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**RESTRICTIONS**

OF

**SAN PEDRO CREEK ESTATES SUBDIVISION**

A Declaration of Restrictions, Covenants and Conditions for the  
Creation and Maintenance Of a Planned Residential Development

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STATE OF NEW MEXICO } ss  
COUNTY OF SANDOVAL }  
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SAN PEDRO CREEK ESTATES SUBDIVISION RESTRICTIONS

A Declaration of Restrictions, Covenants and Conditions for the Creation and Maintenance  
of a Planned Residential Development

THIS DECLARATION is made as of February 28, 1995, by Campbell Farming Corporation, a Montana corporation, with respect to that certain real property situate in Sandoval County, New Mexico and more particularly described as follows:

All of the SAN PEDRO CREEK ESTATES SUBDIVISION, as the same is shown on the Plat thereof recorded in the Sandoval County, New Mexico Real Estate Records on February 22, 1995, in Vol. 3, Folio 1220A.

It is hereby declared that all of the described real property is subject to this Declaration which is for the purpose of creating and maintaining a planned residential development on the described real property and for the improvement and protection of the value, desirability and attractiveness of the described real property.

It is the purpose of this Declaration to create a planned unit residential development originally consisting of ninety-nine (99) single family residential building lots to be located on private streets, with portions of certain lots subject to easements for the benefit of the community, adjoining properties, and/or the public.

This Declaration shall run with the described real property and shall be binding upon and inure to the benefit of Grantor, the Association, each Owner of the described real property or any part of it, and each successor in interest of Grantor, the Association, and any such Owner.

ARTICLE 1  
Definitions

Unless the context otherwise specifies or requires, the terms defined in this Article 1 shall have the meanings as defined in this Article for the purposes of these Restrictions.

Section 1.01: Architectural Control Committee.

The terms "Architectural Control Committee" or "Committee" shall mean the architectural control committee created pursuant to Article 8.

Section 1.02: Association.

The term "Association" shall mean the San Pedro Creek Estates Homeowners' Association, Inc., a New Mexico non-profit corporation described in the Article entitled, "Organization, Powers and Duties of the Association," and any predecessor or successor unincorporated association.

Section 1.03: Board.

The term "Board" shall mean the Board of Directors of the Association and the governing body of any predecessor or successor unincorporated association.

Section 1.04: Common Area.

The term "Common Area" shall mean portions of the Subdivision which have been or will be conveyed to the Association for the benefit of the Lot Owners and Owners of property annexed into the Association in the future. The Common Area within the Subdivision shall be the Private Streets.

Section 1.05: Conservation Easement.

The term "Conservation Easement" shall mean the easement over the Nature Area that Grantor anticipates to convey to the Albuquerque Conservation Trust or another entity for ecology, conservation, nature and/or open space purposes. The Conservation Easement may be in the form attached as Exhibit "A" or in another form as approved by Grantor.

Section 1.06: Easement Area.

The term "Easement Area" shall mean certain interests in real property including Improvements thereon owned or controlled by the Association or owned by the public or the Lot Owners but maintained by the Association for the common use and enjoyment of the Lot Owners and Owners of property annexed into the Association in the future. The Easement Areas are the Trail Easements, the Entrance Area Easements and the Roadway Slope Easements.

Section 1.07: Eligible Mortgagee.

The term "Eligible Mortgagee" shall mean any holder of a first Mortgage lien against any Lot provided that such mortgagee has given the Association written notice of its Mortgage setting forth its name and address and identifying the Lot, by legal description and address, which is subject to such first Mortgage.

Section 1.08: Entrance Area Easements.

The term "Entrance Area Easements" shall mean the entrance area easements to be conveyed to the Association by separate document over portions of Lots 1, 78 and/or 99 as defined in Section 3.05.

Section 1.09: Fiscal Year.

The term "Fiscal Year" shall be the calendar year; but, a different Fiscal Year may be adopted by the Association by By-Law or Board Resolution.

Section 1.10: Grantor.

The term "Grantor" shall mean Campbell Farming Corporation, a Montana corporation, its successors and assigns, who are assigned, in writing, all or part of Grantor's powers and responsibilities for all or a specific area or portion of the Subdivision and who accept such powers and responsibilities in writing. All such assignments and agreements to accept the obligations of Grantor shall be recorded, filed with the Board and placed with the records of the Association. Each person or entity named as Grantor in an assignment may exercise the rights of Grantor provided by these Restrictions for the area assigned, but no general power, such as the power to annex, shall be partially assigned, except for an assignment of all rights under this Declaration.

Section 1.11: Improvements.

The term "Improvements" shall include, without limitation, buildings, out-buildings, (including sheds and storage buildings), roads, driveways, parking areas, fences, retaining walls, privacy walls or fences, subdivision exterior walls or fences, stairs, decks, windbreaks, poles, antennas, signs, utility or communication installations (whether above or underground), and any structure and excavation of any type or kind.

Section 1.12: Lot.

The term "Lot" shall mean each of the Lots shown on the Plat together with the Improvements located on each such Lot, and any lots subsequently annexed into the Association.

Section 1.13: Mortgage.

The term Mortgage shall mean a deed of trust, as well as a mortgage, and the term "Mortgagee" shall mean a beneficiary under or a holder of a deed of trust, as well as a mortgagee.

Section 1.14: Nature Area.

The term "Nature Area" shall mean the property adjacent to the Subdivision, the approximate boundaries of which are shown on the map attached hereto as Exhibit "B". It is anticipated that Grantor will grant a Conservation Easement over the Nature Area to the Albuquerque Conservation Trust or another entity and that the Grantor will convey the fee of the Nature Area (subject to said easement) to the Association.

Section 1.15: Owner.

The term "Owner" shall mean the persons or entities, including Grantor, holding the beneficial ownership of the fee, including the purchaser under a real estate contract, and shall not include persons holding only a security interest or a seller under a real estate contract. For the purposes of the Article entitled, "Permitted and Prohibited Uses of Property," unless the context otherwise requires, "Owner" shall include the family, invitees, licensees and tenants of any Owner.

Section 1.16: Plat.

The term "Plat" shall mean all of the real property shown on the Plat and comprising the plat of San Pedro Creek Estates Subdivision, as recorded in the Sandoval County, New Mexico real estate records on February 22, 1995 in Volume 3, Folio 1220A.

Section 1.17: Private Streets.

The term "Private Streets" shall mean all of the streets within the Subdivision shown on the Plat, designated thereon as "Common Area A" or "Private Street".

Section 1.18: Roadway Slope Easements.

The term "Roadway Slope Easements" shall mean the easements created over portions of the Lots pursuant to Section 3.06 hereof.

Section 1.19: Subdivision.

The term "Subdivision" shall mean the Planned Residential Development subdivision created by and subject to this Declaration.

Section 1.20: Subdivision Restrictions.

The term "Subdivision Restrictions" shall mean, with respect to all property within the Subdivision, the limitations, easements, restrictions, covenants, and conditions set forth in this Declaration, as this Declaration may from time to time be amended. The term "This Declaration" and the title to this Declaration shall have the same meaning as "Subdivision Restrictions."

Section 1.21: Trail Easements.

The term "Trail Easements" shall mean the trail easements created by this Declaration on the portions of the Lots described on Exhibit "C" for the purposes set out in Section 3.07.

ARTICLE 2

Property Subject to Subdivision Restrictions

Section 2.01: Initial Development.

All of the property shown on the Plat.

Section 2.02: Subsequent Development.

Grantor may, pursuant to the following provisions of this section, from time to time and in its sole discretion and without necessity of any approvals, annex real property owned by Grantor or other persons with the permission of such other persons. The annexation of any such property shall become effective when Grantor shall have recorded the following:

- a. A declaration, which may consist of more than one document and which shall, among other things, (i) describe the real property which is to be annexed, (ii) set forth or refer to such additional or other limitations, restrictions, covenants and conditions, applicable to such property, (iii) describe any areas to be included within the Common Areas and/or Easement Areas, and (iv) declare that such property is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved, subject to The Restrictions of San Pedro Creek Estates Subdivision; and
- b. A subdivision plat with respect to the real property described in said declaration.

Upon annexation becoming effective, the property covered by annexation shall become and constitute part of The San Pedro Creek Estates Homeowners' Association, Inc. and the Association shall have and shall accept and exercise jurisdiction over such property as a part of The San Pedro Creek Estates Community.

The annexation declaration, with respect to all or any part of the property described by it, may provide for any or all of the following which shall become part of these Restrictions as applicable to such property:

- (1) Such new land classifications, and the restrictions, covenants and conditions applicable to such property as Grantor deems appropriate for the development of such property; and
- (2) With respect to a land classification provided for by these Restrictions, such additional or different limitations, restrictions, covenants and conditions with respect to use as Grantor deems appropriate for

the development of such property; provided, however, that such additional or different limitations, restrictions, covenants and conditions applicable to Common Area and/or Easement Area lying within such annexed property shall not discriminate between Owners.

The Common Area and Easement Area shall be for the additional benefit of the Owners of property annexed into the Association.

**ARTICLE 3**  
**Permitted and Prohibited Uses of Property**

**Section 3.01: Permitted Uses of Property Within the Subdivision.**

a. Improvements and development within the Subdivision shall be limited to detached residential single family dwellings, having a minimum of 1,800 square feet of heated living area, associated parking, garages, roads and access ways, landscaped areas, and all public or private service and utility facilities related to such uses, including, but not limited to, drainage, sewer, gas, water, electric and communication facilities. No dwelling shall be used as a boarding house or divided into apartments or rooms for rental purposes. This subsection does not prevent the rental or lease of the whole dwelling by the Owner thereof, but any such rental or lease must be by a written agreement which requires the tenant to observe these Restrictions. No dwelling may be leased or rented for a period of less than thirty (30) days. Each Lot may have, in addition to the main dwelling, a guest house (the "Guest House"). The Guest House on each Lot shall be subject to the following requirements: (i) the use of the Lots for Guest Houses shall be subject to the Sandoval County Zoning Ordinances as they exist from time to time; (ii) The Guest House shall be a minimum of 900 ft<sup>2</sup>; (iii) the Guest House is not intended to provide for a second single family dwelling on each Lot, but shall serve as a "guest house" or "mother-in-law quarters"; and (iv) the Guest House on each Lot may not be constructed prior to construction of the main dwelling.

b. Grantor shall, so long as Grantor is the owner of any Lot, have all of the rights of use set out in the Article entitled, "Limitation of Subdivision Restrictions on Grantor."

**Section 3.02: Prohibited Uses of Subdivision.**

a. In no event shall any Lot be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth, or be used in any other way inconsistent with the Subdivision Restrictions.

b. No illegal, noxious or offensive activity shall be carried on within the Subdivision. No light shall be emitted from any Lot which is unreasonably bright or which causes unreasonable glare to any residences. No sound shall be emitted on or from any Lot which is unreasonably loud or annoying. No odor shall be emitted from any Lot which is noxious or offensive to others. Nothing shall be done or placed which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to Lot Owners in the enjoyment of their dwellings.

c. No signs whatsoever, including, but without limitation, commercial or similar signs, visible from other Lots, shall be erected or maintained upon any Lot, except:

1. Such signs as may be required by legal proceedings or are useful for such proceedings.

2. During the time of construction of any structure or other Improvement, job identification signs having a maximum face area of twelve (12) square feet per sign and of the type usually employed by contractors, subcontractors, and tradesmen.

