

LAS BRISAS SUBDIVISION

**COMPREHENSIVE DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS DECLARATION, is made by BBP, INC., a New Mexico Corporation, hereinafter referred to as the "Declarant".

RECITALS

1. Declarant is the owner of that certain real property described in Section 1.12 hereof (the "Subdivision").

2. The purpose of this Declaration is to create and carry out a uniform plan for the improvement, development, sale and use of the Subdivision; to enhance the environmental quality and economic value of the Subdivision.

NOW; THEREFORE, Declarant hereby declares that the Subdivision, and all Lots contained therein, shall be subject to the following restrictions, covenants and conditions which shall run with the land and shall be binding on, and shall inure to the benefit of, all parties having or hereafter acquiring any right, title or interest in the Subdivision or any Lot therein.

ARTICLE I

DEFINITIONS

Section 1.1. "Association" or "Homeowners Association" shall mean the LAS BRISAS Homeowners Association, Inc., a New Mexico non-profit corporation.

Section 1.2. "Improvement" shall mean buildings, garages, carports, animal facilities, streets, roads, antennas, driveways, parking areas, walls and fences, lighting, utility lines and all other man-made improvements of every kind and type.

Section 1.3. "LOT" shall mean each parcel of land shown as a lot on the recorded Subdivision Plat and designated thereon by a separate lot number.

Section 1.4. "Owner(s)" shall mean the record Owner, of title to any Lot. Owner shall include a purchaser of a Lot under an executory contract for sale of real property.

Section 1.5. The "Subdivision" shall mean all of LAS BRISAS Subdivision, as set forth on the subdivision plat filed in real property records of the Sandoval County Clerk on March 20, 1995 in Folio 1230-B as Document No. 63884 in Volume 3 and March 21, 1995 in Folio 1231-B as Document No. 64000 in Volume 3.

Section 1.6. "Structure" shall mean any improvement, construction on any Lot, and which at any point, extends three or more feet above ground level.

Section 1.7. "Subdivision Plat" or "Plat" shall mean the recorded plats of the LAS BRISAS Subdivision.

Section 1.8. "Supplemental Declaration" shall mean any Supplemental Declaration of Covenants, Conditions, and Restrictions bringing or adding additional property within the scheme of this Declaration pursuant to Article 11 hereof.

ARTICLE II

PROPERTY SUBJECT TO DECLARATION

Section 2.1. General Declaration. All property within the Subdivision is and shall be subject to this Declaration, as amended from time to time.

ARTICLE III

LAND USE

Section 3.1. Single-family Residential Use. All Lots shall be used exclusively for single-family residential use. No business or commercial activity shall be conducted within the Subdivision. Home occupations of the Owner are permissible if conducted in the home, studio or workshop.

Section 3.2. Mobile and Modular Homes Prohibited. No mobile home, house trailer, modular home or prefabricated home shall be placed, erected or constructed within the Subdivision.

Section 3.3. Time for Construction. Construction of any Structure or Improvement shall be continual and proceed in an orderly fashion without interruptions and any Structure or Improvement on a Lot shall be completed in a reasonable time, not to exceed twelve (12) months from the commencement of construction.

ARTICLE IV

RESIDENTIAL STRUCTURES

Section 4.1. Requirements. All Structures shall be subject to the following:

(a) Set Backs: All Structures are subject to a twenty-five (25) foot setback requirement from any road or street right of way boundary, and a fifty (50) foot setback requirement from any Structure on an adjacent Lot. A twenty-five (25) foot setback shall also be observed from side and rear Lot lines. Provided, however, that the Architectural Control Committee may, in its discretion, grant an exception of these setback requirements.

(b) Minimum Floor Areas: All residences constructed on any Lot shall have a floor area of not less than 1,800 square feet, exclusive of portals, porches (open and closed), patios, garages, carports, balconies or decks.

(c) Plans and specifications for all buildings or improvements, including, without limitation, the architectural style of such buildings, will be subject to the approval of the Architectural Control Committee. The decision of the Architectural Control Committee with respect to any proposed buildings, including, without limitation, the architectural style thereof shall be final. Without limitation the Architectural Control Committee may in its discretion may disapprove any building which has an architectural style other than Southwestern/New Mexico Pueblo, New Mexico territorial, or Spanish Mission architectural style. All buildings should be in natural earth-tone colors. Flat roofs are encouraged. Contemporary clerestory styles and other active and passive solar features may be permitted if the Structure represents an appropriate and integrated blend of contemporary and traditional style and technology. Pitched roofs are prohibited unless demonstrably consistent with a recognized, traditional Northern New Mexico pitch.

d) Height Limitations: Maximum building height shall be seventeen and one-half (17-1/2) feet, exclusive of chimney, measured from the natural ground at the highest point adjacent to the building.

e) Private Waste Disposal Systems: Private waste disposal systems shall be allowed only when approved by all

appropriate public health agencies including the State of New Mexico Environmental Improvement Division.

