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RESTRICTIVE COVENANTS
FOR THE
WOODLANDS SUBDIVISION

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
FILED FOR RECORD

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BK JUDY B. COLEMAN
CO. CLERK 5932.

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RESTRICTIVE COVENANTS FOR THE WOODLANDS SUBDIVISION

WHEREAS, C. J. Mead, Inc., is the Developer of that certain subdivision known as "The Woodlands", as shown on a plat for THE WOODLANDS SUBDIVISION, located in the County of Bernalillo, State of New Mexico, according to that certain plat recorded in Volume 96C of records of said County Folio 110 of the records of the County Clerk of Bernalillo County, New Mexico, and bearing the recording date of March 8, 1996, at 3:36 p.m.; and

WHEREAS, said Developer, pursuant to a general plan for the mutual benefit, protection and enjoyment of all the property owners in THE WOODLANDS and for the mutual benefit, protection and enjoyment of prospective purchasers of lots in said subdivision, desire to place thereon certain restrictive covenants as to the use and occupancy of all of the lots in said subdivision, and shall be included in full or by reference in all deeds or real estate contracts thereto.

NOW THEREFORE, said Developer does hereby impose the following restrictive covenants which run with the land:

ARTICLE I

LAND USE

Section 1.1. Single-family Residential Use. All property shall be used, improved and devoted exclusively to Single-family Residential Use. Nothing contained herein shall be deemed to prevent the leasing of all of a lot and residence to a single person, family or family-sized residence from time to time by the Owner thereof, subject to the provisions of these Restrictive Covenants.

Section 1.2. Development Plan. Each Owner shall be required to submit a detailed development plan to the Architectural Control Committee (hereinafter referred to as the "Committee") as to all anticipated construction and improvements upon their lot or lots, which plan shall be designed within the pre-determined building envelope designated upon the recorded plat and such plan must be approved in writing prior to the commencement of construction of any improvement. No construction whatsoever, including, without limitation, site preparation, clearing of trees or excavation, shall commence without the prior written approval of the Committee. All construction and development shall comply strictly with the development plan as approved by the Committee. Reclamation measures intended to preserve the pre-construction character of disturbed surface conditions shall be explicitly identified within the development plan.

Section 1.3. Time for Construction.

(a) Construction of any structure or improvement shall be continuous 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.

(b) Commencement of construction shall mean the first on-site work for construction, including, but not by way of limitation, clearing of trees, excavation or site preparation for the purpose of foundation.

(c) Materials and equipment necessary for construction, and all debris resulting from clearing or construction, shall be confined to the building envelope, and shall not be left on areas outside of the building envelope or any other lots, common Areas or roadways. All such debris shall be contained within a suitable form of trash receptacle approved by the Committee prior to the start of any construction.

Section 1.4. Rentals. No portion of a lot, other than the entire lot together with the improvements thereon, may be rented or leased and then only to a single family, for residential use.

Section 1.5. Re-subdivision. No lot within the subdivision shall be further subdivided or separated into smaller lots or parcels by any Owner.

ARTICLE II

RESIDENTIAL STRUCTURES

Section 2.1. Requirements: All single-family residential structures shall be subject to the following requirements, and each enumerated item must be included in the development plan submitted and approved in writing by the Committee prior to the commencement of construction. Once approved, no structure or improvement may vary from the development plan without further approval of the Committee. No modular or mobile homes shall be approved.

(a) Set Backs. All structures are subject to a fifty (50) foot setback requirement from the front lot line and from any road or street right of way boundary, and a fifty (50) feet setback requirement from any structure situated on an adjacent lot. A twenty-five (25) foot setback shall also be observed from side lot lines. The Committee shall have the right to impose additional and/or modified setback requirements from all lot lines to preserve lines of sight of neighboring properties.

(b) Building Envelope. Building envelopes, designed to restrict the area of disturbance during home construction, shall be designated on the recorded plat. The committee shall verify that individual development plans recognize these lot disturbance boundaries (building envelopes) during construction and for the period of time such residence or any replacement thereof shall remain on such lot. All structures shall be constructed within the building envelope.

(c) Minimum Floor Areas. All single-family residential structures shall have a floor area of not less than one thousand eight hundred (1,800) square feet of heated livable space, exclusive of portals, porches (open and closed), patios, garages, carports, balconies or decks.

(d) Height Limitations. The Committee shall have the right to impose limitations on a lot by lot basis on the height of any structure or improvement to preserve lines of sight and views enjoyed by neighboring lots and to insure adherence to the subdivision design and architectural style. No structure shall exceed a maximum height of 26 feet from ground level.

(e) Exterior Finish. The Committee shall have the right to impose limitations on the exterior color and building materials to be used in all Structures consistent with subdivision design and architectural style. Brick, stucco and some wood siding materials are acceptable. The colors of such products shall be approved on an individual basis.

(f) Roofing Materials. The Committee shall have the right to impose limitations on roofing materials and colors to be used in any structure. Pro-panel roofing and concrete roofing materials are acceptable. The colors of such products shall be approved on an individual basis.