3. Appropriate safety, directional, and identification and safety signs installed by Grantor, the Association, or required by law.

4. Customary "for sale" or "for rent" signs.

5. Such residential or commercial identification signs as Grantor has the right to maintain, or as are specifically approved by the Board in accordance with the rules adopted by the Board.

d. Except as provided otherwise by this Section, no mobile home, motor home, recreational vehicle, motorcycles, campers, trailers, boat, or similar facility, structure or recreational equipment shall be kept, placed, or maintained within the Subdivision at any time, unless enclosed within a garage or within the side or rear yard so as not to be visible from outside the Lot. The provisions of this subsection shall not apply to temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any work or improvement permitted by this Declaration, for a period not to exceed 90 days.

e. Any outside clothes lines or other outside clothes drying or airing facilities shall be maintained exclusively within a fenced yard or in such a way as not to be visible from streets and the ground floor of neighboring dwellings.

f. No garbage, clippings from trees, shrubs or lawns, trash, ashes or other refuse may be thrown, dumped or allowed to accumulate on any land within the Subdivision, other than compost material that is enclosed and that is not offensive to others. There shall be no burning of refuse out of doors, except for the burning of natural materials in connection with land clearance or fire control. No incinerators or other device for the burning of refuse indoors shall be constructed, installed or used by any person except in conformity with law and approved by the Board.

g. Horses are permitted to be kept on the Lots pursuant to the following limitations: (i) no commercial stables or boarding of horses shall be permitted, (ii) horses shall be kept within corrals, not to exceed 10,000 feet in size, and (iii) no more than four (4) horses shall be kept on any Lot at any time. Dogs, cats and other household pets in reasonable numbers may be kept, providing they are not kept, raised or bred for commercial purposes. Such household pets, except cats, must be restrained on a leash, otherwise under the direct control of an individual or restrained by fence or other restraint, when in the Subdivision. No other animals, livestock, insects or poultry of any kind shall be kept, raised, or bred in the Subdivision.

h. All exterior spot or directional lighting of any sort, the light source of which is visible from neighboring Lots, shall be approved, in writing, by the Committee prior to installation.

i. No exterior antenna, or satellite dishes, of any sort shall be installed or maintained on any Lot or within the Subdivision, except those devices which are erected, installed, placed or maintained and used entirely under the eaves or enclosed within a building or structure or are not visible from the ground level of other Lots. This provision shall remain enforceable even if enforcement action is not commenced within the time limitations otherwise provided by the Subdivision Restrictions.

j. No mechanical device shall be installed or maintained on the roof or exterior surface of any dwelling if such device is visible from the street which the dwelling faces unless screened or enclosed to the satisfaction of the Committee.

k. No vehicles of any type shall be permanently or semipermanently parked in any portion of the Subdivision visible from other Lots for purposes of repairs or reconstruction, or storage. A vehicle shall be deemed parked for storage if it is not driven out of the Subdivision for fifteen (15) consecutive days.

l. No trucks of greater than 3/4 ton or other commercial vehicles shall be kept or maintained in the Subdivision, except within standard size garages, and except where customary or required for the limited purposes of building, repairing, refinishing, or maintaining the Subdivision or a dwelling, or for the purpose of moving household goods or other necessary or customary furnishings, equipment or supplies in or out of the Subdivision.

m. Except temporarily during a construction period, all utility lines, including, but not limited to, electrical, gas, telephone, cable television, and other communications systems shall be underground, except for access ports and aboveground transformers.

n. No portion of the Subdivision shall be used for any purpose or in any manner which would increase the rate at which insurance against loss or damage by fire and the perils covered by extended coverage, bodily injury, property damage liability insurance, covering any other dwelling may be obtained, or cause any other dwelling to be uninsurable or have such insurance canceled or suspended.

o. Propane tanks and water storage tanks must conform to state regulations and be screened from view from the ground floor of other homes and from the Private Streets.

p. There shall be no hunting or discharging of firearms, including pellet guns, within the Subdivision.

q. No commercial activity may be conducted within the Subdivision, except activities clearly secondary to the use of the Lot as residential purposes, and employing only residents of the Lot such as arts and crafts studios, or professional offices; provided the activity shall not result in frequent vehicular traffic, noise, or other annoyance as determined by the Committee.

r. Pens, corrals, stables, and other animal enclosures shall not be located nearer than one hundred (100) feet to any Lot line.

s. No on-street parking shall be permitted on the Private Streets. Owners shall provide adequate parking for residents and guests on their Lots.

t. No permanent structure shall be placed on or in any easements as shown on the Plat.



u. No pavement cuts may be made on the Private Streets without prior written approval by the Committee. All pavement cuts or damages to Private Streets or roadways must be repaired to the same standard as required by Sandoval County, as if such pavement cut or damage were done to a public right-of-way.

Section 3.03: Common Area.

The Grantor has conveyed or shall convey, by separate document, the fee title to the Common Area to the Association. The Common Area shall be conveyed to the Association for the benefit of all Lot Owners and Owners of property annexed into the Association in the future, for the purpose of ingress and egress, for the purpose of installing, maintaining and repairing signs and, if landscaping areas are added to the Common Area, for the purpose of watering, planting, cutting, removing and otherwise caring for the landscaping, and for the purpose of utility lines necessary for the maintenance of the landscaping. Grantor reserves and excepts the right for Grantor to use the Common Area to serve Grantor's Remaining Property (as defined in Section 10.05 hereof). Grantor reserves and excepts the right for Grantor to grant in the future a non-exclusive easement over the Common Area for the purpose of ingress and egress to owners of property in the Paa-ko development and to the extent reasonably necessary to promote access by the public to the Nature Area pursuant to the terms of the Conservation Easement.

Section 3.04: Nature Area.

The Grantor reserves the right to convey, by separate document, a Conservation Easement over the Nature Area to the Albuquerque Conservation Trust or some other entity for ecology, conservation, nature and/or open space purposes. After such easement is granted, the Grantor shall convey, by separate document, the fee of the Nature Area, encumbered by said easement, to the Association. The Association shall have the obligation to maintain the Nature Area, as set forth in the Conservation Easement or as required by law. The Association agrees to pay the grantee of the Conservation Easement an amount required by such grantee. The rights of the Association and the Owners to the use and improvement of the Nature Area shall be severely limited by the terms of the Conservation Easement. If the Conservation Easement is not granted to a third party, then restrictions limiting the use of the Nature Area to open space and/or other uses set forth in Exhibit "A" hereto shall be imposed upon the Nature Area.

Section 3.05: Entrance Area Easements.

The Grantor reserves the right to convey, by separate document, the Entrance Area Easements to the Association for the purposes of installing, maintaining and repairing one or more gates, a gatehouse, one or more identification signs and/or entrance features as may be determined by the Association, and if landscaping is added to the Entrance Area Easements, then for the purpose of watering, planting, cutting, removing and otherwise caring for the landscaping, and for the purpose of utility lines for lighting the Entrance Area Easements and the sign(s) or features therein, and for maintenance of the landscaping. The Association shall have the obligation to maintain the Entrance Area Easements. The Entrance Area Easements shall be contiguous to the Private Street entitled Entrada and shall not exceed an area of 400 ft<sup>2</sup> on any of the Lots.

Section 3.06: Roadway Slope Easements.

The Grantor reserves unto itself and its successors and assigns, and hereby grants and conveys to the Association, an easement over and across the Lots adjacent to the Private Streets for the purpose of minor roadway realignment, roadway slope and/or roadway foundation, and, if a Private Street is realigned, then for utilities within ten feet (10') of the realigned boundary of the Private Street. The Roadway Slope Easements shall be the 25' feet of depth of the Lot adjacent to each Private Street, except for Lots 14, 15, 16, 26, 27, 28, 34 and 35 where they shall be 100' feet of depth from the adjacent Private Street. Grantor reserves and excepts the right for Grantor to use the Roadway Slope Easements to serve Grantor's Remaining Property (as defined in Section 10.05 hereof).

Section 3.07: Trail Easements.

The Grantor hereby grants and conveys to Lot Owners and Owners of property annexed into the Association in the future an easement over and across the portions of the Lots described on Exhibit "C" for the purpose of access to the Nature Area. The Association shall have the obligation of maintaining the Trail Slope Easements. Grantor reserves and excepts the right for Grantor to use the Trail Easements to serve Grantor's Remaining Property (as defined in Section 10.05 hereof). The Grantor reserves and excepts the right for Grantor to grant in the future a non-exclusive easement over the Trail Easements, for the purpose of access to the Nature Area, to owners of property in the Paa-ko development and to the extent reasonably necessary to provide access by the public to the Nature Area pursuant to the terms of the Conservation Easement.

ARTICLE 4  
Membership in the Association  
Voting Rights

Section 4.01: Membership.

a. Each Lot Owner, by virtue of being a Lot Owner and during such time as such Owner remains a Lot Owner, including the Grantor, shall be a member of the Association, or, a member of the unincorporated association preceding the Association or succeeding to the Association.

b. The rights, duties, privileges, and obligations of an Owner as a member of the Association or its proceeding or succeeding unincorporated association shall be those set forth in, and shall be exercised and imposed in accordance with the provisions of this Declaration and the Association's Articles of Incorporation and By-Laws.

Section 4.02: Classes of Membership.

The Association shall have one (1) class of membership.

Section 4.03: Voting Rights.

Each Owner shall be entitled to vote as provided in this Article on all matters properly submitted for vote to the membership of the Association. Every Owner entitled to vote at any election of members of the Board may cumulate his votes and give any one or more candidates a number of votes equal to the number of votes to which the Owner is entitled, multiplied by the number of Directors to be elected. The right to vote may not be severed or separated from any Lot, and any sale, transfer or conveyance of the beneficial interest of the fee of any Lot to a new Owner shall operate to transfer the appurtenant voting rights without the requirement of any express reference thereto. Voting may be by written proxy.

Section 4.04: Voting Rules.

When any provision of the Subdivision Restrictions calls for the vote or the consent of the members in any stated percentage, the following rules apply, unless the specific language of the provision provides to the contrary:

a. Whenever a vote of the members is required, it is sufficient to obtain the written consent of the same percentage of members;

b. The percentage requirement shall be a percentage of the total voting power of the Association and not a percentage of the number of members of the Association; and

c. In any election held pursuant to the requirements of this Declaration, ballots may be transmitted to Owners in the manner provided for the giving of notice.

ARTICLE 5  
Organization, Powers and Duties of the Association

Section 5.01: Organization.

a. The Association shall be organized as a non-profit corporation charged with the duties and empowered with the rights set forth herein. The Association's affairs shall be governed by this Declaration, the Articles of Incorporation and the By-Laws.

b. In the event that the Association, as a corporate entity, is not formed or after formation loses its corporate powers or is dissolved, a non-profit, unincorporated association shall forthwith and without further action or notice, be formed and shall succeed to all the rights and obligations of the Association hereunder until a qualified non-profit corporation is formed. Said unincorporated association's affairs shall be governed by the laws of the State of New Mexico, and to the extent not inconsistent therewith, by this Declaration, the Articles of Incorporation and the By-Laws, respectively, as if they were created for the purpose of governing the affairs of an unincorporated association.

c. The President and Secretary of the Association, or any three (3) members of the Board of Directors, may execute, seal, acknowledge and record a certificate of identity stating the names of all of the members of the then current Board and the then current Architectural Control Committee, if any. The most recently recorded affidavit shall be conclusive evidence of the identity of the persons then composing the Board and Architectural Control Committee in favor of any person relying thereon in good faith.

d. The Board shall be appointed by and shall serve at the pleasure of the Grantor through December 31, 1996. Thereafter, the Board shall be elected at annual meetings of the members.

e. The affairs of the Association shall be managed by the Board of Directors, which shall exercise all of the rights and powers and perform all of the duties and responsibilities set out in this Declaration for the Association.

