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**Condominium Declaration  
for  
Residencias del Rio Pueblo, a Condominium**

000958

Article 1  
Submission of the Property; Defined Terms

**1.1 Submission of Property.** K&A Enterprises, LLC, a New Mexico limited liability company, owner of the real property described in Exhibit "A" annexed hereto, located within Taos County, New Mexico, submits the real property, together with all easements, rights and appurtenances thereto (Property) to the provisions of New Mexico Laws 1982, Chapter 27 (Chapter 47, Articles 7A, 7B, 7C and 7D, N.M.S.A. 1978), known as the New Mexico Condominium Act (Condominium Act or the Act), and creates a Condominium with respect to the Property to be known as Residencias del Rio Pueblo, a Condominium (Condominium).

**1.2 Defined Terms.**

- **Association:** Residencias del Rio Pueblo Condominium Association, a New Mexico non-profit corporation.
- **Bylaws:** the Bylaws of the Association filed with the New Mexico Public Regulation Commission.
- **Directors:** the Board of Directors of the Association.
- **Documents:** The Declaration, Plat and Plans recorded and filed pursuant to the provisions of the Condominium Act, the Bylaws, and any Regulations as they may be amended from time to time. Any exhibit, schedule, or certification accompanying a Document is a part of that Document.
- **Eligible Mortgagee:** The holder of a first Security Interest in a Unit which has notified the Association, in writing, of its name and address, and that it holds a first Security Interest in a Unit. Such notice shall be deemed to include a request that the Eligible Mortgagee be given the notices and other rights described in Article 6.
- **Owner:** the owner of a Unit as defined herein.
- **Property:** The real property in Taos County, New Mexico, more particularly described on Exhibit A.
- **Regulations:** The Regulations of the Association, adopted by the Board of Directors of the Association pursuant to §47-7C-2 NMSA 1978.
- **Reserved Common Element:** a portion of the Common Elements designated by the Board of Directors for the exclusive use of one or more but fewer than all the Units, pursuant to §47-7C-2, N.M.S.A. 1978.
- **Security Interest:** An interest in real estate created by contract or conveyance, which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, land sales contract, lease intended as security, assignment of lease or rents intended as security, and any other consensual lien or title retention contract intended as security for an obligation.

• **Other Terms:** Terms not otherwise defined herein or in the Plat, Plan, Exhibits, or Bylaws, or in any amendment hereto, shall have the meanings specified in §47-7A-3 of the New Mexico Condominium Act.

**Article 2**  
**Buildings on the Property; Unit Boundaries; Maintenance**

**2.1 The Buildings.**

The location, dimensions and area of the buildings on the Property are depicted on Exhibit B, (Plat and Plan).

**2.2 Units.**

The location of Units and any Limited Common Elements allocated exclusively to each Unit are shown on the Plat and Plan. Attached as Exhibit C hereto is a list of all Units, their identifying letters, size (as shown more fully on the Plat and Plan), and the undivided percentage interest of each Owner in the Common Elements and Common Expenses (Percentage Interest) appurtenant to each Unit determined on the basis of size. The size of each Unit is the total number of interior square feet determined by reference to the dimensions shown on the Plat and Plan. The percentage ownership interest in the Common Elements, liability for common expenses, and vote allocated to each Unit is the ratio of the size of the Unit to the size of all Units in the Condominium, expressed as a decimal fraction. Each Unit shall be allotted one vote in the Association. The number of Units created hereby is two (2).

**2.3 Unit Boundaries.**

Each Unit consists of the space within the walls, floors and ceilings of that Unit.

**2.4 Maintenance Responsibilities.**

Each Owner shall be responsible for the maintenance and repair of his Unit, and the Limited Common Elements appurtenant thereto. Each Owner shall be responsible for the repair and replacement of glass in the windows and doors of his unit. All replacement glass shall be subject to the approval of the Association. Should the Board of Directors determine that any Owner has neglected properly to maintain or to repair any Limited Common Element appurtenant to his Unit, the Board may provide exterior maintenance upon such Limited Common Element.