(g) Driveway. The Committee shall have the right to impose limitations on driveway design, including materials, dimensions, aprons, location and point of contact with dedicated roads, streets or other private driveways in the subdivision. The Committee may require the installation and maintenance of culverts at the point of contact with dedicated roads or wherever a driveway crosses a drainage way. It shall be the intent of the Committee to permit a single driveway to each residence and to minimize driveway-related disturbances of existing surface conditions. All slopes remaining after construction shall be seeded with native vegetation and maintained by the owner. Circular, dual-access driveways shall be prohibited.

(h) Garbage Containers. The Committee shall have the right to require each Owner to specify a specific location for trash service, and shall require each Owner to construct a permanent facility of acceptable design and materials at such

approved location for the placement of garbage containers for collection purposes. The Committee shall also have the right to require owners to contract with a single private solid waste disposal company, capable of providing domestic on-site pick-up services.

(i) Solar Heating Collectors, Tanks, Air Conditioners and Swamp Coolers. The Committee shall have the right to approve the location of any active solar equipment, tank, air conditioner or swamp cooler used or proposed in connection with a single-family residential Structure, including propane tanks, tanks for storage of water, and swimming pool filter tanks. All tanks, air conditioners, and swamp coolers shall be screened so as not to be visible from neighboring property, or from any street, road, easement or right-of-way. Oil or gasoline tanks are prohibited on any lot.

(j) Exterior Lighting. The Committee shall have the right to approve the location, number, size and design of all proposed exterior lighting and such lighting shall be in strict accordance with the Bernalillo County East Mountain Lighting Ordinance. No street lamp or neon arc lamps will be permitted.

(k) Internal Plumbing Fixtures. All interior plumbing fixtures shall be of the low-flow type, and approved by the appropriate building authority. Each residence shall be tied to the constructed wetland system.

Section 2.2. Trees, Shrubs and Landscaping. The Committee shall have the right to approve the removal and/or addition of trees, shrubs, hedges, ground cover and all other landscaping in an effort to maintain and preserve the historical appearance of the site, within the building envelope and will permit only such removal as shall be absolutely necessary to construction of approved buildings. There shall be no disturbance of existing trees or other ground cover on the portion of the lot outside of the building envelope during construction. After construction is completed, the disturbed area shall be replanted and reseeded. Native landscaping shall be encouraged. Vegetation requiring long-term irrigation shall not be allowed. Establishment of import or vegetation (including gardens and related agricultural plots) requiring long-term irrigation may be acceptable when proposed in conjunction with water reclamation/conservation measures on the development plan.

Section 2.3. Windmills, Towers and Antennas. No windmill, antenna or other service for the transmission or reception of television signals, radio signals or other form of electromagnetic radiation visible from any street shall be erected, used or otherwise employed, without prior approval of the Committee. 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. This provision does not apply to any public or private utility company. Satellite dishes or dishes of any other nature shall not be visible from any street, and shall be adequately screened or painted so as to not be visible. Any dish shall be approved by the Committee prior to its installation.

Section 2.4. Underground Utility Lines. All permanent public and private utility lines shall be placed underground. Erection of temporary power or telephone structures incident to the construction of buildings or structures which have been previously approved in writing by the Committee shall be allowed. The installation method, including, but not limited to, location, type of installation equipment, trenching method and other aspects of installation, for both temporary and permanent utilities shall be included in the development plan and approved in writing by the Committee. Trenching for all utility lines to each residence shall fall within a defined private utility corridor, preferably in close proximity to or beneath the driveway, to be identified on the development plan.

Section 2.5. Temporary Structures - Occupancy During Construction. No trailer, basement or any incomplete building, tent, shack, garage or barn and no temporary building of any kind shall be used at any time for a residence on the property within the subdivision either on a temporary or permanent basis.

Section 2.6. Out-buildings. Acceptable out-buildings include a principal garage or carport and either a studio, office or workshop. Any proposed out-buildings must be included in the development plan situated within the platted building envelope and approved in writing by the Committee.

Section 2.7. Signs. Except for a 24" x 36" "For Sale" sign, no sign, billboard, or advertising structure shall be erected or maintained on any lot or parcel of property within the subdivision, unless approved in writing by the Committee and shall be further subject to any codes or ordinances applicable to such signs.

Section 2.8. Improvements and Alterations. No structures, improvements, alterations, repairs, excavations or other work which in any way alters the exterior appearance of any Structure within the subdivision or the appearance of any other improvements located thereon shall be made or done without the prior written approval of the Committee.

Section 2.9. Solar Equipment. Request for approval of installation of any type of solar equipment shall be included in the development plan and approved in writing by the Committee.

Section 2.10. Chemical Fertilizers, Pesticides or Herbicides. No commercial chemical fertilizers, pesticides or herbicides other

than those approved by the Committee shall be used on any of the property. This provision in no way limits the use of those products which are readily available for consumer use and approved by an agency, such as the Food and Drug Administration, for the purpose intended.

Section 2.11. Committee Approval. No structure or development of any kind shall be commenced, erected, placed or altered on any lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the Committee as to compliance with these covenants, style, harmony of external design with existing structures, and as to location with respect to topography and finish grade and elevation upon the lot. The committee's approval or disapproval, as required in these covenants, shall be in writing. In general, owners shall be entitled to build on a location heretofore designated as the "building envelope" within their lot where they so choose, but subject to the direction and approval of the Committee. Such location shall be in accordance with Paragraph 2.1 (a) of these covenants and so located that such structure is fully or partially hidden from roadways and contiguous residences by existing trees and other vegetation. In the event that the Committee, or its designated representative, fails to approve or disapprove, within thirty (30) days after all of the plans and specifications have been finally submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required, and the related covenant shall be deemed to have been fully complied with.