Section 5.02: Powers and Authority of the Association.

The Association shall have all of the powers set forth in its Articles of Incorporation, together with its general powers as a non-profit corporation, subject only to the limitations upon the exercise of such powers as are expressly set forth in its Articles of Incorporation, its By-Laws and in this Declaration, to do any and all lawful things which may be authorized, required, or permitted to be done by the Association under and by virtue of the Subdivision Restrictions and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association or for the peace, health, comfort, safety, and general welfare of Owners.

a. Any of the following actions by the Board shall require a majority vote or written assent of the members:

1. Entering into a contract for the furnishings of goods or services for Common Area, Nature Area and/or Easement Area or the Association for a term longer than three (3) years with the exception of prepaid casualty or liability policies of not to exceed three (3) years duration provided that the policy permits short rate cancellation by the insured; and

2. Paying compensation to members of the Board or officers for services performed in the conduct of the Association's business provided that the Board may cause a member or officer to be reimbursed for expenses incurred in carrying on the business of the Association.

b. In fulfilling any of its obligations or duties under the Subdivision Restrictions or the Nature Area, including, without limitation, its obligations or duties for the maintenance, repair, operation, or administration of the Common Areas and/or Easement Areas, and any obligations or duties for the maintenance, repair, operation, or administration of the Nature Area, the Association shall have the power and authority:

1. To contract and pay for, or otherwise provide for, the improvement, maintenance, restoration, and repair of the Common Area, Nature Area and/or Easement Area and all Improvements located thereon;

2. To obtain, maintain, and pay for such insurance policies or bonds, whether or not required by this Declaration, as the Association shall deem to be appropriate for the protection or benefit of the Subdivision, the Nature Area, the Association, the members of the Board, the officers, agents and employees of the Association and the Lot Owners;

3. To incur indebtedness; but any indebtedness in excess of the Association's estimate of its estimated gross revenue for the year incurred or any indebtedness to be repaid over a period longer than one (1) year must be approved by a two-thirds (2/3) vote of the voting power of the members;

4. To contract and pay for, or otherwise provide for, such utility services, including, but without limitation, water and electrical services, as may from time to time be required;

5. To contract and pay for, or otherwise provide for, the services of architects, engineers, attorneys, bookkeepers and certified public accountants, and such other professional and non-professional services as the Association deems necessary;

6. To contract and pay for, or otherwise provide for, such materials, supplies, furniture, equipment, and labor as and to the extent the Association deems necessary;

7. To pay and to discharge any and all liens from time to time placed or imposed upon any Common Area, Nature Area and/or Easement Area, or on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation, or administration;

8. To lease or contract for the use of land and Improvements for recreation or other purposes to the extent the Association deems necessary; and

9. To place and maintain upon Common Area and/or Easement Area such signs as the Association may deem necessary for the identification of the Subdivision and/or roads, the regulation of traffic, including parking, for the health, welfare and safety of owners and other persons.

c. In fulfilling any of its obligations or in exercising any of its rights with respect to the development, construction, installation or acquisition of a capital improvement, the Association shall have the

power and authority:

1. To contract and pay for such Improvements upon such terms and conditions as the Association shall deem appropriate;
  2. To obtain, maintain, and pay for such insurance policies or bonds as the Association may deem appropriate for the protection and benefit of the Association, the members of the Board, and Lot Owners, including, but without limitation, builder's risk insurance, additional comprehensive liability insurance, workman's compensation insurance, and performance and fidelity bonds;
  3. To incur indebtedness under terms and conditions as provided by this Article; and
  4. To contract and pay for the services of architects, engineers, attorneys, and certified public accountants, and other professional and non-professional services.
- d. With respect to the Common Area, the Association shall exercise control over the Common Area, but only for the purpose of carrying out the purposes of these Restrictions. The Association shall have no authority to mortgage, sell or convey the Private Streets or any part thereof, unless approved by the owners of all of the Lots served by the Private Streets, except that the Association shall have the power and authority from time to time without a vote of the members to grant and convey easements or rights of way, in, on, over, or under any Common Area, for the purpose of constructing, erecting, operating and maintaining thereon, therein, and thereunder wires, conduits and other equipment for the transmission of electricity and signals for lighting, heating, power, communication, cable television and other purposes, and for the necessary attachments in connection therewith; and public and private sewers, storm water ponding areas, storm water drains, storm water ponding areas, land drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and any and all equipment in connection with the foregoing. Notwithstanding the above, the Association shall have the right to dedicate th Private Streets to Sandoval County upon approval of two-thirds (2/3) of the Lots served by the Private Streets, excluding Grantor.
- e. The Association may, from time to time and upon such terms and conditions as it may deem appropriate, agree with the governing body of any other subdivision to jointly manage the affairs of the Subdivision, to jointly hire a manager, or jointly to engage in other activities not inconsistent with the Subdivision Restrictions.
- f. The Association shall have the right from time to time to pay, compromise, or contest any and all taxes and assessments levied against the Association upon all or any part of the Common Area, Nature Area and/or Easement Areas, upon any income of or assessed to the Association, and upon any personal property belonging to or assessed to the Association.
- g. The Association shall have the power and authority from time to time, in its own name, on its own behalf, and on behalf of any Lot Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Subdivision Restrictions and to enforce, by mandatory injunction or otherwise, all of the provisions of this Declaration.
- i. The Association shall have the power, but not the duty, to enter upon and maintain, or provide for the maintenance of, any Lot or Improvements which is not maintained by the Owner thereof in accordance with the requirements of these Restrictions, at the expense of any such Owner.

Section 5.03: Liability of Members of Board.

No member of the Board shall be personally liable to the Association or to any Lot Owner, or to any other person, including Grantor, for any negligent act or omission of the Association, its representatives, other directors and employees, or the manager, or for any action taken as a director or for any failure to take any actions as a director, or for breach of fiduciary duty as a director, unless the member of the Board has breached or failed to perform the duties of the director's office and the breach or failure to perform constitutes willful misconduct or recklessness.

Section 5.04: Duties and Obligations of the Association.

- a. The Association shall have the obligation and duty, subject to the Subdivision Restrictions, to do and perform each and everything set out in this Section, for the benefit of the Lot Owners and for the maintenance and improvement of the Subdivision.
- b. The Association shall accept all Lot Owners as members of the Association.
- c. The Association shall accept from Grantor the Common Areas and maintenance responsibilities in all Easement Areas which shall be deemed transferred to it upon recording of these Restrictions, or subsequently granted to the Association by separate grants of easement, subject to the reservations of all easements, licenses and rights to use and the rights of Grantor.

d. The Association shall maintain, or provide for the maintenance of, the Common Areas, the Easement Areas and all Improvements thereon.

e. The Association shall maintain, or provide for the maintenance of, the Nature Area, subject to the provisions of the Conservation Easement.

f. The Association may employ the services of a corporate or individual manager to manage the affairs of the Association and, upon such conditions as are otherwise advisable by the Association, the Association may delegate to the manager any of its powers under the Subdivision Restrictions. No management agreement entered into between the Association and any professional management company (whether or not such professional management company is owned or controlled by the Grantor) shall provide for a term in excess of two (2) years and all such agreements shall permit the Association to terminate for cause upon not more than thirty (30) days' prior written notice and all such agreements shall provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.

g. The Association shall obtain and maintain in force the following policies of insurance.

1. Fidelity Bond: The Association shall procure and maintain a fidelity bond naming the Association as obligee in an amount equal to the estimated maximum amount of funds to be in the custody or control of the Association or its professional management company, including reserves for replacement and working capital, at any given time during the term of such bond, but in any event in an amount at least equal to three (3) months' aggregate monthly assessments on all Lots plus the sum of all reserve funds. Such fidelity bond shall cover all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of or administered by the Association, including the officers, directors, employees and agents of the professional management company employed by the Association pursuant to these Restrictions. Provided, however, that the fidelity bond to be procured by the Association need not cover the professional management company and its officers, directors, employees and agents, if such professional management company provides a sufficient fidelity bond naming the Association as an additional obligee or loss payee. Such bond shall contain a waiver of any defense or exclusion based upon the exclusion of persons serving without compensation from the definition of "employees" or other similar terms or expressions. Such bond shall require at least ten (10) days' prior written notice to the Association of cancellation or substantial modification (including cancellation for non-payment of premiums). The cost of such fidelity bond (except for premiums on any fidelity bond provided by the professional management company which the Board determines to be satisfactory and in compliance with the provisions of this Section) shall constitute a common expense of the Subdivision.

2. Liability Insurance: The Association shall procure and maintain comprehensive public liability insurance in the amount of at least one million dollars (\$1,000,000) per single occurrence for bodily injury, death and property damage suffered by the public or any Lot Owner and his family, guests, agents, employees or invitees occurring in, on or about the Common Areas and Nature Area. Such policy shall insure the Lot Owners and the Association and its officers, directors, employees and agents, including expressly the professional management company and its officers, directors, employees and agents, and such other persons as may be deemed advisable by the Association, and shall further expressly cover legal liability arising from lawsuits related to employment contracts of every nature to which the Association is a party. Such policy shall be issued by insurers of recognized responsibility authorized to do business within the State of New Mexico and shall require at least ten (10) days' prior written notice of cancellation or substantial modification (including cancellation for nonpayment of premiums) to the Association and to any Mortgagee having a first lien against any Lot which is listed as a scheduled holder of such a first mortgage in the policy. The cost of such policy shall constitute a common expense of the Subdivision. Such insurance must not provide for contribution with regard to any policies of liability insurance carried individually by any Lot Owner.

3. Additional Insurance: The Board shall have the authority to obtain such other insurance, including the authority to increase the scope or amount of any insurance required by this Article 5, as the Board shall determine to be necessary or advisable. The cost of any such additional insurance shall constitute a common expense of the Subdivision.

h. The Association shall prepare an annual operating statement reflecting the money received by the Association and the expenditures of the Association for each fiscal year and distribute such statement to each member and each Eligible Mortgagee upon request.

i. The Association shall take such action, whether or not expressly authorized by the Subdivision Restrictions, as may reasonably be necessary to enforce or carry out the purposes of the Subdivision Restrictions and the Subdivision Rules.

ARTICLE 6  
Funds, Assessments and Delinquency

Section 6.01: Creation of Lien and Personal Obligation for Assessments.

Grantor for each Lot owned by it hereby agrees to pay, and each Owner of any Lot by the acceptance of a deed or contract of sale therefor, whether or not so expressed in any such deed or contract or other conveyance, is deemed to agree to pay to the Association:

- a. Maintenance assessments;
- b. Delinquency assessments;
- c. Assessments for capital improvements; and
- d. All other fees or other moneys due to the Association from such Owner.

The maintenance assessment, delinquency assessment and assessment for capital improvements, plus interest, late charges, costs and attorney's fees, shall be a charge against the Lot and shall be a continuing lien upon the Lot against which each such assessment is made, and shall also be the personal obligation of the Owner or Owners of such property on the assessment date. The personal obligation to pay assessments shall not pass to successors in title unless expressly assumed by them.

