico limited liability company ("Declarant");

WITNESSETH:

WHEREAS, Declarant has previously recorded a Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for Ventana Ranch West, recorded in the records of Bernalillo County on November 23, 2004 as document number 2004162726 (the "Declaration"); and

WHEREAS, Declarant is still the owner in fee of all of the Tracts of land constituting Ventana Ranch West, and said Tracts, which are legally described on **Exhibit A** attached hereto and incorporated herein by this reference, are all subject to the Declaration; and

WHEREAS, the Tracts are being sold to one or more Developers who intend to subdivide the same into Lots which they will then develop with single family residences; and

WHEREAS, in connection with the anticipated development of the Tracts, Declarant, pursuant to its rights and powers under Article XV, Section 15.2 of the Declaration, has adopted an as amendment to the Declaration the provisions set forth below and is recording this Certificate to memorialize the same.

NOW, THEREFORE, Declarant hereby declares, covenants and agrees as follows:

1. Article I, Section 1.15, of the Declaration is deleted and replaced with the following:

1.15 "Common Area and Common Areas" shall mean (a) all Association Land and the Improvements thereon; (b) all land within the Covered Property which the Declarant, or any Developer, by a Recorded Plat or other Recorded documents, makes



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available for use by Members of the Association and evidences its intent to convey to the Association at a later date; (c) all land within the Covered Property which the Declarant, or any Developer, indicates on a Recorded subdivision plat is to be used for landscaping, water retainage, drainage, and/or flood control for the benefit of Ventana Ranch West and/or the general public and is to be dedicated to the public for the City of Albuquerque upon the expiration of a fixed period of time, but only until such land is so dedicated; and/or (d) all land within Ventana Ranch West which is owned privately or by a governmental agency for which the Association has accepted responsibility for maintenance, and for which the Association benefits by limited use, full use, or aesthetic consistency, for the benefit of the Members.

2. Article I, Section 1.18, of the Declaration is deleted and replaced with the following:

1.18 "Declarant" shall mean Ventana West LLC, a New Mexico limited liability company, and its corporate successors and assigns. Developers shall not be considered as successors or assigns of Declarant.

3. An additional subparagraph is added to Article I, Section 1.27 of the Declaration as subparagraph "(3)" thereof, as follows:

(3) All Tracts and Lots owned by Declarant, or a Developer who purchases the subject Lot(s) or Tract(s) for the purpose of constructing Single Family detached housing thereon, so long as the Declarant or Developer is the owner thereof.

4. Article I, Section 1.43, of the Declaration is deleted and replaced with the following:

1.43 "Single Family" shall mean a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not all so related, who maintain a common household in a Dwelling Unit. Notwithstanding this definition, this Declaration shall in no event prohibit living arrangements otherwise permitted by ordinance, law or regulation.

5. The final sentence in Article IV, Section 4.2(l), of the Declaration is deleted and replaced with the following:

Landscaping shall comply with any applicable design guidelines adopted by Declarant or the Ventana Ranch West Community Association Design Review Committee.

6. Article IV, Section 4.2(u), of the Declaration is deleted and replaced with the following:

(u) Perimeter Walls. Perimeter walls shall be constructed by the Declarant. The Association shall be responsible for maintenance, repair, replacement, graffiti

removal and upkeep of the exterior side of perimeter walls. Each Lot owner shall be responsible for maintenance, repair, replacement, graffiti removal and upkeep of the interior side of any portion of a perimeter wall on his Lot, as well as the overall structural integrity of any portion of a perimeter wall on his Lot. Lot owners may not alter the perimeter walls in any manner without the written approval of the Design Review Committee.

7. Article IV, Section 4.2(w), of the Declaration is deleted and replaced with the following:

(w) Restriction on Further Subdivision, Property Restrictions and Rezoning. No Lot shall be further subdivided or separated into smaller Lots by any Owner other than the Developer of said Lot, and no portion less than all of any such Lot, shall be conveyed or transferred by any Owner other than its Developer, without the prior written approval of the Board. This provision shall not, in any way, limit Declarant from subdividing or separating into Lots any property at any time owned by Declarant. No portion of a Lot but for the entire Lot, together with the Improvements thereon, may be rented, and then only to a Single Family. No further covenants, conditions, restrictions or easements shall be Recorded against any Lot by any Owner, Lessee, or other person other than the Declarant, so long as Declarant is the owner of said Lot, and other than by a Developer, so long as such Developer is the owner of said Lot, unless the provisions thereof having been first approved in writing by the Board. Any covenants, conditions, restrictions or easements Recorded without such approval being endorsed thereon shall be null and void.

8. The first paragraph of Article VI, Section 6.1, of the Declaration, is deleted and replaced with the following:

Section 6.1. Owners of Lots and Tracts. Every Owner (including the Declarant and any Developer) of a Lot or Tract which is Assessable Property shall be a Member of the Association. For the purposes of this Section, Lots and Tracts owned by the Declarant and any Developer shall be considered Assessable Property, however, said Lots and Tracts will not subject to Assessment so long as they are owned by Declarant or a Developer, unless they are rented or leased to a tenant or lessee in which event such Lot or Tract shall be assessed beginning at such time as all or any portion thereof is rented or leased by someone other than the Developer thereof. Each such Owner (including the Declarant and any Developer) shall have the following number of Memberships:

9. Article VI, Section 6.2, of the Declaration, is deleted and replaced with the following:

Section 6.2. Declarant and Developers. Developers shall be members of the Association for so long as they own any Tract and so long as they still own at least 75% of any Lots they develop within the Covered Property. Declarant shall be a member of the Association for as long as it owns any Lot or Tract or any part of the



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Covered Property or any property covered by the Development Plan which has not been annexed and subjected to this Declaration, and so long as any Developer still owns at least 75% of any Lots developed by a Developer. Declarant may thereafter elect to resign its membership, or it may elect to continue as a member for an additional period not to exceed the date upon which all Lots developed by any Developer have been sold to homebuyers.