Section 2.12. Prohibition Against Further Subdivision. No lot may be subdivided, nor may a portion of any residential lot be sold, other than to a joint owner of the whole lot.

Section 2.13. Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved. Such easements are shown on and dedicated by recorded plat.

ARTICLE III

RESTRICTIONS

Section 3.1. Animals - Household Pets. No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained or cared for on the property. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed on the property other than the lot of its Owner unless confined to a leash or under voice control. Upon written request of any Owner, the Committee shall conclusively determine at its sole discretion, in accordance with its rules,

whether an animal is a domestic household pet, whether an animal is being allowed to run at large or whether an animal is a nuisance. The decision of the Committee in such matters is final, conclusive and shall be enforced as other restrictions contained herein. Except for domestic pets, no animal may be stabled, maintained, kept, cared for or boarded for hire or remuneration on the property and no commercial or boarding kennels shall be allowed. All confined animals shall be kept within an enclosed area which must be clean, sanitary and reasonable free of refuse, insects and waste at all times.

Section 3.2. Non-Disturbance of Native Grasslands, Natural or Imported Vegetation and Plantings. No Owner shall cut, tamper, destroy or remove any natural grassland or any pinon or juniper tree on any lot except pursuant to the development plan for said lot approved in writing by the Committee. Each Owner, on his lot, shall keep all shrubs, trees, grass and planting of every kind which are visible from neighboring property or from a dedicated road, common property or common facility, properly cultivated, pruned and free of trash and other unsightly material. Whenever the Developer and/or the Association or Committee shall, in good faith, believe an abuse of native vegetation shall have occurred upon any lot, Developer, and/or the Association or the Committee shall have the right at any reasonable time to enter upon any lot, assess alleged or perceived abuse of native vegetation and replace, maintain or cultivate shrubs, trees, grass or other plantings located thereon, at cost to Owner.

Section 3.3. Clothes Drying Facilities. Outside clothes lines or other facilities for drying clothes or airing clothes shall not be erected, placed or maintained on any lot unless they are concealed in such a manner so as not to be visible from neighboring property or from streets or from access roads.

Section 3.4. Dumping. Dumping of ashes, trash, rubbish, sawdust, garbage, land fill, solid waste and any type of refuse and other sightly or offensive material is expressly prohibited within the subdivision.

Section 3.5. Mineral Exploration. No mining, quarrying, tunneling, excavation or drilling for exploration or removal of any minerals including oil, gas, gravel, rocks, earth or earth substances of any kind shall be permitted within the subdivision.

Section 3.6. Obnoxious Activities. No Nuisance, obnoxious or offensive activities shall be permitted on any lot, nor shall any rubbish or debris of any kind be placed or permitted to accumulate on or adjacent to any of the property within the subdivision, and no odors shall be permitted to arise therefrom, so as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of

any of the foregoing provision, no exterior speakers, horns, whistles, bells or any other devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such property which are audible from neighboring property.

Section 3.7. Vehicles and Equipment. No bus or truck larger than a one-ton pickup, semi-trailer, tractor, machinery or equipment shall be kept or placed upon any lot except during the course of making deliveries, or for the purpose of loading or unloading, or while such property is being maintained, constructed, reconstructed, or repaired. No motor vehicle or trailer of any type 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 of any sort or type which are intended to be kept on the property by the Owner must be placed in such a manner that they will not be visible from neighboring property or from dedicated roadways, common facilities or common properties. No motorized vehicle of any kind may be operated in any manner which is dangerous, noisy or which creates a nuisance.

Section 3.8. No Overnight Parking. No vehicle of any kind shall be allowed to park overnight on any roadway within the subdivision.

Section 3.9. Emergency or Temporary Maintenance Vehicles. The provisions of these Restrictive Covenants shall not prevent any emergency vehicles repairs or operation of an emergency vehicle, ambulance, snow removal equipment etc., within the subdivision. The provisions of these Restrictive Covenants shall also not prevent the operation or temporary use of construction trailers, vans, or other trucks, machinery/equipment, construction shelters or facilities maintained during and used exclusively in connection with the construction of any improvement approved in writing by the Committee.

Section 3.10. Motorcycles. The use of motorcycles shall be limited to those which have been approved and are legal for street use. Such use shall be limited to the public streets. No off-road use of any motorcycles within the subdivision shall be permitted.

Section 3.11. Continuing Adequacy of Repair or Maintenance. No building or structure upon the property within the subdivision shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. Such duty to repair shall include the regular maintenance of any exterior structures and finish which was included in the development plan approved by the Committee.

Section 3.12. Gates, Walls, and Fences. All gates, walls, and fences must be described in the development plan and approved by the Committee.

Section 3.13. Rights and Duties of Developer. Any and all of the right, title, interest and estate given to or reserved by the Developer herein or on the plat of The Woodlands Subdivision may be transferred or assigned to any person, firm or corporation by appropriate instrument in writing duly executed by the Developer and recorded in the office of the County Clerk of Bernalillo County, New Mexico, and wherever the Grantor is hereby referred to, such reference shall be deemed to include its successors and assigns.