Section 6.02: Operating Fund.

There shall be an operating fund, into which the Association shall deposit all monies paid to it and from which the Association shall make disbursements in performing the functions for which the foregoing assessments are levied.

Section 6.03: Maintenance Assessment.

a. Within thirty (30) days prior to the commencement of each fiscal year the Association shall estimate the costs and expenses to be incurred by the Association during such year, including a reasonable provision for contingencies, and reserves for major repair and replacement, and shall subtract from such estimate an amount equal to the anticipated balance, exclusive of any reserves for contingencies and reserves for major repair and replacement, in the operating fund at the start of such year. The sum or net estimate so determined shall be assessed to all Lot Owners in shares: one (1) share for each Lot owned.

b. If, at any time and from time to time, during any fiscal year, the maintenance assessment proves or appears likely to prove inadequate for any reason, including non-payment of any Owner's share thereof, the Association may levy a further maintenance assessment in the amount of such actual or estimated inadequacy, which shall be assessed to all Lot Owners apportioned as provided in subsection a, if approved by the Owners of two-thirds (2/3) of the Lots.

c. Maintenance assessments shall be due and payable to the Association on such due dates as the Board shall designate.

d. The Board shall not levy assessments to defray the costs of any action or undertaking on behalf of the Association which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year and which are not part of such budgeted gross expenses without the vote or written consent of Owners of two-thirds (2/3) of the Lots.

e. From and after the December 31st immediately following the conveyance of the first Lot by Grantor, the maximum maintenance assessment may be increased each year not more than an increase equal to ten percent (10%) from the previous year without a vote of the owners of two-thirds (2/3) of the Lots and approval of the Grantor, if the Grantor continues to own any Lots. The percent of increase shall be cumulative from year to year so that an increase not used in one year may be used in a subsequent year without a vote of the members.

Section 6.04: Delinquency Assessment.

The Association shall levy a delinquency assessment against any Lot Owner or Owners as a result of whose acts, or failure or refusal to act, or otherwise comply with the Subdivision Restrictions, or the Subdivision Rules, monies were expended from the operating fund by the Association. Such assessment shall be in the amount so expended, and shall be due and payable to the Association when levied, or in such installments as the Association shall designate. Prior to the levy of a delinquency assessment the Board shall hold a hearing to determine the validity and amount of the assessment upon at least thirty (30) days notice to the Owner to be assessed at which hearing such Owner shall be given an opportunity to be heard.

Section 6.05: Assessments for Capital Improvements and Indebtedness.

The Association may also levy in any year an assessment for paying or returning, in whole or in part, the cost or proposed cost of acquisition and construction of a described capital improvement (whether the improvement constitutes real or personal property) in an amount greater than can be included in the maintenance assessment, provided it has been approved by Owners of two-thirds (2/3) of the Lots, which assessment shall be assessed to Lot Owners as provided for in Section 6.03.

Section 6.06: Reserves as Trust Funds.

Reserves for major repairs and replacements and for capital improvements to be built or acquired shall be kept segregated from the other monies held by the Association as trust funds in an account or accounts labeled "Reserve Trust Fund" and shall be withdrawn and used only for the purposes of major repairs and replacements or for capital improvements respectively, unless a different or other use is authorized by the vote of Owners of two-thirds (2/3) of the Lots.

Section 6.07: Delinquency.

Each assessment under this Article shall be the separate, distinct and personal debt and obligation of the Lot Owner against whom it is assessed. Any assessment provided for in this Article, which is not paid when due, shall be delinquent. With respect to each assessment not paid within ten (10) days after its due date, the Association may, at its election, require the Owner to pay a sum (late charge) to be determined by the Association, to pay the costs of handling the delinquent sum. Such a charge shall be considered an additional assessment and collectible with the assessment for which it was charged. If any such assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at a rate set from time to time by the Association, however not greater than twenty percent (20%), and the Association may, at its option, bring an action at law against the Owner or Owners personally obligated to pay the same, and upon compliance with the provisions of this Article to foreclose the lien against the Lot, and there shall be added to the amount of such assessment the late charge, the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest at the rate provided herein and a reasonable attorney's fee, together with the costs of action. Each Owner vests in the Association, or its assigns, the right and power to bring all actions at law or lien foreclosure against such Owner or other Owners for the collection of such delinquent assessments.

Section 6.08: Notice of Lien.

No action shall be brought to foreclose an assessment lien less than thirty (30) days after the date a notice of claim of lien is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of said Lot, and a copy thereof is recorded by the Association in the office of the Sandoval County Clerk; said notice of claim must recite a good and sufficient legal description of any such Lot, the record owner or reputed owner thereof, the amount claimed (which shall include the interest charges, costs and attorney's fees recoverable by an action at law) and the name and address of the Association.

Section 6.09: Foreclosure Sale.

Any such sale provided for above is to be conducted in accordance with the customary practice of the court of the State of New Mexico, applicable to the foreclosure of Mortgages, or in any other manner permitted or provided by law. The Association, through its duly authorized agents, shall have the power to bid on the Lot at a foreclosure sale, and to acquire and hold, lease, mortgage and convey the same.

Section 6.10: Curing a Default.

Upon the timely curing of any default for which a notice of claim of lien was filed by the Association, the officers of the Association are hereby authorized to file or record, as the case may be, an appropriate release of such notice, upon payment by the defaulting owner of a fee, to be determined by the Association, to cover the costs of preparing and filing or recording such release, together with the payment of such other costs, interest or fees as shall have been incurred.

Section 6.11: Cumulative Remedies.

The assessment lien and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

Section 6.12: Certificate of Payment.

The Association shall, upon demand, furnish to any Owner liable for assessments, a certificate in writing signed by an officer of the Association, setting forth whether the assessments on a specified Lot have been paid, and the amount of the delinquency, if any. A reasonable charge may be made by the Board for the

issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 6.13: Commencement of Annual Assessments.

The maintenance assessments provided for in this Article shall commence as to each Lot upon the sooner of (i) the first day of the month following the initial conveyance of the Lot by the Grantor or (ii) one year after the recording of this Declaration, or the recording of an Annexation Declaration for the Lot. The first such annual assessment shall be prorated for each Lot for the period from the commencement as provided in this section to the start of the next fiscal year following such commencement.

ARTICLE 7  
Duties and Responsibilities of Owners

Section 7.01: Owner's Responsibility to Repair.

Each Owner shall be responsible for the maintenance and repair of his dwelling, his Lot and his landscaping. Each Owner shall be responsible for the construction and maintenance of a crossing structure for the Lots' driveway crossing the bar ditch adjacent to the Private Streets. The Owner is also responsible for any damage to the Private Streets or other land in or adjacent to the Subdivision done by any contractor or subcontractor during the course of construction of improvements on the Owner's Lot.

Section 7.02: Maintenance of Landscaping.

Each Owner shall maintain the native vegetation and landscaping on his Lot in a natural, neat and attractive manner.

Section 7.03: Observance of Subdivision Restrictions.

Each Owner shall comply with the Subdivision Restrictions and will cause and be responsible for Owner's family, agents, guests, contractors, employees, invitees and any person renting or leasing Owner's dwelling to do likewise.

Section 7.04: Rights of Action.

Each Owner and the Association shall have a right of action against Owners for failure to comply with the provisions of this Article 7 of the Subdivision Restrictions.

ARTICLE 8  
Construction and Architectural Control

Section 8.01: Architectural Control Committee.

An Architectural Control Committee for the Subdivision is hereby established consisting of the following three persons:

H. ROBERT WARREN  
DIANA WARREN  
TERRY L. MYERS

At least one Board member shall serve on the Committee at all times. So long as the Grantor owns any Lots subject to these Restrictions, including subsequently annexed Lots, the Committee shall serve at the pleasure of the Grantor who shall have the right to appoint, reappoint and discharge members of the Committee at will. A majority of the members of the Committee may appoint one member of the Committee to act on and for the Committee. The Board shall have the authority to appoint the Committee at any time which the Grantor does not have the right to appoint the Committee.

Section 8.02: Construction of Improvements.

(a) Before anyone shall commence on any Lot within the Subdivision the installation of, construction of, remodeling of, addition to, or alteration of any Improvement [the term Improvement is defined in Section 1.9, and includes but is not limited to fencing and walls] of whatsoever nature; and before anyone shall paint, texture, repaint or retexture the exterior surfaces of any Improvement, there shall be submitted to the Committee, by hand delivery or certified mail (notwithstanding Section 11.07), plans and specifications as follows:

(i) Preliminary or tentative plans and specifications which shall clearly show the nature of the work or installation proposed and the location thereof, on the Lot, which such preliminary or tentative plans shall include sufficient description of materials, colors, textures, etc. together with



a landscaping plan as shall enable the Committee to evaluate whether the proposed construction, alteration, installation, etc. will harmonize with the motif and style of the Subdivision and be compatible with surrounding homes and with the character of the Subdivision; and

(ii) After approval of the preliminary or tentative plans, including therein any requirements made by the Committee in the due and proper exercise of its discretion and powers, two complete sets of the final plans and specifications. All such final plans shall include plot plans showing the location on the Lot of all Improvements proposed to be constructed and/or installed, planted, placed or maintained on the Lot and shall further include elevations, together with the proposed color scheme and textures for roofs and exteriors thereof, indicating the materials for same.

(b) The Committee shall approve or disapprove within thirty days after actual receipt thereof plans and specifications which have been submitted to it. One set of plans and specifications, with the Committee's approval or disapproval and requirements endorsed thereon, shall be returned to the applicant and the other copy thereof, with a duplicate endorsement thereon corresponding to the first set, shall be retained in the Committee's files.

No Improvement of any kind, installations, painting or texturing, shall ever be, or permitted to be, erected, constructed, installed, placed or maintained on any Lot within the Subdivision, unless and until the final plans, specifications and elevations therefor shall have received written approval of the Committee.

The Committee is authorized to charge not more than \$100.00 for review of plans and specifications. Payment of the required charge shall be a part of, and condition to, the submittal of plans and specifications for committee approval.

In the event that the Committee shall fail to approve or disapprove the plans, specifications and other information within thirty days after actual receipt thereof by the Committee, then such approval shall not be required, provided that no structure, building or other improvement shall be installed, erected, painted, textured, altered or modified which violates any of the Restrictions.

The Committee shall have the right and power to disapprove any plans, specification or details submitted to it, if the Committee shall find that the plans and specifications are not in accord with all provisions of this Declaration, or if a design or color scheme submitted is not in harmony and accord with the Subdivision, or surrounding homes, or if the plans and specifications are incomplete.

(c) If any Improvement or work is completed or done without compliance with this Article, such Improvement or work shall be deemed to have been done in compliance with this Article if no action has been commenced to enforce the provisions of this Article against such Improvement or work within one (1) year of its completion.

### Section 8.03: Design Guidelines.

#### a. Preface to Design Guidelines.

The purpose of the Committee's Design Guidelines and the Committee's review of construction plans is not to develop a look-alike community, but to ensure that designs are compatible to the unique sites and the character of the Subdivision.

This Preface, subsection 8.03(a), contains general land use concepts for consideration by the Committee in evaluating whether proposed Improvements are consistent with the character of the Subdivision. These concepts are ordinarily appropriate for buildings in the high deserts of New Mexico, and in San Pedro Creek Estates.