10. The definition of "Class II" in Article VI, Section 6.3, of the Declaration, is deleted and replaced with the following:

Class II. The Class II Members shall be the Declarant and any Developer. Each Class II member shall be entitled to one (1) vote for each Membership. Notwithstanding the forgoing, by purchasing a Tract subject to this Declaration, each Developer has automatically granted Declarant an irrevocable proxy to vote all of its votes for it for as long as such Developer remains a member of the Association. No further documentation is needed to evidence this irrevocable proxy.

11. Article VII, Section 7.1 is deleted and replaced with the following:

Section 7.1. Creation of Lien and Personal Obligation of Assessments and Maintenance Charges. Each Lot and Tract owner, except a Developer unless the Developer owns a Lot or Tract subject to assessment as set forth in Section 6.1, by acceptance of a Deed therefor (whether or not it shall be so expressed in such Deed) is deemed to covenant and agree, to pay to the Association the following assessments and charges: (1) Annual Assessments established by this Article VII, (2) Special Assessments for capital improvements or other extraordinary expenses or costs established by this Article VII, and (3) Penalty Assessments as set forth by this Article VII, all such Assessments to be established and collected as hereinafter provided. The Annual Assessments, Special Assessments Penalty Assessments, together with interest, incidental and taxable costs, and reasonable attorney's fees, and all other sums which may become due and payable to the Association by an Owner shall be a charge on the Lot or Tract and shall be a continuing servitude and lien upon the Lot or Tract against which each such Assessment is made. The Annual and Special Assessments against each Lot or Tract shall be based on the number of Memberships appurtenant to the Lot or Tract (including, without limitation, Memberships attributable to Dwelling Units, Condominium Units and/or Rental Apartments located on such Lot or Tract). Each such Annual, Special and Penalty Assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of the Lot or Tract at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them, however, the Assessment Lien itself will run with the land and will not be extinguished except in the case of a transfer pursuant to foreclosure of a superior lien in which the Assessment Lien has been extinguished by such foreclosure. Further, such exemption does not apply to the obligation of the successor in title of the Owner to correct any violation of the



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Declaration, the Ventana Ranch West Rules, or the Design Review Committee Guidelines by the Owner pursuant to Article XI.

12. Article VII, Section 7.3, of the Declaration, is deleted and replaced with the following:

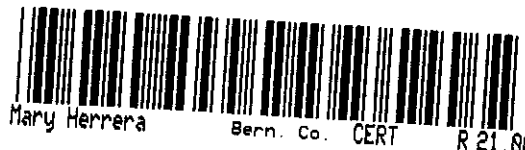
Section 7.3. Determination of Annual Assessment Payment. The Annual Assessment shall be determined as set forth above. Until January 1 of the year following the recording of the first deed conveying a Lot to a homebuyer, the Annual Assessment against each Owner shall be a maximum of eighteen dollars per month (\$18.00/month). Commencing on the year immediately following the recording of the first deed conveying a Lot to a homebuyer and continuing each succeeding year thereafter for as long as a Class II Membership exists, the Annual Assessment may be increased January 1 of each year by the Board up to a maximum of ten percent (10%) per annum. For as long as a Class II Membership exists, the short fall between the amount of Annual Assessments due and payable by the Class I Members and the total budgeted amount of the Annual Assessment necessary for the operation of the Association shall be paid by the Declarant.

(a) Payment of Assessment Amounts. The amount of any Annual Assessment payable by each Owner shall be in accordance with the voting rights described in Article VI as modified herein. All Assessments shall be payable in full when assessed.

13. In Article VII, Section 7.6, of the Declaration, the percentage of Class I Members, or proxies thereof, needed to constitute a quorum is changed from 50% to 30%.

14. The first paragraph of Article X, Section 10.1, of the Declaration, is deleted and replaced by the following:

Section 10.1. Common Areas and Public Right of Way. The Association, or its duly delegated representatives, shall maintain and otherwise manage all Common Areas, including, but not limited to, the landscaping, walkways, paths, parking areas, drives, recreational facilities and the roofs, interiors and exteriors of the buildings and structures located upon the Common Areas; provided however, the Association shall not be responsible for providing or maintaining the landscaping, structures or other Improvements on any Common Areas which are part of Lots or Tracts unless such landscaping, structures or other Improvements are available for use by all Owners and Residents or are within easements intended for the general benefit of Ventana Ranch West. The Association shall not maintain areas which the City of Albuquerque or other governmental entity is maintaining. Specific areas, such as drainage easements, to be maintained by the Association may be identified on subdivision plats Recorded or approved by the Declarant or a Developer in Tract Declarations and in Deeds from the Declarant or a Developer to the Association. Failure to so identify such specific areas to



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EXHIBIT "A"

LEGAL DESCRIPTION

All of Tracts 1A, 1B, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of the Bulk Land Plat for Ventana Ranch West recorded in Bernalillo County, Albuquerque, New Mexico Real Estate records on March 11, 2004, Book 2004-C, Page 84.

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