ARTICLE IV

ARCHITECTURAL CONTROL COMMITTEE

Section 4.1. Establishment and Composition. There is hereby established an Architectural Control Committee (herein referred to as "Committee"), which shall consist of three (3) regular members. The following persons are hereby designated as the initial members:

<u>Position</u>	<u>Name</u>	<u>Address</u>
Office No. 1	C. J. Mead	5111 San Mateo Blvd., NE Albuquerque, NM 87109
Office No. 2	Richard B. Addis	5111 San Mateo Blvd., NE Albuquerque, NM 87109
Office No. 3	Linda M. Schroeder	5111 San Mateo Blvd., NE Albuquerque, NM 87109

Members of the Committee shall serve without salary or pay and none of the members shall be required to be an architect or to meet any other particular qualifications for membership. They shall be reimburse any expenses incurred on behalf of the Committee.

Section 4.2. Terms of Office. Unless the initial members of the Committee have resigned or been removed, their terms of office shall be for the periods of time beginning as of the date of record of this Declaration and ending on the dates indicated below, and until appointment of their respective successors:

Office Nos. 1 and 2 January 1, 1999

Office No. 3 January 1, 1998

Thereafter, the term of each Committee member appointed shall be for a period of three (3) years and thereafter until the

appointment of a successor. Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term. Members who have resigned or whose terms have expired may be reappointed. At any time the composition of the Committee is added to or altered, a writing referring to and identifying this Declaration by recording data shall be recorded in the real property records of Bernalillo County, New Mexico, setting forth the name and address of each member of the Committee as it is constituted.

Section 4.3. Appointment and Removal. Except as provided below, the right to appoint and remove all regular members at any time, with or without cause, shall be, and hereby is, vested solely in the Developer. At such time as the Developer owns less than ten percent (10%) of the lots (in number) or at such time that the Developer records a waiver of the right herein retained, whichever event occurs first, then the Association shall appoint all members of the Committee in accordance with the Bylaws of the Association.

Section 4.4. Resignations. Any member of the Committee may resign at any time from the Committee from the Committee by giving written notice thereof to the Developer or the Association as the situation requires.

Section 4.5. Vacancy. Vacancies on the Committee, however caused, shall be filled by the Developer. A vacancy shall be deemed to exist in case of death, resignation or removal of any regular or alternate member.

Section 4.6. Transfer of Authority to the Association. The duties, rights, powers and authority of the Committee constituted hereby may be assigned at any time, at the sole election of a majority of the regular members of the Committee to the Association, and from and after the date of such assignment, and the acceptance thereof by the Board of Directors of the Association, the Board of Directors of the Association shall have full right, authority and powers, and shall be obligated to perform the functions of the Committee as provided herein (and in the Bylaws of the Association).

Section 4.7. Address. The address of the Committee shall be 5111 San Mateo Blvd., NE, Albuquerque, NM 87109 or such other place as may from time to time be designated by the Committee by written instrument recorded in the real estate records of Bernalillo, New Mexico; and the last instrument so recorded shall be deemed the Committee's property address.

Section 4.8. Duties.

(a) General: It shall be the duty of the Committee to receive, consider and act upon all proposals, plans, complaints, requests for determination, development plans or other matters

submitted pursuant to the provision of these Restrictions, and to carry out all other duties imposed on it by these Restrictive Covenants, including, but not limited to, the adoption of rules relating to the business of the Committee.

(b) Developmental Plan Submission Fees: The Committee shall require a submission fee of \$250.00 for each proposed development plan. This fee shall be considered as a filing requirement of the development plan and such development plan will not be considered until such costs are paid. The amount of the fee may be amended and fees for other services may be set by the Committee. All fees received by the Committee shall be deposited into an account under control of the Committee and such fees shall be used for the expenses incurred by the Committee in the furtherance of its duties.

Section 4.9. Meetings. The Committee shall meet from time to time as necessary to perform its duties hereunder. The vote or written consent of a majority of the regular members at a meeting shall constitute the act of the Committee. The Committee shall keep and maintain written records of all actions taken by it at such meetings or otherwise.

Section 4.10. Action Without Formal Meeting. The Committee may take action without formal meeting by unanimously consenting in writing on any matter which they might consider at a formal meeting. Such unanimous written consent shall constitute the act of the Committee. For the purposes hereof, unanimous written consent shall mean a writing signed by all members of the Committee.

Section 4.11. Procedure for Submission and Approval of Development Plan.

(a) Submission of a development plan shall be in accordance with the Rules promulgated by the Committee, as authorized by Section 4.8 (a) hereof.

(b) If the Committee fails to approve or disapprove any development plan submitted to it hereunder with thirty (30) days after the date shown on the submittal receipt or fails to give notice of its actions as above required, it shall be conclusively presumed that the Committee has approved such materials as submitted. If the Committee requests additional or amended materials or an amended development plan during the initial thirty (30) day period, or approved on condition that certain additional or amended materials be submitted, such period shall automatically be extended to fifteen (15) days following the date upon which such additional materials are delivered to and received by the Committee. An additional fifteen (15) day extension shall occur if further additional or amended materials are requested or required during any subsequent extension period. If the additional or

amended materials are not received on or before the required date, then the development plan shall be automatically disapproved.