**2.5 Common Expenses Attributable to Fewer than all Units.**

Any Common Expense associated with the maintenance, repair or replacement of any Limited Common Element shall be assessed against the Unit or Units to which the Limited Common Element is assigned. If any such Limited Common Element is assigned to more than one Unit, the Common Expenses attributable to the Limited Common Element shall be assessed equally among the Units to which it is assigned.

Any Common Expense for services provided by the Association to an individual Unit at the request of the Owner shall be assessed against the Unit which benefits from such service.

Any Common Expense for maintenance of a building containing Units shall be assessed against the Units in that building.

Any insurance premium increase attributable to a particular Unit by virtue of activities in or construction of the Unit shall be assessed against that Unit.

An assessment to pay a judgment against the Association may be made only against the Units in the Condominium at the time the judgment was entered, in proportion to their Common Expense liabilities.

If a Common Expense is caused by the misconduct of an Owner, the Association may assess that expense exclusively against that Owner's Unit.

Fees, charges, late charges, fines, collection costs, and interest charged against an Owner pursuant to the Documents and the Act are enforceable as Common Expense assessments.

### **Article 3 Restriction on Units and Common Elements**

#### **3.1 Designation of Reserved Common Elements.**

The Board of Directors shall have the power in their discretion to designate from time to time certain Common Elements as Reserved Common Elements and grant reserved rights to any or less than all of the Owners and establish a reasonable charge to such Owners for the use and maintenance thereof. Such designation by the Board shall not be construed as a sale or disposition of the Common Elements.

#### **3.2 Use of Unit and the Common Elements.**

The use of each Unit is restricted to that of a single family residence and accessory uses as permitted herein. Except for those activities conducted as a part of the marketing and development program of the Declarant, no industry, business, trade or commercial activities other than home professional pursuits without employees, public visits or nonresidential storage, mail or other use of a Unit shall be conducted, maintained or permitted in any part of a Unit, nor shall any Unit be used or rented for transient, hotel or motel purposes. A single-family residence is defined as a single housekeeping unit, operating on a nonprofit, noncommercial basis with a common kitchen and dining area, and with no more overnight occupants than two per bedroom as designated on the plans on file with the building official of the Town of Taos. No immoral, improper, offensive or unlawful use may be made of the Property and Owners shall comply with and conform to all applicable laws and regulations. A violating Owner shall hold the Association and other Owners harmless from all fines, penalties, costs and prosecutions for the violation thereof or noncompliance therewith.

#### **3.3. Occupancy Restrictions.**

The following occupancy restrictions apply to all Units and to the Common Elements:

- No electrical device creating electrical overloading of standard circuits may be used without permission from the Board of Directors. Misuse or abuse of appliances or fixtures within a Unit which affects other Units or the Common Elements is prohibited. Any damage resulting from such misuse shall be the responsibility of the Owner from whose Unit it shall have been caused. Total electrical usage in any Unit shall not exceed the capacity of the circuits as labeled on the circuit breaker boxes.
- Each Owner shall keep his or her Unit in a good state of preservation and cleanliness. No storage of trash will be permitted in or outside any Unit in such

manner as to permit the spread of fire, odors, seepage, or encouragement of vermin.

- All fixtures and equipment will be used for the purposes for which they were designed.
- No noxious, offensive, dangerous or unsafe activity shall be carried on in any Unit, nor shall anything be done therein either willfully or negligently, which may be or become an annoyance or nuisance to the other Owners or occupants. No Owner or occupant shall make or permit any disturbing noises by himself or herself, his or her family, servants, employees, agents, visitors and licensees, nor do or permit anything to be done by such persons that will interfere with the rights, comforts or convenience of other Owners or occupants.
- No sign, window display or advertising visible from outside a Unit shall be maintained or permitted in any part of a Unit, except with the prior permission of the Association.
- Any household pet, of gentle disposition, may be kept within the boundaries of a unit. Pets may not be kept for any commercial purpose. Any pet causing or creating a nuisance or unreasonable disturbance or noise shall be permanently removed from the Property upon three days' written notice from the Board. Owner shall hold the Association harmless from any claim resulting from any action of their pets. Seeing eye dogs and hearing ear dogs will be permitted. In no event shall any pet be permitted in any portion of the Common Elements unless carried or on a leash.