Each of the Lots in San Pedro Creek Estates is over 10 acres, which provides ample opportunity to study and utilize the unique advantages of the site. The large Lot size also provides opportunity to create buffers through natural means. If reasonable design skills are employed on the construction sites themselves, a rich pattern of "visual corridors" and "environmental images" will be retained or created.

This integration of building to the natural environment can be amplified by considering the individual solar patterns of the site. Allowing the final design to react effectively to the east-west solar cycle and natural site slope will enhance any design.

Site orientation is a major element in developing a comfortable and functional design on these high desert sites. Understanding the advantages and disadvantages of the cool edge versus the hot edge of a floor plan is essential in determining how to best orient the design.

Recognition of how to best utilize existing trees for both wind protection and solar protection will also benefit sites in San Pedro Creek Estates.

Integration of a design "into a slope," as opposed to "on a slope," is much more compatible to these building sites. In order to accommodate many of these sites, a reasonable amount of stepping, and/or balanced cut and fill, may be required in the plan. The final results will always be more satisfying if the solutions have been integrated into the site.

b. Design Guidelines.

The Committee may from time to time adopt design guidelines for approval of Improvements. The Committee may grant variances from its Design Guidelines. The initial Design Guidelines are as follows:

1. Architecture styles shall be limited to southwest colonial, Santa Fe style, pueblo style, territorial style or soft contemporary.
- ✓ 2. Exterior materials shall be materials which harmonize with the natural landscape and will withstand the climactic changes, and may include stucco, stabilized adobe, stone and wood.
3. Exterior colors and materials shall be of low reflectivity and have a "Light Reflectivity Value (LRV)" of 40 or less. Generally, dark colors should be used near ridges and more exposed sites.
4. All buildings are to be finished within six (6) months from start of construction.
5. White and/or reflective roofs shall not be permitted. Style and location of skylights on pitched roof surface shall be approved by the Committee.
6. Each home must include garage or carport of a style or design compatible with the home. Translucent or transparent garage doors are prohibited.
7. Propane tanks and water storage tanks must conform to state regulations and be screened from view from the ground floor of other homes and from the private streets.
8. The maximum building height shall be twenty-four (24) feet measured pursuant to the City of Albuquerque Comprehensive Zoning Ordinance, exclusive of chimneys and special roof profiles. The Committee may require that there be breaks in a building facade so that the height of a plane in the facade is not greater than sixteen feet (16').
- ✓ 9. No Improvements, which term includes fences and walls, shall be located on any Lot nearer than one hundred (100) feet to any Lot line. The Committee shall consider the size of the Lot and the area upon the Lot suitable for a home site in considering a variance to this guideline.
10. Solid fences or walls, if any, shall be compatible with the exterior materials used for the dwelling.
- ✓ 11. No chain link fences or fencing constructed of reflective material will be permitted.
12. The major arroyos on the property shall be maintained in their natural state.
13. Each residence shall be provided with a method of sewage disposal which meets the requirements contained in the Federal Housing Administration minimum standards in effect at the time of construction. Portable, self-contained toilet facilities may be used during periods of construction of the residence. Garbage and solid waste shall be kept in a covered, water-proof container and shall be stored and disposed of in a manner approved by the Sandoval County Environmental Health Department.
- ✓ 14. No galvanized metal or galvanized wire will be permitted.
- ✓ 15. Natural vegetation will be left undisturbed, except for access to property, clearing of building sites, or establishment of lawns, gardens and landscaped improvements within the immediate vicinity of the dwelling. Combined total irrigated surface shall not exceed 2,000 square feet in area.
16. Upon completion of construction of a single family dwelling, each owner shall install and address a property identification sign and light standard, which shall be of a shape, size, color, lettering and design as designated or approved by the Committee, and which shall comply with any applicable governmental regulations.
17. The following items shall be incorporated into the residential design: (i) water saving toilets; (ii) water restricting shower heads and faucets; (iii) water saving dishwashers; and (iv) water saving clothes washers. Total outside irrigation of permitted lawns, gardens and landscaped improvements shall not exceed 2,600 gallons per month averaged over a 9 month period (equal to 0.072

acre feet per Lot). All Lots will have meters that may be read monthly by the Association to enforce the above.

18. All exterior spot or directional lighting of any sort, the light source of which is visible from neighboring Lots, shall be approved, in writing, by the Committee prior to installation.

19. The Committee shall have the right to require that improvements not be situated on a ridge top such that the line of the ridge is broken.

Section 8.04: Estoppel Certificate.

Within thirty (30) days after written demand is delivered to the Committee by any Lot Owner, and upon payment therewith to the Association of a reasonable fee to cover costs from time to time to be fixed by the Association, the Committee shall provide Owner with an estoppel certificate executed by an officer of the Association and acknowledged, certifying with respect to any Lot owned by said Owner, that as of the date thereof either (1) all Improvements and other work made or done upon said Lot by the Owner, or otherwise, comply with this Declaration, or (2) such Improvements or work do not so comply, in which event the certificate shall also (a) identify the non-complying Improvements and work and (b) set forth with particularity the cause or causes for such noncompliance. Any purchaser from the Owner, or mortgagee or other encumbrancer shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between Grantor, the Association, and all Owners and such purchaser, and mortgagee.

Section 8.05: Liability.

Neither the Committee, the Board nor any member thereof shall be liable to the Association or to any Owner for any damage, loss, or prejudice suffered or claimed on account of:

- a. The approval of any plans, drawings, and specifications, whether or not defective,
- b. The construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications,
- c. The development or manner or development of any property within the Subdivision, or
- d. The execution and recording of an estoppel certificate whether or not the facts therein are correct; provided, however, that the officer executing the certificate, with the actual knowledge possessed by him, has acted in good faith.

Without in any way limiting the generality of the foregoing, the Committee, Board, or any member thereof, may, but is not required to, consult with or hear any Lot Owner with respect to any plans, drawings, or specifications, or any other proposal submitted to it.

ARTICLE 9  
Protection of Security Interests

Section 9.01: Application of Assessments; First Mortgages or First Real Estate Contracts.

a. The monetary liens created under the Subdivision Restrictions upon any Lot shall be subject and subordinate to, and shall not affect the rights of a mortgagee under any recorded first Mortgage upon a Lot made in good faith and for value, provided that after the foreclosure of any such Mortgage the amount of all maintenance and special assessments, and all delinquent assessments to the extent such delinquent assessments relate to expenses incurred after such foreclosure, assessed hereunder to the purchaser at foreclosure sale, shall become a lien upon such Lot upon recordation of a notice thereof with the County Recorder.

b. The monetary liens created under the Subdivision Restrictions upon any Lot shall be subject and subordinate to, and shall not affect the rights of the Grantor under any recorded real estate contract, from Grantor as seller, that is in first lien position upon a Lot made in good faith and for value, provided that after foreclosure or termination after default of any such real estate contract, the amount of all maintenance and special assessments, and all delinquent assessments to the extent such delinquent assessments relate to expenses incurred after such foreclosure or termination, assessed hereunder shall become a lien upon such Lot upon recordation of a notice thereof with the County Recorder.

Section 9.02: Right to Notice.

The Association shall provide an Eligible Mortgagee or the Grantor, as applicable, with timely written notice of any delinquency in the payment of monthly assessments, special assessments or other charges due the Association if the delinquency remains uncured for a period of sixty (60) days or more and if the delinquency is (1) by the Owner of a Lot which is subject to a first mortgage held by any Eligible Mortgagee, or (2) by the

Owner of a Lot which is subject to a real estate contract that is in the first lien position and wherein Grantor is seller.

Section 9.03: Limitation of Enforcement Against Mortgagee.

No violation by an Owner of the Subdivision Restrictions or enforcement of the Subdivision Restriction against an Owner shall defeat or render invalid the lien of any mortgagee made in good faith and for value against the property of such Owner, but, the Subdivision Restrictions shall be effective against any Lot Owner whose title is acquired by foreclosure, trustee's sale, voluntary conveyance, or otherwise.

Section 9.04: Rights of Mortgagee to Information.

A Mortgagee shall, upon written request, be entitled to inspect the Declaration, By-Laws, Subdivision Rules, books and records of the Association on the same basis as a Member. If a Mortgagee furnishes the Association, in writing, with its address, it shall be entitled to receive within a reasonable time financial statement for the immediately preceding fiscal year, free of charge and shall receive notice of meetings on the same basis as members.

Section 9.05: Application of Subdivision Restrictions.

Except as provided in this Article or specifically provided elsewhere in the Subdivision Restrictions, all Mortgages and Mortgagees are bound by the provisions of the Subdivision Restrictions.

Section 9.06: Collection of Assessments.

The Mortgagees shall be under no obligation to collect assessments.

Section 9.07: Mortgage Approval.

So long as the Grantor has more than a majority of the voting power of the Association, if there are any HUD or VA mortgages encumbering any Lots, HUD or VA approval is required prior to the following:

- a. Amendment of the Association's Articles of Incorporation, Bylaws or this Declaration;
- b. Annexation of property to the Association;
- c. Encumbering, conveying or dedicating Common Areas; or
- d. Dissolution of the Association.

ARTICLE 10

Limitation of Subdivision Restrictions on Grantor

Section 10.01: Limitation of Subdivision Restrictions on Grantor.

Grantor is undertaking the work of constructing the Subdivision. The completion of that work and the sale, rental and other disposition of the Lots is essential to the establishment of the Subdivision. In order that said work may be completed and said property be established and fully occupied as rapidly as possible, nothing in this Declaration shall be understood or construed to:

- a. Prevent Grantor or its agents, employees, and contractors from doing on the properties whatever is reasonably necessary or advisable in connection with the completion of the work; or
- b. Prevent Grantor or its agents, employees, and contractors from erecting, constructing and maintaining on any part or parts of the Subdivision, such structures as may be reasonably necessary for the conduct of its business of completing the work and establishing the Subdivision, including, without limitation, sales offices, model units, general business offices for its staff, employees and contractor, and storage and parking facilities for materials and equipment, and disposing of the Subdivision in parcels by sale, lease or otherwise; or
- c. Prevent Grantor from conducting on any part of the properties its business of completing the work, and of establishing and disposing of the Subdivision; or
- d. Prevent Grantor from maintaining such sign or signs on the Subdivision as may be necessary for its sale, lease, or disposition, or the sale, lease or disposition of any Lot.

Section 10.02: Use of Subdivision Name.

Grantor may use the name of the Subdivision and the Subdivision Restrictions in other subdivisions or

projects, whether located adjacent to the Subdivision or not, provided such names have a distinctive number or other designation so that they are not identical with the names of the Subdivision and Association. Consent is hereby given to Grantor and Grantor's assigns to use such names of a Corporation and upon request of Grantor, the Association agrees to execute a written consent authorizing Grantor to use the same or similar name which consent will be filed with the State Corporation Commission.

Section 10.03: Architectural Control.

Improvements by Grantor and declarants to the Subdivision do not require approval of the Committee.

Section 10.04: No Amendment or Repeal.

The provision of this Article may not be amended or repealed without the consent of Grantor.

Section 10.05: Future Developments.