(f) Tanks, Air Conditioners and Swamp Coolers: All tanks, air conditioners, and swamp coolers shall be screened so as not to be visible from neighboring property, or from any street or road. Oil or gasoline tanks are prohibited on any Lot. Any butane or propane tanks shall be placed underground.

(g) Exterior Lighting: All exterior lighting shall be shielded so as to not project on or toward neighboring property.

Section 4.2. Antennas and Satellite Dishes: Antennas may be constructed if attached to a building and shall not extend beyond the highest point of the roof, or shall be hidden so as to be not visible from neighboring property. No free-standing antennas will be allowed except as may be specifically permitted by the Architectural Control Committee.. Satellite dishes may be erected as long as the dish is not to be visible from neighboring property, or from any street or road. No radio signals, television signals, or any other form of electromagnetic radiation shall originate from any Lot which may unreasonably interfere with the reception of any television or radio signal on any other Lot.

Section 4.3. Underground Utility Lines. Any utility lines shall be installed underground, provided, however, that this provision does not forbid temporary above-ground power lines incident to the construction of buildings.

Section 4.4. Temporary Structures - Occupancy During Construction. No mobile home, tent, shack or temporary building of any kind shall be used on any Lot within the Subdivision either on a temporary or permanent basis.

Section 4.5. Outbuildings. Acceptable out-buildings are limited to (1) a principal residence, including a garage or carport for not more than three automobiles, and (2) a guest house, studio, workshop or other outbuilding, not to exceed 600 square feet.

Section 4.6. Signs. Except for a 24" X 36" "For Sale" sign, no sign shall be erected or maintained on any Lot or parcel of Property within the Subdivision.

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ARTICLE V

RESTRICTIONS

Section 5.1. Animals - Household Pets. The total number of domesticated household pets is limited to five (5) outdoor pets per Lot. Non-domesticated animals are not permitted. Horses, cattle, pigs, sheep, goats and other non-household animals are prohibited. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance, and no pets will be allowed on any property other than the Lot of its Owner unless confined to a leash or under voice control. No animal may be boarded for hire on a Lot and no kennels or breeding operation will be allowed.

Section 5.2. Non Disturbance of Natural Vegetation and Maintenance of Lawns and Planting. No Owner shall cut, destroy, or remove any pinon or juniper tree on any Lot except pursuant to building of Structures approved by these covenants.

Section 5.3. Landscaping. Each Lot may have a vegetable garden area of not more than 500 square feet. All other plants, shrubs, trees and other vegetation shall be drought-resistant natural vegetation, which is indigenous to the area.

Section 5.4. Hunting/Trapping/Firearms and Explosives. Hunting, trapping and discharge of firearms or other explosives are prohibited within the Subdivision.

Section 5.5. Dumping. Dumping of refuse and other unsightly or offensive material is prohibited.

Section 5.6. Mineral Exploration. No mining or drilling for exploration or removal of any minerals of any kind shall be permitted.

Section 5.7. Business Activities. No business or commercial activity frequented by and open to the general public (and in any event no outdoor business or commercial activity) shall be conducted within the Subdivision. Home occupations of the Owner are permissible if conducted entirely within the home, studio and/or workshop.

Section 5.8. Obnoxious Activities. No nuisance, obnoxious or offensive activities shall be permitted on any Lot, nor shall any rubbish or debris be permitted to accumulate on any Lot. No exterior speakers, horns, whistles, bells or any other devices, except security devices used exclusively for security purposes, shall be used on any Lot which are audible from neighboring property.

Section 5.9. Garbage. Any garbage or trash shall be kept in covered containers. No garbage or trash shall be buried on any Lot nor shall the burning thereof be permitted except for yard waste such as tumbleweeds as permitted by law.

Section 5.10. Vehicles and Equipment. (a) No bus, truck larger than a one-ton pickup, semi-trailer, tractor, or heavy machinery or equipment shall be kept on any Lot. No motor vehicle or trailer shall be constructed, reconstructed or repaired on the Property in such a manner as will be visible from neighboring property. Motor homes, recreational house trailers, horse trailers, truck campers, boats, boat trailers and recreational vehicles which are intended to be kept on any Lot by the Owner must be placed within an enclosed garage. (b) No vehicle shall be allowed to park overnight on any street or road within the Subdivision. (c) The use of motorcycles shall be limited to those which are legal for street use. No off-road use of any motorcycles shall be permitted.

Section 5.11. Continuing Adequacy of Repair. No Structure or Improvement upon any Lot shall be permitted to fall into disrepair, and all Structures and Improvements shall be kept in good condition and repair and adequately painted or otherwise finished.