### **3.4 Restrictions on Alienation**

A Unit may not be conveyed pursuant to a time-sharing plan. Any lease of a Unit shall include a provision that the occupant will recognize the Association as landlord, solely for the purpose of having the power to enforce a violation of the provisions of the Documents against the tenant, provided the Association gives the landlord notice of its intent to so enforce and a reasonable opportunity to cure the violation directly, prior to the commencement of an enforcement action.

### **3.5 Subdivision of Units.**

No Unit may be subdivided as provided in §47-7B-13 of the Act.

## **Article 4 Easements**

### **4.1 Easement for Ingress and Egress Through Common Elements and Access to Units.**

4.1.1 Each Owner in common with each other Owner is hereby granted a non-exclusive easement appurtenant to each Unit for ingress and egress through all Common Elements, subject to such reasonable rules, regulations and restrictions as may be imposed by the Owners' Association.

4.1.2 Declarant reserves in favor of Declarant and the managing agent and/or any other person authorized by the Board of Directors the right of access to any Unit as provided in §47-7C-7 of the Condominium Act. In case of emergency, such entry shall be immediate whether the Owner is present at the time or not.

## Article 5 Amendment of Declaration

### 5.1 Restrictions On Amendments.

No material amendment of this Declaration may be made by the Association or the Owners without the prior written consent of fifty-one percent (51%) of the Eligible Mortgagees holding Security Interests encumbering Units. An addition or amendment to this Declaration shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only. Any amendment or change to any provisions which establishes, governs or regulates any of the following are material:

- Voting;
- Changes the Percentage Interests of any Unit for purposes of levying assessments or otherwise changes the obligations of any Unit for assessment liens or subordination of such liens;
- Responsibility for maintenance and repairs;
- Reallocation of interest in the Common Elements, or rights to their use except that when Limited Common Elements are reallocated by agreement between Owners, only those Owners and only Eligible Mortgagees holding Security Interests in such Units must approve such action;
- Boundaries of any Unit and/or partition or subdivision of any Unit or the Common Elements except that when boundaries of only adjoining Units are involved, or a Unit is being subdivided, then only those Owners and the Eligible Mortgagees holding Security Interests in such Unit or Units must approve such action;
- Convertibility of Units into Common Elements or of Common Elements into Units;
- Expansion or contraction of the project or the addition, annexation or withdrawal of property to or from the provisions of the Condominium;
- Imposition of any right of first refusal or similar restriction on the right of a Owner to sell, transfer, or otherwise convey his or her Unit;
- Restoration or repair of the Property (after a hazard damage or partial condemnation) in a manner other than specified in the Act or Documents;
- Assessments, assessment liens or subordination of assessment liens;
- Reserves for maintenance, repair and replacement of Common Elements;
- Establishment of self-management when professional management had been required previously by any Eligible Mortgagee;

- By act or omission withdraw the submission of the Property to the Act, except as provided by the Documents and Act, in case of substantial destruction or condemnation of the Units and Common Elements; or
- Any provisions which are for the express benefit of Eligible Mortgagees.

Notwithstanding the foregoing, the approval of sixty-seven percent (67%) of all the Eligible Mortgagees is required to add or amend any material provisions of the Declaration which terminates the legal status of the Property for reasons other than the substantial destruction or condemnation of the Property.

#### **5.2 Implied Consent of Eligible Mortgagees.**

A proposed amendment shall be deemed approved by an Eligible Mortgagee if the Eligible Mortgagee fails to object or consent to a written proposal for an amendment within thirty (30) days after receipt of the written proposal.