The Grantor owns additional property surrounding the Subdivision ("Grantor's Remaining Property"). Nothing contained herein shall create restrictions, either express or implied, upon the manner in which Grantor's Remaining Property may be used or developed. Grantor reserves the right for itself and its successors and assigns to use the Grantor's Remaining Property for nonresidential purposes, to subdivide the Grantor's Remaining Property into building lots smaller than the Lots, or to encumber the Grantor's Remaining Property with restrictions different from the Restrictions, or not to encumber the Property with any restrictions at all. Grantor reserves and excepts the right for Grantor to use the Private Streets, the Roadway Slope Easement and the Trail Easements to serve Grantor's Remaining Property. Grantor further reserves and excepts the right for Grantor to grant in the future a non-exclusive easement over the Private Streets, the Roadway Slope Easement and the Trail Easements to owners of property in the Paa-ko development for ingress and egress to their properties and to the Nature Area and the public to the extent required by the Conservation Easement to allow public access to the Nature Area.

ARTICLE 11  
Miscellaneous Provisions

Section 11.01: Amendment or Repeal; Duration.

a. These Restrictions and any provisions thereof which are in effect with respect to all or part of the Subdivision, may be amended or repealed in the following manner:

1. The approval by seventy-five percent (75%) vote or written consent of the voting power of the members and the consent of the Grantor, so long as the Grantor owns any Lots subject to these Restrictions, including subsequently annexed Lots; and

2. The recordation of a certificate of the Secretary or an Assistant Secretary of the Association setting forth, in full, the amendment or amendments so approved, including any portion or portions of this Declaration repealed, and certifying that such amendment or amendments have been approved by the required vote or consent of the Owners, and if necessary, by the required percentage of Owners of a particular class of property or Lots.

At any time during which Grantor is the only owner of property within the Subdivision, Grantor may amend or correct these Restrictions by a recorded instrument of amendment or correction.

b. All of the provisions of these Restrictions shall continue and remain in full force and effect at all times with respect to all property, and each part thereof, included within the Subdivision, to the Owner and to the Association subject, however, to the right to amend and terminate as provided for in this Article, through the initial term ending December 31, 2044; provided that these Restrictions shall terminate if, within one (1) year prior to December 31, 2044, there shall be recorded an instrument directing the termination of these Restrictions signed by two-thirds (2/3) of the Owners of record title. If not so terminated, these Restrictions as in effect immediately prior to December 31, 2044 shall, subject to the provisions of Section 11.01a, be continued automatically without any further notice, for additional periods of ten (10) years unless within one (1) year prior to expiration of any such period these Restrictions are terminated as set forth in this Section.

c. No amendment to or termination of these Restrictions or lapse of these Restrictions shall deprive any Lot Owner of use of the Private Streets to provide access to his Lot.

Section 11.02: Enforcement; Non-Waiver; No Forfeiture.

a. Except to the extent otherwise expressly provided herein, the Association or any Lot Owner or Owners shall have the right to enforce any and all of the provisions now or hereafter imposed by the Subdivision Restrictions upon other Lot Owners, or upon any property within the Subdivision.

b. Except to the extent otherwise expressly provided herein, any Lot Owner or Owners shall have the right to enforce any and all of the provisions now or hereafter imposed by the Subdivision Restrictions upon the Association.

c. Every act or omission whereby any restriction, condition, or covenant of the Subdivision Restrictions is violated, in whole or in part, is hereby declared to be and to constitute a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by the Association or by a Lot Owner or Owners, as provided for in this Section. Any provisions to the contrary notwithstanding, only the Association or its duly authorized agents may enforce by self-help any limitation, restriction, covenant, condition, or obligation herein set forth.

d. Each remedy provided for in the Subdivision Restrictions is cumulative and not exclusive.

e. The failure to enforce the provisions of any limitation, restriction, covenant, condition, obligation, lien, or charge of the Subdivision Restrictions shall not constitute a waiver of any right to enforce any such provision or any other provision of the Subdivision Restrictions.

f. No breach of any of the provisions of the Subdivision Restriction shall cause any forfeiture of title or reversion or bestow any rights of re-entry whatsoever.

g. Reasonable attorney's fees and costs may be awarded in any action brought to enforce the provisions of the Subdivision Restrictions.

Section 11.03: Construction; Compliance with Laws; Severability; Singular and Plural; Titles.

a. All of the limitations, restrictions, covenants, and conditions of the Subdivision Restrictions shall be liberally construed, together, to promote and effectuate the beneficial operation of the Subdivision.

b. No provision of the Subdivision Restrictions shall be construed to excuse any person from observing any law or regulation of any governmental body having jurisdiction over such person or the Subdivision.

c. Notwithstanding other provisions in this Section, the limitations, restrictions, covenants, and conditions of the Subdivision Restrictions shall be deemed independent and severable, and the invalidity or partial invalidity of any provision, or portion thereof, of any of such limitations, restrictions, covenants, or conditions shall not affect the validity or enforceability of any other provision.

d. The singular shall include the plural and the plural, the singular, unless the context requires the contrary, and the masculine, feminine and neuter, as the context requires.

e. The table of contents and all titles used in the Subdivision Restrictions, including those of Articles and Sections, are intended solely for convenience of reference and the same shall not, nor shall any of them affect that which is set forth in such Articles, Sections, nor any of the terms or provisions of the Subdivision Restrictions. Any numbered or lettered subdivision of a Section is referred to as "subsection" or "subsections" and any indented portion of this Declaration which is unnumbered and unlettered shall be referred to as "Paragraph."

Section 11.04: Lot Splitting; Consolidation.

a. No Lot shall be split into Lots less than 10 acres in size.

b. No Lot shall be split within two (2) years of the date of these Restrictions.

c. All permitted Lot splits require the filing of a replat in the Sandoval County records.

d. No two or more lots within the Subdivision shall be consolidated into one Lot unless the Board shall have given its written consent.

e. Nothing contained in this Section shall apply to the splitting of any Lots by Grantor or the consolidation of two or more Lots into one Lot by Grantor.

f. The Association can require a change in the voting rights and assessment obligation in any Lot split or consolidation to keep the assessment and voting rights the same after the split or consolidation as they were before.

Section 11.05: Obligations of Owners; Avoidance; Termination.

a. No Owner, through the abandonment of his Lot, may avoid the burdens or obligations imposed on

him by the Subdivision Restrictions by virtue of his being an Owner.

b. Upon the conveyance, sale, assignment or other transfer of a Lot to a new Owner, the transferring Owner shall not be liable for any assessments levied with respect to such Lot after the date such transfer is recorded, provided such transferring Owner notifies the Association of the transfer as provided by the Subdivision Restrictions, and no person, after the termination of his status as an Owner and prior to his again becoming an Owner, shall incur any of the obligations or enjoy any of the benefits of an Owner under the Subdivision Restrictions following the date of such termination.

Section 11.06: No Partition or Severance of Interests.

There shall be no partition or severance of any Lot from the Subdivision, and the Grantor, Board, Association and Lot Owners shall not seek to partition or sever any part of a Lot from the Subdivision, nor shall they have any right to maintain an action for judicial partition in connection with the Subdivision unless such right is expressly given by the Subdivision Restrictions. This provision shall not prevent the partition of any Lot or Lots held in joint ownership as long as no physical partition takes place and there is no severance from any incident of the Subdivision Restrictions. No owner shall sever his Lot from its interest in the Association.

Section 11.07: Notices; Documents; Delivery.

Except as set forth herein to the contrary, any notice or other document permitted or required by the Subdivision Restrictions to be delivered may be delivered either personally, by mail or certified mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed as follows:

If to a Lot Owner: At any House within the Subdivision owned by the Owner or at such other address given by Owner to the Association, in writing.

If to Grantor:  
Campbell Farming Corporation  
5555 No. Via Alcalde  
Tucson, Arizona 85718

If to the Association:  
San Pedro Creek Estates Homeowners' Association, Inc.  
5555 No. Via Alcalde  
Tucson, Arizona 85718

Any such address may be changed from time to time by any Lot Owner, or by Grantor by notice in writing, delivered to the Association, or by the Association, by notice in writing, delivered to all Lot Owners.

Section 11.08: Ownership of Property.

All funds and facilities provided for by the Subdivision Restrictions and all property of any kind held by the Association and derived from assessments of members, proceeds of insurance carried or obtained by the Association, proceeds of bonds payable to the Association or payment received for damages to the Subdivision, and any right or interest in any such property shall belong to the Lot Owners in proportion to each Owner's share of the maintenance assessment, and no assessment or the proceeds of any assessment shall be considered income to the Association. No person has any right to appropriate or make use of such property, except as provided by the Subdivision Restrictions until and unless there has been a partition or distribution of such property. All such property shall be appurtenant to each Lot in proportion to each Lot's share of the maintenance assessment and may not be severed or separated from any house, and any sale, transfer, or conveyance of the beneficial interest of the fee of any house shall operate to transfer the Owner's rights in such property without the requirement of any express reference thereto.

Section 11.09: Transfer of Common Area.

Grantor shall transfer and convey to the Association, and the Association shall accept, the Common Areas. The Common Areas may be subject to any or all of the following exceptions, liens, and encumbrances:

- a. The lien of real property taxes and assessments not delinquent;
- b. Such easements and rights of way as may have been offered for dedication to a political subdivision or public organization, or public utility corporation;
- c. Such easements and rights of way, licenses or rights of use on, over, or under all or any part of any such property or structures or improvements thereon as may be reserved to Grantor or granted to any Owner for the use thereof in accordance with the provisions of these Restrictions;

d. Obligations imposed, directly or indirectly, by virtue of any statute, law, ordinance, resolution, or regulation of the United States of America, the State of New Mexico, or any other political subdivision or public organization having jurisdiction over such property, or by virtue of any organization or body politic created pursuant to any such statute, law, ordinance or regulation; and

e. Any other lien, encumbrance, or defect of title of any kind whatsoever (other than of the type which would, at any time, or from time to time, create a lien upon such property to secure an obligation to pay money) which would not materially and actually prejudice Owners in their use and enjoyment of such property.

f. The easements reserved by Grantor set forth in Sections 3.03 and 10.05 hereof. In favor of Grantor and the owners of property in adjoining developments to use the Private Streets and the Easement Area for access to the Grantor's Remaining Property and to adjoining developments.

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first above written.

CAMPBELL FARMING CORPORATION,  
a Montana corporation

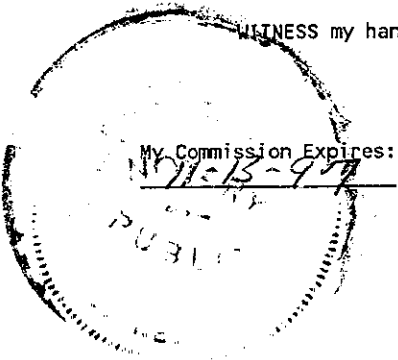
By: *H. Robert Warren*  
H. ROBERT WARREN  
President

STATE OF NEW MEXICO            )  
  ) ss.  
COUNTY OF BERNALILLO        )

THIS INSTRUMENT was acknowledged before me on February 28, 1995, by H. Robert Warren, President of Campbell Farming Corporation, a Montana corporation.

WITNESS my hand and official seal.

*Karenell Ward*  
NOTARY PUBLIC





**CONSERVATION EASEMENT**

( \_\_\_\_\_ )

THIS INDENTURE, made this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,

WITNESSETH:

WHEREAS, CAMPBELL FARMING CORPORATION, a Montana corporation, whose address is 5555 North Via Alcalde, Tucson, Arizona 85718 (hereinafter called the "Grantor"), is the owner in fee simple of certain real property (hereinafter called the "Protected Property"), which has ecological, scientific, educational and aesthetic value in its present state as a natural area which has not been subject to development or exploitation, which property is described as follows:

See Exhibit A attached hereto and by this reference incorporated herein.