Section 4.12. Basis for Committee Approval or Disapproval. The subdivision is intended by the Developer to be a development composed of homes of fine quality and good appearance. Toward this end, it is intended that the Committee have complete discretion in reviewing, approving or disapproving development plans. Developer intends that the Committee shall have the right to consider as the basis for any approval or disapproval of development plan:

(a) Compliance or non-compliance with objective standards set out in these restrictive covenants;

(b) The nature and quality of the building materials and methods of construction to be used;

(c) The location of the proposed improvements on the lot; and

(d) The visual impact of the proposed improvements from the standpoint of style and consistency with other improvements constructed or approved by the Committee for construction in the subdivision.

Section 4.13. Decisions Conclusive. All decisions of the Committee shall be final and conclusive, and no Owner or any other person, association or entity shall have any recourse against the Committee, or any member thereof, for its or such member's approval or refusal to approve all or any portion of a development plan or of any materials submitted therewith, or for any other decision rendered under the authority of these Restrictive Covenants.

Section 4.14. Liability. Neither the Developer nor the Committee or any member thereof shall be liable to any Owner, or any other person, association, or entity, for any damage, loss or prejudice suffered or claimed on account of:

(a) The approval or disapproval of any development plan or any materials submitted therewith, whether or not defective;

(b) The construction or performance of any work, whether or not pursuant to an approved development plan or any materials submitted therewith;

(c) The development of the property;

(d) The structural capacity or safety features of the proposed improvements or structure;

(e) Whether or not the location of the proposed improvements or structure on the building site is free from

possible hazards from flooding or from any other possible hazards, whether caused by erosion causing sliding conditions;

(f) Compliance with governmental laws, ordinances and regulations;

(g) Any decision made or action taken or omitted to be taken under the authority of these covenants; provided, however, that with respect to the liability of a member, such member has acted in good faith on the basis of such information as may be possessed by him.

Without in any way limiting the generality of any of the foregoing provisions of this Section, the Committee, or any member thereof, may, but is not required, to consult with or determine the view of any other Owner with respect to any plan, or any materials submitted to the Committee.

Section 4.15. Modifications or Waivers. The Committee, upon such terms and conditions, upon the payment of such fees or expenses, and for such procedures as it may prescribe, may, but is not required to, adopt, review and approve or disapprove, in whole or in part, with or without conditions, applications for the modification or waiver of any requirement of these covenants or of the Committee rules applicable to any improvement or use of, in, upon or abutting any lot. Such applications shall contain such information as the Committee may prescribe and shall affirmatively show that the application of such requirements, under the circumstances, creates unnecessary and undue hardship, and that a modification or waiver will not be detrimental (aesthetically, economically, or otherwise) to the Owner of any other lot. The Committee may decide the matter upon the application and any materials or written statements accompanying it or may allow oral presentations in support of or in opposition to the application prior to the decision, at its discretion. The Committee shall render a decision in writing, which decision need not contain any reasons, finding, or conclusions for the decision and shall forward one (1) copy to the applicant, and retain one (1) copy in its records.

Section 4.16. Governmental Agency Approval. Nothing in these covenants shall relieve or be interpreted as purporting to relieve any Owner from also securing such approval(s), certificate(s) or permit(s) of any governmental agency or entity with jurisdiction as may be required by law as a condition to the commencement, construction, maintenance, addition, change or alteration to or of any improvement, and the committee may require that a copy of such approval(s), certificate(s) or permit(s) be provided to the Committee as a final condition to approval of a development plan, or as additional insurance to the Committee that the improvements

and uses of an approved development plan meet governmental requirements, or for both such purposes.

ARTICLE V

HOMEOWNERS ASSOCIATION

Section 5.1. The Association. The developer shall cause the formation and incorporation of the Association a non-profit corporation organized and existing under the New Mexico Non-profit Corporation Act, charged with the duties and invested with the powers prescribed by law and set forth in the Articles of Incorporation, Bylaws, and these Restrictive Covenants. Neither the Articles of Incorporation nor the Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with these covenants.

Section 5.2. Membership. Each Owner (whether one or more persons or entities) of a lot shall, upon and by virtue of becoming such Owners, automatically become a member of the Association and shall remain a member thereof until his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Membership in the Association shall be appurtenant to and shall automatically follow the legal ownership of each lot and may not be separated from such ownership.

Section 5.3. Voting. Subject to the provisions of Section 5.5, all members of the Association in good standing shall be entitled to one (1) vote for each lot owned at any meeting of members of the Association or with respect to any matter submitted to a vote of the members of the Association.

Section 5.4. Board of Directors and Officers. The affairs of the Association shall be conducted by a Board of Directors and such officers as the Directors may elect or appoint, in accordance with the Articles of Incorporation and the Bylaws, as the same may be amended from time to time.

Section 5.5. Control of the Association. Until the first to occur of (a) conveyance by Developer of ninety percent (90%) in number, of all lots or (b) a written relinquishment by Developer of Developer's rights under this Section 5.5 or (c) January 1, 2010, Developer shall have the exclusive right to elect the members of the Board of Directors of the Association, and the members shall thereafter and otherwise, have the right to elect the members of the Board of Directors and to vote on all other matters properly put before the members, all in accordance with the Articles of Incorporation and Bylaws of the Association.