#### **5.3 Amendment by Owners.**

Except as otherwise provided or reserved herein or in the Act, this Declaration may be amended only by a vote of agreement of Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

#### **5.4 Implied Consent of Owners.**

A proposed amendment shall be deemed approved by an Owner if the Owner fails:

- to vote in person or by proxy at a meeting properly called for that purpose; and
- fails to object or approve a written proposal for an amendment within thirty (30) days after receipt of a written proposal following such meeting.

**5.5 Execution of Amendments.** An amendment to the Declaration required by the Act to be recorded by the Association, which has been adopted in accordance with this Declaration and the Act, must be prepared, executed, recorded and certified on behalf of the Association by an officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association.

### **Article 6 Protection of Security Interests**

#### **6.1 Eligible Mortgagee Protection.**

Except as specifically provided in the Declaration or in the Act, no provision of the Declaration shall be construed to grant to any Owner or to any other person, any priority over any lien rights of an Eligible Mortgagee pursuant to its Security Interest in the case of distributions of insurance proceeds or condemnation awards.

#### **6.2 Subordination.**

Notwithstanding any other provision of this Declaration to the contrary, the lien of any assessment levied pursuant to the Bylaws upon any Unit (and any penalties, interest on assessments, late charges or the like) shall be subordinate to, and shall in no way affect the rights of an Eligible Mortgagee; provided, however, that such

subordination shall apply only to assessments on a Unit which have become due and payable prior to a sale or transfer of such Unit pursuant to a decree of foreclosure, or to any deed or other proceeding in lieu of foreclosure, and any such sale or transfer in foreclosure or in lieu of foreclosure shall not relieve the purchaser of the Unit from liability for any assessment thereafter becoming due, nor from the lien of any such subsequent assessment.

### **6.3 Notice of Actions.**

The Association shall give prompt written notice to each Eligible Mortgagee of:

- Any condemnation loss or any casualty loss which affects a material portion of the Condominium or any Unit in which there is a Security Interest held by such Eligible Mortgagee;
- Any delinquency in the payment of Common Expense assessments owed by a Owner whose Unit is subject to a first Security Interest held by such Eligible Mortgagee, which remains uncured for a period of sixty (60) days;
- Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;
- Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Article 5 hereof; and
- Any judgment rendered against the Association.

### **6.4 Inspection of Books.**

The Association shall permit any Eligible Mortgagee to inspect the books and records of the Association during normal business hours.

### **6.5 Financial Statements.**

The Association shall provide any Eligible Mortgagee, which submits a written request, with a copy of an annual financial statement within ninety (90) days following the end of each fiscal year of the Association. Such financial statement may be audited by an independent certified public accountant if any Eligible Mortgagee requests it, in which case the Eligible Mortgagee shall bear the cost of the audit.

### **6.6 Enforcement.**

The provisions of this Article are for the benefit of Eligible Mortgagees and their successors, and may be enforced by any of them by any available means, at law, or in equity.

### **6.7 Attendance at Meetings.**

Any representative of an Eligible Mortgagee may attend and address any meeting which a Owner may attend.



**Article 7  
Association May Assign Income**

The Owners' Association shall have all the powers provided for in §47-7C-2 of the Condominium Act including but not limited to the right to assign its right to future income (including the right to receive Common Expense Assessments) for the purpose of securing repayment of funds borrowed or indebtedness incurred by the Association in the performance of its responsibilities.

**Article 8  
Special Declarant Rights**

**8.1 Declarant Control of the Association.**

Pursuant to §47-7C-3 of the Condominium Act, Declarant reserves the right to appoint the members of the Board of Directors of the Association during the maximum period allowed by Subsections D and E of §47-7C-3, subject to the provisions of §47-7C-3(E).

**8.2 Use for Sales Purposes.**

All Units shall be subject to the statutory right in favor of Declarant provided in §47-7B-15 of the Condominium Act. Declarant reserves the right to use any Units owned by Declarant as models, management offices or sales offices until such time as Declarant conveys title thereto to Owners. Declarant reserves the right to relocate the same from time to time within the Property; upon relocation or sale of a model, management office or sales office, the furnishings thereof may be removed. Declarant further reserves the right to maintain on the Property such advertising signs as may comply with applicable governmental regulations, which may be placed in any location on the Property and may be relocated or removed, all at the sole discretion of Declarant.