Section 5.12. Fences and Walls. Any fences and walls must be constructed within fifty feet of the principal residence on each Lot. No fence or wall may be placed within twenty-five feet of any Lot line.

ARTICLE VI

MEMBERSHIP AND VOTING RIGHTS

Section 6.1. Member. Every Owner of a Lot shall be a member of the Association.

Section 6.2. Votes. Members shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, The one vote for such Lot shall be exercised as they determine.

ARTICLE VII

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 7.1 Creation of the lien and personal obligation of assessments. The Owner of each Lot within the Subdivision, is obligated to pay to the Association:

- (a) Annual assessment or charges; and
- (b) Special assessments for capital improvements, road maintenance and legal fees, such assessments to be established and collected as hereinafter provided.

The annual and special assessments shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment shall also be the personal obligation of the person or entity who was the Owner of such Property at the time when the assessment fell due.

Section 7.2. Purpose of Assessments. The assessments levied by the Association shall be used to promote the privacy, safety, and welfare of the residents of the Subdivision.

Section 7.3. Maximum Annual Assessment. The annual assessment shall be determined by the Board of Directors of the Association, but until January 1, 1996, the maximum annual assessment shall be \$50.00 per Lot. Beginning January 1, 1996 and thereafter for each succeeding year, the maximum annual assessment may not be increased more than (5%) above the maximum assessment for the previous year, unless such increase is approved by the affirmative vote of two-thirds of all votes cast by Members at a meeting duly called for this purpose.

Section 7.4. Special Assessments. In addition to the annual assessment authorized above, the Association may levy in any calendar year a special assessment applicable to that year only for the purpose of defraying the following:

(a) The cost of any construction, reconstruction, repair or replacement of capital improvements that may be owned by the Association, (b) the cost of road maintenance and/or improvement of any street or road within the Subdivision and/or any street or road which provides access to the Subdivision; and (c) The cost of any legal action, including legal fees, incurred by the Association while enforcing the provisions of this Declaration and/or protecting the property rights of the Association and/or its members, against claims or infringements by property owners adjoining the Properties; provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Members of the Association who are voting in person or by proxy at a meeting duly called for this purpose. The Board of Directors may elect to have a special assessment paid in annual, semi-annual, quarterly or monthly installments.

Section 7.5. Notice and Quorum for any Action Authorized Under Sections 7.3 and 7.4. Written notice of any meeting which is required for the purpose of taking any action under Sections 7.3 or 7.4 shall be sent to all members not less than 15 days nor more than 30 days in advance of such meeting. The presence of Members or of proxies entitled to cast 51 percent (51%) of all votes shall constitute a quorum.

Section 7.6. Uniform Rate of Assessment. Both annual and special assessment must be based on a "per Lot" basis.

Section 7.7. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within 30 days after the due date shall bear interest from the due date at the rate of ten percent (10%) per annum. The Board of Directors of the Association may do any or all of the following:

(a) File a lien for any unpaid assessment by recording an affidavit of such fact in the office of the County Clerk of Sandoval County, New Mexico.

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(b) Bring an action at law against the Owner personally obligated to pay the same, and/or

(c) Foreclose the lien against the property.

In the event any of the foregoing actions are taken by the Association, then the Owner shall be obligated to pay to the Association reasonable attorneys' fees and costs incurred by the Association.

Section 7.8. Subordination of the Lien to Mortgages. The lien of the assessments provided herein shall be subordinate to the lien of any first mortgage granted by an Owner of a Lot. Sale or transfer of any Lot shall not affect the assessment lien.

ARTICLE VIII

ARCHITECTURAL CONTROL COMMITTEE

Section 8.1. An Architectural Control Committee is hereby established, consisting of Lynzie Flynn and Jonathan Zimmerman, to serve for a period of ten years from the date hereof and until their successors shall be appointed and qualify. Vacancies occurring either before the end of, or as a result of the expiration of such ten-year term shall be filled by the members of the Committee, provided that within thirty days of any appointment, owners of a majority of the residential lots may select other appointees in their stead.

Section 8.2. Before anyone shall commence the construction, remodeling, addition to, or alteration of any building, wall, fence, tank, visible air conditioner, radio antenna more than 5 feet above a building, or other structure whatsoever, on any Lot, there shall be submitted to the Architectural Control Committee two complete sets of the plans and specifications for said work and no such structure or improvement of any kind shall be erected, altered, placed or maintained upon any Lot unless and until the final plans, elevations and specifications therefor have received such written approval as herein provided. Such plans shall include plat plans showing the location of the Lot or property of the wall, fence, coping, or other structure proposed to be constructed, placed, altered, or maintained, and elevation of same, together with the proposed color scheme for roofs and exteriors thereof, indicating materials for same.