WHEREAS, THE ALBUQUERQUE CONSERVATION TRUST, with its principal offices at \_\_\_\_\_, (hereinafter called the "Trust") is a \_\_\_\_\_, whose purpose is to preserve and conserve natural areas for aesthetic, scientific, charitable and educational purposes; and

WHEREAS, the Protected Property is a natural area which provides significant habitat for wildlife and plants and has substantial value as a natural, scenic and educational resource; and

WHEREAS, preservation of the Protected Property is for the scenic enjoyment of the general public and will yield a significant public benefit; and

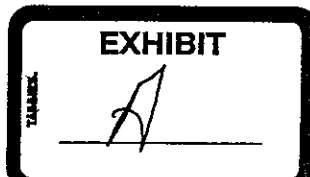
WHEREAS, the preservation of the Protected Property is pursuant to federal, state and local governmental conservation policy; and

WHEREAS, the Grantor and the Trust recognize the natural, scenic, aesthetic, and special character of the Protected Property and have the common purpose of conserving the natural values of the Protected Property by the conveyance to the Trust of a Conservation Easement on, over and across the Protected Property which shall conserve the natural values of the Protected Property, conserve and protect the special animal and plant populations, and prevent the use or development of that property for any purpose or in any manner which would conflict with the maintenance of the Protected Property in its current natural, scenic and open condition for this generation and future generations; and

WHEREAS, the Grantor and the Trust have the common purpose of conserving and protecting in perpetuity the Protected Property as "a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem," as that phrase is used in P.L. 96-541, 26 USC 170(h)(4)(A)(ii), as amended, and in regulations promulgated thereunder; and

WHEREAS, the Grantor and the Trust have the common purpose of protecting in perpetuity the Protected Property's "natural and open space values", as that term is used in the New Mexico Land Use Easement Act of 1991, New Mexico Statutes 47-12-1 through 47-12-6; and

WHEREAS, "ecological, scientific, educational and aesthetic value," "natural, scenic and open condition" and "natural values" as used herein shall, without limiting the generality of the terms, mean the condition of the Protected Property at the time of this grant evidenced by reports, photographs, maps and scientific documentation possessed (at present or in the future) by the Trust and which the Trust shall make available on any reasonable request to the Grantor, its successors and assigns, and which more particularly may include, but are not limited to, the following described items:



a) the appropriate survey maps from the United States Geological Survey, showing the property lines and other contiguous or nearby protected areas;

b) a map of the area drawn to scale showing all existing man-made improvements or incursions (such as roads, buildings, fences or gravel pits), vegetation and identification of flora and fauna (including, for example, rare species locations, animal breeding and roosting areas, and migration routes), land use history (including present uses and recent past disturbances), and distinct natural features (such as large trees and aquatic areas);

c) an aerial photograph of the property at an appropriate scale taken as close as possible to the date the donation is made;

d) on-site photographs taken at appropriate locations on the property; and

e) an easement documentation report including, among other things, an owner acknowledgement of condition, background information, legal information, ecological features information, and land-use and man-made features information; and

WHEREAS, the Grantor intends to convey fee title to the Protected Property, subject to this Conservation Easement, to the San Pedro Creek Estates Homeowner's Association, Inc., formed or to be formed as a New Mexico Nonprofit Corporation.

NOW, THEREFORE, the Grantor, for and in consideration of the facts above recited and of the mutual covenants, terms, conditions and restrictions herein contained and as an absolute and unconditional gift, does hereby give, grant, bargain, sell and convey unto the Trust, its successors and assigns forever a Conservation Easement in perpetuity over the protected Property consisting of the following:

1. The right of visual access to and view of the Protected Property in its natural, scenic and open condition.

2. The right of the Trust, in a reasonable manner and at reasonable times, to enforce by proceedings at law or in equity the covenants hereinafter set forth, including but not limited to the right to require the restoration of the Protected Property to the condition of the time of this grant. The Trust, or its successors or assigns, does not waive or forfeit the right to take action as may be necessary to insure compliance with the covenants and purposes of this grant by any prior failure to act. Nothing herein shall be construed to entitle the Trust to institute any enforcement proceedings against the Grantor, its successors and assigns, for any changes to the Protected Property due to causes beyond their control, such as changes caused by fire, floods, storm or the unauthorized wrongful acts of third persons. In the event that the Trust becomes aware of an event or circumstance of non-compliance with the terms and conditions herein set forth, the Trust shall give notice to the then owner of the fee of the Protected Property, at its last known address, of such event or circumstance of non-compliance via certified mail, return receipt requested, and request corrective action sufficient to abate such event or circumstance of non-compliance and restore the Protected Property to its previous condition. Failure by the fee owner to cause discontinuance, abatement or such other corrective action as may be requested by the Trust within thirty (30) days after receipt of notice shall entitle the Trust to bring an action at law or equity in a court of competent jurisdiction to enforce the terms of this agreement; to require the restoration of the property to its prior condition; to enjoin such non-compliance by ex parte temporary or permanent injunction in a court of competent jurisdiction; and/or to recover any damages arising from such non-compliance. Such damages, when recovered, may be applied by the Trust, in its discretion, to corrective action on the Protected Property, if necessary. If such court determines that the fee owner has failed to comply with this

agreement, the fee owner shall reimburse the Trust for any reasonable costs of enforcement, including costs of restoration or court costs and reasonable attorneys fees, in addition to any other payments ordered by such court. Grantor hereby waives any defense of laches with respect to any delay by the Trust, its successors or assigns, in acting to enforce any restriction or exercise any rights under this Easement.

3. The right to enter the Protected Property at all reasonable times and, if necessary, across other lands retained by the Grantor, for the purposes of (a) inspecting the Protected Property to determine if the Grantor, or its successors or assigns, is complying with the covenants and purposes of this grant; (b) enforcing the terms of this Conservation Easement; (c) taking any and all actions with respect to the Protected Property as may be necessary or appropriate, with or without order of court, to remedy or abate violations hereof; and (d) observing and studying nature and making scientific and educational observations and studies and taking samples in such a manner as will not disturb the quiet enjoyment of the Protected Property by the Grantor, its successors and assigns.

4. The right, but not the obligation, to monitor rare plant and animal populations and plant communities and to manage them, if needed, for their continued survival and quality on the Protected Property.

#### COVENANTS

In furtherance of the foregoing affirmative rights, the Grantor makes the following covenants as to the Protected Property, for the benefit of the Trust, its successors and assigns, which covenants shall run with and bind the Protected Property in perpetuity:

1. There shall be no construction or maintenance of buildings, camping accommodations or mobile homes, fences, signs, billboards or other advertising material, or other structures, other than those structures which currently exist.

2. There shall be no ditching, draining, diking, filling, excavating, dredging, mining or drilling, removal of topsoil, sand, gravel, rock, minerals or other materials, nor any building of roads or change in the topography of the land in any manner excepting the maintenance of existing foot trails, and excepting any activity permitted under the Water Agreement, which term is defined below.

3. There shall be no removal, destruction or cutting of trees or plants (except as is necessary to construct and maintain foot trails), planting of trees or plants, use of fertilizers, spraying with biocides, introduction of non-native animals, grazing of domestic animals, or disturbance or change in the natural habitat in any manner.

4. There shall be no dumping of ashes, trash, garbage, or other unsightly or offensive material, hazardous substance, or toxic waste, nor any placement of underground storage tanks in, on, or under the Protected Property; there shall be no changing of the topography through the placing of soil or other substance or material such as land fill or dredging spoils, nor shall activities be conducted on the Protected Property or on adjacent property which could cause erosion or siltation on the Protected Property.

5. There shall be no manipulation or alteration of natural water courses, lake shores, marshes or other water bodies, nor shall there be activities conducted on the Protected Property which would be detrimental to water purity, or which could alter natural water level and/or flow.

6. There shall be no operation of snowmobiles, dunebuggies, motorcycles, all-terrain vehicles, or any other types of motorized vehicles.

7. There shall be no hunting or trapping except to the extent specifically approved by the Trust as necessary to keep the animal population within the numbers consistent with the ecological balance of the area.

8. Prior to undertaking any changes in the use of the Protected Property, the fee owner of the Protected Property shall consult with the Trust regarding the proposed changes to determine the effect of such changes on the natural values being protected on the Protected Property. The Trust shall have the right to approve such changes in use, such approval not to be unreasonably withheld.

NEVERTHELESS, and notwithstanding any of the foregoing provisions to the contrary and as expressly limited herein, the Grantor reserves for itself, and its successors and assigns, including the San Pedro Creek Estates Homeowners' Association, Inc. and its members, and including the owners of property surrounding or nearby the Protected Property that is developed by Grantor or its successors and assigns, the following reserved rights, which may be exercised after providing written notice to the Trust; provided, however, that the exercise of such rights will not interfere with either the essential natural, open and scenic quality of or the conservation interest associated with the Protected Property.

#### RESERVED RIGHTS

1. The right to use the Protected Property for all purposes not inconsistent with this grant.

2. The right to sell, give or otherwise convey the Protected Property or any portion or portions of the Protected Property, provided such conveyance is subject to the terms of this easement.

3. The right to maintain views from established overlooks and to maintain existing foot trails on the Protected Property.

The Grantor, for itself and on behalf of its successors and assigns, agrees that the fee owner of the Protected Property shall pay any real estate taxes or other assessments levied by competent authorities on the Protected Property and shall relieve the Trust from any duty or responsibility to maintain the Protected Property. If the Grantor, or its successors and assigns, becomes delinquent in payment of said taxes or assessments, such that a lien against the land is created, the Trust, at its option, shall have the right to purchase and acquire the Grantor's, or his successor's or assign's, interest in said Protected Property by paying funds to discharge said lien or delinquent taxes or assessments, or to take other actions as may be necessary to protect the Trust's interest in the Protected Property and to assure the continued enforceability of this Conservation Easement.

The Grantor agrees that any subsequent deed or other legal instrument by which the Grantor divests itself of either the fee simple title to or its possessory interest in the Protected Property shall be subject to the terms, conditions and restrictions of this grant.

Any notices required in this Conservation Easement shall be sent by registered or certified mail to the following address or such address as may hereafter specified by notice in writing:

GRANTOR: CAMPBELL FARMING CORPORATION  
5555 Via Alcalde  
Tucson, Arizona 85718

TRUST: THE ALBUQUERQUE CONSERVATION TRUST  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If any provision of this Conservation Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of the Conservation Easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid shall not be affected thereby.

The covenants agreed to and the terms, conditions, restrictions and purposes imposed with this grant shall not only be binding upon the Grantor but all its agents, successors and assigns, and all other successors to him in interest and shall continue as a servitude running in perpetuity with the Protected Property.

And the Grantor does further covenant and represent that the Grantor is seized of the Protected Property in fee simple and has good right to grant and convey the aforesaid Conservation Easement, and that the Protected Property is free and clear of any and all encumbrances, except for the Permitted Encumbrances, defined immediately below, and that the Trust shall have the use of and enjoy all of the benefits derived from and arising out of the aforesaid Conservation Easement. The Protected Property is subject to the following (the "Permitted Encumbrances"):

A. Reservations in the patent from the United States of America recorded in the Sandoval County, New Mexico Real Estate Records in Book Misc. 9, Pages 912-927.