Section 5.6. Powers and Duties of the Association. The Association shall have such rights, powers and duties as set forth

in the Articles of Incorporation and Bylaws, as the same may be amended from time to time.

Section 5.7. Personal Liability. No member of the Board of Directors or any Committee of the Association or any of the officers of the Association shall be personally liable to any Owner or any other party including the Association for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board of Directors or any other representative or employees of the Association; provided, however, that such person has, upon the basis of such information as may be possessed by him, acted in good faith, without willful or intentional misconduct.

ARTICLE VI

ASSESSMENTS

Section 6.1. Maintenance Fund. All funds collected by the Association from the regular maintenance charge provided for in this Article, together with all funds collected by the Association from the regular annual maintenance charges imposed on the lots in the subdivision by all supplemental Restrictive Covenants, shall constitute and be known as the "Maintenance Fund". The Maintenance Fund shall be held, used, and expended by the Association for the common benefit of all Members to promote the health, safety, and welfare of the Members, including, without limitation:

(a) Maintenance and construction of publicly dedicated, but privately maintained roadways, if any, bridges, culverts and related improvements;

(b) The installation, construction, erection, and relocation of improvements related to the enhancement and beautification of the Common Properties and Facilities in the subdivision, including any park and any open space easement, and any other areas provided by these covenants or any supplemental covenants to be developed or maintained by the Association, such as shrubbery, trees, walkways and street lights, and the construction, repair, maintenance and replacement of properties, services, improvements and facilities devoted to such purposes and related to the use and enjoyment of the subdivision by the Members;

(c) Payment of utility charges in connection with the operation of common properties of use of common properties;

(d) Payment of charges for security guards, private fire protection, road maintenance, garbage collection and other services contracted for by the Association;

(e) Charges for liability and property insurance and other insurance related to the common facilities, common properties and their use and operation;

(f) Accounting and legal fees, including legal fees incurred by the Association while enforcing the provisions of these covenants; and

(g) Reasonable reserves for the foregoing.

All funds belonging to the Association shall be deposited into insured accounts in a bank in Albuquerque, New Mexico at interest.

In the event Developer shall operate any common facility in the subdivision, or such common facility shall be operated by others on behalf of Developer under agreement authorized hereby, and the actual proceeds realized by Developer from such operation shall be less than the actual costs incurred by Developer in connection with operating and maintaining any such common facility, Developer shall be entitled to be reimbursed from the maintenance fund for all costs actually incurred by Developer in maintaining and operating such common facility in excess of the actual proceeds realized by Developer from such operation, as such costs are incurred, to the extent that the balance of the maintenance fund from time to time existing exceeds the amount then designated by the Board of Directors of the Association in good faith to be the minimum amount necessary to accomplish the maintenance functions of the Association. Further, Developer shall be entitled to be reimbursed from the maintenance fund for all ad valorem taxes and other assessments in the nature of property taxes, real or personal, and any sales, gross receipts or other taxes, fairly allocable to the common properties and facilities and accrued subsequent to the recordation hereof, and prior to the date on which title to such common properties and facilities is conveyed to the Association by Developer, which have been actually paid by Developer.

Section 6.2. Covenant for Assessments. Each and every lot in the property is hereby severally subjected to and impressed with an initial regular annual maintenance charge or assessment in the amount, until amended by the Board of Directors of the Association, of Three Hundred and Sixty and no/100 Dollars (\$360.00) per year per lot, (herein sometimes referred to as the "full maintenance charge") which charge shall commence on a date determined by the Association and be due and payable in advance on said date and in advance on the first day of January of each year thereafter, and which shall run with the land, and shall be subject to increase and decrease in accordance with the Articles of Incorporation and Bylaws of the Association, by the consent of 66-2/3% of the lot owners. Any lot purchased other than in January will be prorated from the date of purchase through December of that year. No lot

belonging to the Developer shall be subject to any assessment or special charge, until first sold.

Each Owner of a lot, by his claim or assertion of ownership or by accepting a deed to any such lot, whether or not it shall be so expressed in such deed, is hereby conclusively deemed to covenant and agree, as a covenant running with the land, to pay to the Association, its successors or assigns, each and all of the charges and assessments against his lot and/or assessed against him by virtue of his ownership thereof, as the same shall become due and payable, without demand. The charges and assessments herein provided for shall be a charge and a continuing lien upon each lot, together with all improvements thereon, as hereinafter more particularly stated. Each assessment, together with interest costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of the lot at the time the obligation to pay such assessment accrued, and no member shall avoid personal liability for the payment of any assessment by waiver of the use or enjoyment of the common properties or facilities, or any part hereto, or by abandonment of his lot or his interest therein. Any lien upon a lot shall be subordinate to the lien of any first mortgage upon such property, and no mortgagee shall ever be required to collect any assessment.

Section 6.3. Special Maintenance Charge. The Board of Directors of the Association may levy a special assessment or a special maintenance charge to cover any expenses of the Association that for any reason cannot be satisfied by the annual maintenance charge or assessment. The Board of Directors shall send written notice of each special assessment to every owner subject thereto at least thirty (30) days in advance of the due date.