**8.3 Creation of Units, Common Elements and Limited Common Elements.**

Declarant reserves the right, until the tenth (10<sup>th</sup>) anniversary of the recording hereof, to create within the Condominium up to nineteen (19) additional Units, Common Elements and Limited Common Elements as described in Exhibit "B". These may be built at any time and in any order.

**8.4 Adjustment of Allocated Interests.**

If Declarant exercises the right to add additional Units to the Condominium, the Percentage Interest of each Unit in the Common Elements and Common Expenses shall be computed and reallocated on the basis of size, as specified in §2.2 hereof and each Unit shall be allotted one (1) vote in the Association.

**8.5 No Limitation as to Development Rights.**

Any Development Right herein reserved by the Declarant under Article 8 may be exercised with respect to different parcels or portions of the Property at different times. No assurance is made as to the boundaries of those portions of real property subject to any Development Right or as to the order in which those portions may be subject to the exercise of each Development Right.

**Article 9  
Substantial Completion**

It is hereby certified that the structural and mechanical systems of all buildings containing Units, have been substantially completed in accordance with the Plat and Plan.

**Article 10  
Taxation**

Each Unit shall be deemed a separate parcel for tax purposes, and shall be separately assessed.

In witness whereof, the undersigned have executed this Declaration this 18<sup>th</sup> day of November, 2002.

Declarant: K&A Enterprises, LLC

By: Kent Lewis  
Kent Lewis, Member

By: Angela Lewis  
Angela Lewis, Member

State of New Mexico

County of Taos

The foregoing instrument was acknowledged before me on November 18, 2002, by Kent and Angela Lewis as Members of K & A Enterprises, LLC, a New Mexico Limited Liability Company.

Jennifer C. Trujillo  
Notary Public



[SEAL]

My Commission Expires: 10/16/04

Amendment to Condominium Declaration  
for  
Residencias del Rio Pueblo, a Condominium

# 272041  
12-5-02  
9:09

The undersigned is the holder of Special Declarant Rights reserved in the Declaration for Residencias del Rio Pueblo, a Condominium, filed for record at Book M-351, Pages 958-971, Records of Taos County, New Mexico (Declaration).

The undersigned hereby exercises its Reserved Special Declarant Rights to create two new units on the land subject to the Declaration.

The Plat and Plan attached hereto as Exhibit B is added to the Declaration to reflect the floor plan and location of the building containing Units 1 and 3, which are hereby created.

Exhibit "D" attached hereto reflects the sizes of Units 1 and 3, and reallocates the percentage interests allocated to all Units.

It is hereby certified that the structural and mechanical systems of the buildings containing Units 1 and 3 have been substantially completed in accordance with the plans.

Dated: December 3, 2002

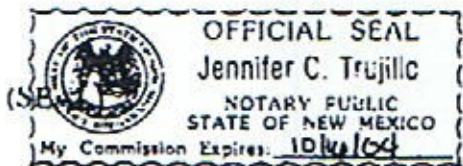
Declarant: K&A Enterprises, LLC

By: [Signature]  
Kent Lewis, Member

By: [Signature]  
Angela Lewis, Member

State of New Mexico )  
                                  )SS:  
County of Taos       )

This instrument was acknowledged before me on December 3, 2002, by Kent Lewis and Angela Lewis, Members of K&A Enterprises, LLC, on behalf of said limited liability company.



[Signature]  
Notary Public

My Commission Expires: 10/16/04

000871

Unit	Size (ft <sup>2</sup> )	Allocated Interest
1	1252	23.8613%
3	1463	27.8826%
6	1,266	24.1281%
8	1,266	24.1281%
<b>Total</b>	<b>5247</b>	<b>100.0000%</b>



COUNTY OF TAOS )SS  
STATE OF NEW MEXICO )

I hereby certify that this instrument was filed  
for record on the 5<sup>th</sup> day of June A.D.  
2002 at 9:09 o'clock A m.  
and was duly recorded in book 10.352  
page 871-872 of the records of Taos County,

Witness my Hand and Seal of Office  
Jeannette G. Ruel  
County Clerk, Taos County, N.M.