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The Architectural Control Committee is authorized to charge not more than \$150.00 for review of plans for new construction and not more than \$50.00 for review of plans for alteration of existing structures. The Architectural Control Committee shall approve or disapprove said plans and specifications within thirty days from the receipt thereof. One set of said plans and specifications with the approval or disapproval endorsed thereon shall be returned to the owner and the other copy thereof shall be retained by the Architectural Control Committee.

The Architectural Control 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 this Declaration, or if a design or color scheme in the proposed structure is not in harmony with the general surroundings of such Lot or the adjacent structure, or if the plans and specifications submitted are incomplete, or if the Architectural Control Committee deems said plans and specifications to the contrary to the spirit and intent of these Restrictive Covenants, or contrary to the interest and the welfare and rights of all or any part of Las Brisas Subdivision. The decision of the Architectural Control Committee in any of these matters shall be final, and no building or improvement of any kind shall be constructed or placed upon any Lot in Las Brisas Subdivision without the prior written consent of the Architectural Control Committee.

The Architectural Control Committee shall not be responsible in any manner whatsoever for any defect in any plans or specifications submitted nor as revised by the Architectural Control Committee, or for any work done pursuant to the requested changes of said plans and specifications.

The Architectural Control Committee may, in its discretion, condition its approval regarding the construction of any building or other improvement upon the Owner's and/or contractor's posting of an appropriate bond or deposit for the purpose of protecting against unnecessary or improper destruction or damage to vegetation and/or other damage within the Subdivision, during the course of such construction.

ARTICLE IX

GENERAL PROVISIONS

Section 9.1. Enforcement. The Association and/or any Owner shall have the right to enforce this Declaration. In any such proceedings, the prevailing parties shall be entitled to recover cost and expenses, including reasonable attorney's fees. Failure by the Association or any Owner to enforce any restriction, covenant, condition, duty or right herein contained shall not be a waiver of their respective right to do so at a later time.

Section 9.2. Covenants to Run with the Land. This Declaration shall run with the land, and shall be binding upon, and inure to the benefit of, the Owner of any Lot therein, their respective legal representatives, heirs, successors and assigns for a term of fifty (50) years from the date this Declaration is recorded in the real property records of Sandoval County, New Mexico. After which time this Declaration, shall automatically be extended for successive periods of ten (10) years, unless amended, modified or repealed as hereinafter provided.

Section 9.3. Any of the provisions of this Declaration may be amended by a recorded written instrument, executed and acknowledged by the then Owners of not less than 75% of the Lots in the Subdivision. This Declaration may be repealed as of the expiration of the initial fifty-year term of this Declaration, or as of the beginning of each successive ten-year term of this Declaration, by a recorded written instrument, executed and acknowledged by the then Owners of not less than seventy-five percent (75%) of the Lots in the Subdivision.

Section 9.4. Severability. Invalidation of any provision hereof shall not affect the validity of any other provision.

Section 9.5. Rentals. No portion of a Lot, other than the entire Lot together with all Improvements thereon, may be rented or leased and then only to a single person, family or family-sized unit.

Section 9.6. Resubdivision. No Lot within the Subdivision shall be further subdivided or separated into smaller Lots or parcels of less than 2 acres.

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ARTICLE X

EASEMENTS

Section 10.1. Existing Easements. The Subdivision Plat will dedicate for use certain roadways, streets, rights-of-way and easements and such Subdivision Plat will establish dedications, limitations, reservations and restrictions applicable to the Subdivision and the Lots.

Section 10.2. Utility Installation and Maintenance. There is hereby created an easement along and on both sides of any Lot line, which easement shall have a width of seven and one-half (7.5) feet on each side of such Lot line for the installation, replacing, repairing and maintaining of all underground utilities, including, but not limited to, gas, telephone, electricity and cable television. The utility companies furnishing service shall have the right as necessary to remove plants and trees situated within the utility easements shown on the Subdivision Plat and to trim overhanging trees and shrubs located on portions of the Lots abutting such easements.

Section 10.3. Drainage Easements. Each Owner covenants to provide easements for drainage and water flow as contours of land and the arrangement of Improvements require. Each Owner further covenants not to disturb or displace any trees or other vegetation within the drainage easements as defined in this Declaration and shown on the Plat. There shall be no development, Improvements or Structures, temporary or permanent, in any drainage easement.

ARTICLE XI

Section 11.1. Subsequent Dedications. All of the roadways shown on the Plat are public roads maintained at the expense of the Association. The Association shall have the right to petition the County to maintain the roads in the Subdivision at any time and to release the roads to the County for that purpose, without obtaining the approval or consent of any Owner. Notwithstanding any other provisions hereof to be the contrary, no Owner of any Lot shall, or shall have the right or authority to, dedicate or purport to dedicate to the public all or any portion of any Lot, private road or private access easement without the prior written consent of the Association and, where required by law, the County of Sandoval.