Section 6.4. Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each lot or owner for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the properties together with the name and address of their owners, and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the assessment shall thereupon be sent to every owner subject thereto. The Association shall, upon demand at any time, furnish to any owner liable to said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 6.5. Liens to Secure Assessment. The regular maintenance charges or assessments, any applicable special maintenance charge, as herein provided for, and any other charge or assessment or cost or performance provided for in these covenants

shall constitute and be secured by a separate and valid and subsisting lien, hereby created and fixed, and which shall exist upon and against each lot and all improvements thereon, for the benefit, as appropriate, of the Association which may be a party to any court proceeding to enforce any lien hereinafter deemed to be superior, the lien hereby created shall be subordinate and inferior to:

(a) All liens for taxes or special assessments levied by County and State government, or any political subdivision or special district thereof, and

(b) All liens securing amounts due or to become due under any Real Estate Contract or Contract of Sale, any mortgage or deed of trust filed for record, prior to the date payment of any such charges or assessments become due and payable.

Any judicial foreclosure of any such superior lien under any mortgage, deed of trust, or other security instrument in which the Association has been made a party, shall cut off and extinguish the liens securing maintenance charges or assessments which became due and payable prior to such foreclosure date, but no such foreclosure shall free any lot from the liens securing assessments thereafter becoming due and payable, nor shall the liability of any Member personally obligated to pay maintenance charges or assessments which become due prior to such foreclosure, be extinguished by any foreclosure.

Section 6.6. Effect of Non-Payment of Assessment. If any charge or assessment due the Association is not paid within thirty (30) days from due date thereof, the same shall bear interest from the due date until paid at eighteen percent (18%) per annum, and, if placed in the hands of an attorney for collection or if suit is brought thereon or if collected through probate or other judicial proceedings, there shall be paid to the Association all reasonable attorney's fees and costs of collection incurred by the Association. The Association, as a common expense of all members, may institute and maintain an action at law or in equity against any defaulting member to enforce collection and/or for foreclosure of the liens against his lot. All such actions may be instituted and brought in the name of the Association, as appropriate, and may be maintained and prosecuted in a like manner as an action to foreclose the lien of a mortgage or deed of trust on real property.

Section 6.7. Collection and Enforcement. Each member, by his assertion of title or claim of ownership or by his acceptance of a deed to a lot, whether or not it shall be so recited in such deed, shall be conclusively deemed to have expressly vested in the Association, and in its officers and agents, the right, power and authority to take all reasonable action which the Association shall deem proper for the collection of assessments and/or for the enforcement and foreclosure of the lien securing the same.

ARTICLE VII**DEVELOPER'S EXEMPTION**

Section 7.1. Developer's Exemption. Nothing contained in these covenants shall be construed to prevent the erection and maintenance by Developers of structures, improvements or signs necessary or convenient to the development, sale, operation or other disposition of the property within the subdivision.

ARTICLE VIII**EASEMENTS**

Section 8.1. Existing Easements. The subdivision plats will dedicate for use as such, subject to the limitations set further therein, certain roadways, street, rights-of-way and easements shown thereof and such subdivision plats will establish dedications, limitations, reservations and restrictions applicable to the property. Further, Developer may grant, create and dedicate by recorded instrument(s) certain other easements, restrictions, rights-of-way and related rights affecting the property. All dedication, limitations, restrictions and reservations shown on the recorded subdivision plat and all grants and dedications of easements, restrictions, rights-of-way and related rights made by Developer are incorporated herein by reference and made a part of these covenants for all purposes as if fully set further herein and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Developer conveying any part of the property.

Section 8.2. Utility Installation and Maintenance. There is hereby created an easement upon, across, over and under all of the property for ingress and egress in connection with installing, replacing, repairing and maintaining all utilities, including, but not limited to, sewer, water, telephones, electricity, cable television and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies, utility cooperative associations, and other entities supplying service to install and maintain pipes, wires, conduits, service lines, or other utility facilities or appurtenances thereto on, above, across and under the property, within the public utility easements from time to time existing and from service lines situated within such easements to the point of service on or in any structure. Notwithstanding anything contained in this section, no electrical lines, water lines or other utilities or appurtenances thereto may be relocated on the property until approved by Developer or the Committee. The utility companies, utility cooperative associations, and other entities furnishing service shall have the right as reasonably necessary to remove trees situated within the utility easements shown on the subdivision plat

and to trim overhanging trees and shrubs located on portions of the properties abutting such easements.

Section 8.3. Maintenance of Slopes. Each Owner covenants and agrees to the creation of an easement to maintain a cut or fill side slope on a lot along any publicly dedicated right-of-way to insure the proper maintenance and drainage of roads in the subdivision, and to seed and maintain all vegetation thereon, provided that Owner is requested to do so in writing by the Committee prior to approval by the Committee of the Owner development plan.

Section 8.4. Drainage Easements. All 100-year flood plains designated on the subdivision plat are designated and shall be maintained by the Owner as drainage easements. No dwellings or outbuildings shall be located within the boundaries of the 100-year flood plain. In addition, each Owner covenants to provide easements for drainage and water flow as contours of land and the arrangement of Developer's improvements and improvements approved by the Committee thereon require. Each Owner further covenants not to disturb or displace any trees or other vegetation within the drainage easements as defined in these covenants and shown on the plat. There shall be no development, improvements or structures, temporary or permanent, in any drainage easement.