[Signature]  
Deputy

Exhibit D

000S72

### Tract A

A certain tract of land designated as Tract A, lying and being situate within Private Claim 100, Parcel 2, Tract 398, Exception 171, Section 8, Township 25 North, Range 13 East, N.M.P.M., Taos Pueblo Grant, near El Prado, Taos County, New Mexico and being more particularly described by metes and bounds as follows:

Beginning at a point located more or less along the centerline of the Rio Pueblo de Taos being witnessed by capped rebar #8327 that bears S 19°35'00" E, 19.70 feet from whence U.S.G.L.O. Brass Cap monument bears the following courses: S 19°35'00" E, 234.90 feet; N 61°05'58" E, 267.54 feet; thence, from said point of beginning, along said river centerline, the following courses, S 79°50'39" W, 35.82 feet; to a point; thence, N 83°25'21" W, 79.64 feet to a point; thence, S 79°22'39" W, 116.77 feet to a point; thence, S 84°11'39" W, 183.40 feet to a point being witnessed by capped rebar #8327 that bears S 32°11'00" E, 15.00 feet; thence, from said point, leaving said centerline, N 32°11'00" W, 38.90 feet to a point; thence, N 85°24'50" E, 423.19 feet to a point; thence, S 19°35'00" E, 31.30 feet to the point and place of beginning.

Containing 0.279 acres or 12,160 sq. ft. more or less as more fully shown on a plat of survey for "Residencias del Rio Pueblo, a Condominium" by AGS Land Surveying, N.M.L.S. No. 11183 dated 07/17/02 and having Job No. 733. Note: shown in the Taos County Assessor's Office as a portion of an unnumbered tract, Map 10, Survey 2 of the 1941 Taos County Reassessment Survey.

### Tract B

A certain tract of land designated as Tract B, lying and being situate within Private Claim 100, Parcel 2, Tract 398, Exception 171, Section 8, Township 25 North, Range 13 East, N.M.P.M., Taos Pueblo Grant, near El Prado, Taos County, New Mexico and being more particularly described by metes and bounds as follows:

Beginning at a 3/4 inch pipe at the southeast corner of this tract from whence a U.S.G.L.O. Brass Cap Monument bears N 61°05'58" E, 267.54 feet; thence, from said point of beginning, S 54°15'52" W, 173.73 feet to capped rebar #8327; thence, S 70°47'14" W, 146.56 feet to a 1/2 inch pipe; thence, N 33°12'10" W, 42.83 feet to a #4 rebar; thence, N 32°11'00" W, 351.98 feet to a point located along the centerline of the Rio Pueblo de Taos being witnessed by capped rebar #8327 that bears S 32°11'00" W, 15.00 feet; thence, along said river centerline, the following courses; N 84°11'39" E, 183.40 feet to a point; thence, N 79°22'39" E, 116.77 feet to a point; thence, S 83°25'21" E, 79.64 feet to a point; thence, N 79°50'39" E, 35.82 feet to a point being witnessed by capped rebar #8327 that bears S 19°35'00" E, 19.70 feet; thence, leaving said centerline, S 19°35'00" E, 234.90 feet to the point and place of beginning.

Containing 2.630 acres more or less as more fully shown on a plat of survey for "Residencias del Rio Pueblo, a Condominium" by AGS Land Surveying, N.M.L.S. No. 11183 dated 07/17/02 and having Job No. 733. Note: shown in the Taos County Assessor's Office as a portion of Tracts 113 & 114, Map 10, Survey 2 of the 1941 Taos County Reassessment Survey.

Exhibit A

000968

Unit	Size (ft <sup>2</sup> )	Allocated Interest
6	1,266	50.0000%
8	1,266	50.0000%
<b>Total</b>	<b>2532</b>	<b>100.0000%</b>

Exhibit C

000969