Section 8.5. Easements for Access by Developer or Committee. Developer, the Committee, and the Association shall have the right and permanent easement to enter upon any and all lots in the subdivision for the purpose of maintenance, repair, removal of drainage obstructions and for the inspections as to compliance with these covenants. Developer, the Committee and the Association shall have the right to enter any lot for the purpose of correcting any violation of any covenant herein. In each instance, reasonable prior notice shall be given to the Owner of such lot, of such intended entry and inspection.

Section 8.6. Surface Area. The surface of easement areas for underground utility services may be used for planting of native-type vegetation of a decorative character. However, neither Developer nor any supplier of any utility service using any easement area or the Association engaged in the re-seeding or re-planting of any neglected area, shall be liable to any Owner or the Association for any damage done by them or either of them or their respective agents, employees, servants or assigns to any of the aforesaid vegetation as a result of any activity relating to the construction, maintenance, operation or repair of any facility in any such easement area.

ARTICLE IX

GENERAL PROVISIONS

Section 9.1. Cost of Performance. Cost and expense in performing any obligation or responsibility in these covenants shall be borne by the person, association, or entity charged with such performance or responsibility.

Section 9.2. Breach not Ground for Rescission. No breach or continuing breach of the restrictions, covenants, conditions, duties or obligations imposed allowed or granted by these covenants shall be grounds for cancellation, termination or rescission of these covenants or of any provision thereof.

Section 9.3. Notice Before Enforcement. Except where damages or injury to persons or property is imminent as a result of the performance or failure to perform or the defective performance of any obligation imposed or restricted by these covenants or where animals are involved, no proceeding for the enforcement of the restrictions, covenants, conditions, rights and duties imposed, allowed or granted by these covenants shall be commenced until ten (10) days' written notice of wrongful performance and such wrongful or defective performance or failure to perform has not been cured within such time. Such notice shall be deemed to be given if deposited in the U.S. Mail, mailed postage prepaid, certified, return receipt requested and said ten (10) days shall commence with the date of posting thereof.

Section 9.4. Enforcement. Developer, the Committee, the Association or any Owner shall have the right to enforce by proceeding, at law or in equity, for damages or for injunction or both, all restrictions, covenants, conditions, rights and duties imposed, allowed or granted by the provisions of these covenants. In any such proceedings, the prevailing parties shall be entitled to recover cost and expenses, including reasonable attorney's fees, and such cost and expenses. Failure by Developer, the Committee, the Association or Owner to enforce any restriction, covenant, condition, duty or right herein contained shall in no event be deemed a waiver of their respective right to do so at a later time.

Section 9.5. Covenants to Run with the Land. The restrictions, easements, covenants, conditions, rights and duties of these covenants shall run with and bind the land within the property, as defined herein, and shall inure to the benefit of the Owner of any lot therein, their respective legal representatives, heirs, successors and assigns for a term of thirty (30) years from the date these covenants are recorded in the real property records of Bernalillo County, New Mexico, after which time such restrictions, easements, covenants, conditions, rights and duties shall automatically be extended for successive periods of ten (10)

years, unless amended, modified or repealed as hereinafter provided.

Section 9.6. Modification or Repeal during Initial Term. Any of the provisions of this Declaration may be amended or repealed during the initial thirty (30) year term by a recorded written instrument, executed and acknowledged by Developer or its successor or assigns, and the Owners of not less than 66-2/3% of the lots.

Section 9.7. Modification or Repeal During extension Terms. Any of the provisions of these covenants may be amended or repealed during any extension term (ten (10) years) by a recorded written instrument executed and acknowledged by Developer and the Owners of not less than 66-2/3% of the lots.

Section 9.8. Severability. Invalidation of any of the provisions hereof by a final judgment or decree of any court shall in no way affect or impair the validity of any other provision hereof.

Section 9.9. Joint and Several Obligations. The terms of these Covenants in effect on the date of any lease or recording of a sheriff's deed, trustee's deed, deed in lieu of foreclosure, other deed, other order or decree declaring, settling or confirming title, pursuant to which one or more persons, associations or entities becomes a Lessee or an Owner as hereinbefore defined, shall bind such new Lessee or new Owner and such new Lessee or new Owner shall be jointly and severally liable with his Lessor or the immediate prior Owner for any continuing performance, failure of performance or defective performance of any act or obligation restricted or imposed hereunder.

Section 9.10. Successors. Deed of conveyance of any lot may contain the provisions, restrictions, covenants and conditions contained herein by reference to these covenants; however, whether or not such reference is made in any or all said deeds, by becoming an Owner as herein defined of any of the property, each such owner, for himself or itself, his heirs, personal representatives, successors, transferrers and assigns, binds himself or itself and such heirs, personal representatives, transferee and assigns to all the provisions, restrictions, covenants and conditions now or hereafter imposed by or under the authority of these covenants and any amendments thereof.

Section 9.11. Assignment of Rights and Obligations of Developer. The rights of Developer hereunder are fully assignable to any person, association or entity and any and all obligations and duties of Developer are fully delegable and assignable to a person, association or entity.

Section 9.12. Mortgage or Conveyance of Common Area. No common area belonging to the Association shall be conveyed or