B. The rights of the developers of the Paa-ko Subdivision to enter upon the Protected Property for purposes of drilling wells and/or running water lines pursuant to that certain Agreement dated March 30, 1985, and recorded in the Sandoval County, New Mexico Real Estate Records on April 1, 1985, in Book Misc. 215-A, Pages 743-756. The Water Agreement may give the owners and developers of property in the Paa-ko Subdivision the right to drill a water well on the Protected Property. That right cannot be exercised until such time as such person has determined, in its reasonable discretion, that water in sufficient quantities to provide water service to at least 1,800 dwelling units on the Paa-ko property cannot be produced from under that property or, if its producible, cannot be produced in a commercially reasonable manner and at a commercially reasonable cost, all as further set forth in the Water Agreement.

The Seller is aware of the following facts, which are accurate to the best of Seller's knowledge:

i) After the Water Agreement was executed, there were several wells drilled on the Paa-ko lands. One produced in excess of 700 gallons per minute and one produced in excess of 800 gallons per minute.

ii) Even though water was found under the Paa-ko land, landowners in the La Madera area objected to a Paa-ko community water system fed by Paa-ko wells, taking the position that La Madera water would be depleted should that water system be put in place. The owners of Paa-ko elected to put in place a water system serviced by Entranosa Water Coop, which system services approximately

1,400 residential lots in the Paa-ko project.

iii) Before using wells to service a community water system for a residential subdivision, approval from the New Mexico State Engineer's Office would be required. The State Engineer's Office has rejected other such applications in the area, having taken the position that the water for a system had already been adjudicated in the area.

iv) The Water Agreement also grants to Paa-ko owners and developers certain other rights, such as the right, if obtaining water from other sources, to construct pipelines and facilities and to pipe water from another source over the Protected Property, all as more fully provided in the Water Agreement.

The Trust acknowledges that it has read the Water Agreement before accepting this Conservation Easement.

The parties hereto recognize and agree that the benefits of this easement are in gross and assignable, and the Trust hereby covenants and agrees, that in the event it transfers or assigns the easement it holds under this indenture, the organization receiving the interest will be a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code of 1986 (or any successor section) and the regulations promulgated thereunder, and which is organized and operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the Internal Revenue Code, and further covenants and agrees that the terms of the transfer or assignment will be required to continue to carry out in perpetuity the conservation purposes which the contribution was originally intended to advance.

For purposes of compliance with Treasury Regulations Section 1.170A-14(g)(6)(ii), the Grantor hereby agrees that at the time of the conveyance of this conservation easement to the Trust, the donation of this conservation easement by the Grantor gives rise to a real property right, immediately vested in the Trust, with a fair market value of said conservation easement as of the date of contribution that is at least equal to the proportionate value that this conservation easement, at the time of the contribution, bears to the fair market value of the property as a whole at that time

That proportionate value of the Trust's property rights shall remain constant. When a change in conditions which makes impossible or impractical any continued protection of the property for conservation purposes, and the restrictions are extinguished by judicial proceeding, the Trust, upon a subsequent sale, exchange or involuntary conversion of the Protected Property, shall be entitled to a portion of the proceeds in a manner consistent with the conservation purposes of the original contribution or for the protection of a "relatively natural habitat of fish, wildlife, or plants or similar ecosystem," as that phrase is used in P.L. 96-541, 26 USC 170(h)(4)(A)(ii), as amended and in regulations promulgated thereunder.

Whenever all or part of the Protected Property is taken in exercise or eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Conservation Easement, the Grantor and the Trust shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking, which proceeds shall be divided in accordance with the proportionate value of the Trust's and Grantor's interests as specified above; all expenses incurred by the Grantor and the Trust in this action shall be paid out of the recovered proceeds.

TO HAVE AND TO HOLD the said Conservation Easement unto the Trust, its successors and assigns forever.

IN WITNESS WHEREOF, the Grantor has executed and sealed this document the day and year first above written.

GRANTOR: \_\_\_\_\_

STATE OF NEW MEXICO            )  
  ) ss  
COUNTY OF BERNALILLO        )

THIS INSTRUMENT was acknowledged before me on \_\_\_\_\_, 1995, by  
\_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:  
\_\_\_\_\_

ease0217 doc

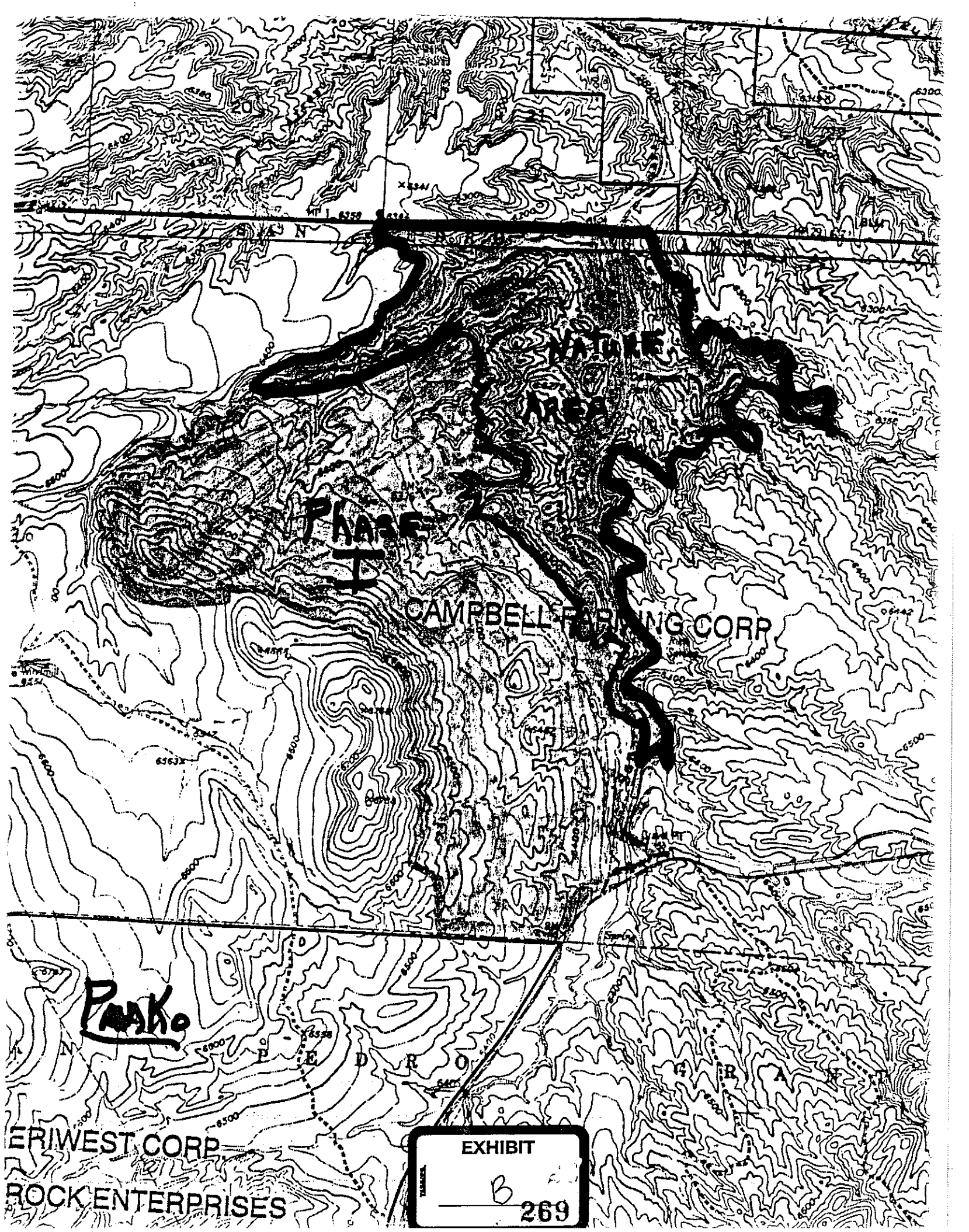


EXHIBIT  
B  
269

ERIWEST CORP  
ROCK ENTERPRISES



## DESCRIPTION OF TRAILS

A strip of land one hundred (100) feet in width, the center line of which is the boundary of the Subdivision from the southeast corner of Lot 16 to the northeast corner of Lot 32, along Lots 16, 17, 18, 19, 20, 21, 22, 30, 31 and 32, and extending fifty feet (50') on each side of said center line.

A strip of land 100 feet in width, the center line of which is the common boundary between Lots 39 and 40, and extending fifty feet (50') on each side of said center line into Lots 39 and 40.

A strip of land 100 feet in width, the center line of which is the southern boundary of Lot 49, and extending fifty feet (50') on each side of said center line into Lots 49, 50, 51, 52, 53 and 54.

A strip of land 100 feet in width, the center line of which is the common boundary between Lots 71 and 72, and extending fifty feet (50') on each side of said center line into Lots 71 and 72.

A strip of land 100 feet in width, the center line of which is the common boundary between Lots 73 and 74, and extending fifty feet (50') on each side of said center line into Lots 73 and 74.

EXHIBIT "C"



**AMENDMENT TO**  
**RESTRICTIONS OF SAN PEDRO CREEK ESTATES SUBDIVISION**

THIS AMENDMENT is made as of April 11, 1995, by Campbell Farming Corporation, a Montana corporation.

WHEREAS, the Restrictions of San Pedro Creek Estates Subdivision (the "Restrictions"), dated February 28, 1995 and recorded on February 28, 1995 as Document No. 62292 in the Sandoval County, New Mexico real estate records, set forth restrictions on certain real property in Sandoval County, all as more fully set forth therein, and

WHEREAS, Campbell Farming Corporation, the Grantor thereunder, desires to clarify and amend certain provisions of the Restrictions,

THEREFORE, it is agreed:

1. The Restrictions are hereby amended as follows:

a. Paragraph (d) of Section 3.02 of the Restrictions is hereby deleted in its entirety, and the following is hereby added in its place:

No trailer, mobile home, manufactured home, motor home, recreational vehicle, camper or trailer shall be utilized as a residence, single family dwelling or Guest House within the Subdivision at any time for any length of time. No mobile home or manufactured home shall be permitted on a Lot, except for non-residential trailers or facilities used by contractors and construction personnel exclusively in connection with the construction of any work or improvement permitted by this Declaration for a period not to exceed 90 days. No motor home, recreational vehicle, motorcycle, camper, trailer, boat or similar facility, structure or recreational equipment shall be kept, placed or maintained within the Subdivision at any time, unless enclosed within a garage or within the side or rear yard so as not to be visible from outside the Lot.

b. The last sentence of Paragraph (g) of Section 3.02 of the Restrictions is hereby deleted, and the following is hereby added in its place:

Subject to applicable zoning provisions and other applicable laws, other animals, livestock, insects or poultry may be kept on a Lot (i) provided they are not kept, raised or bred for commercial purposes, (ii) provided that they must be restrained by leash, corral, fence or other restraint when in the Subdivision, and (iii) provided that the keeping of such

animals does not or would not constitute a nuisance or a violation of the provisions of Section 3.02(b) of the Subdivision Restrictions.


c. The following is hereby inserted immediately after the first sentence of Paragraph (a) of Section 4.03 of the Restrictions:

Each Lot Owner, including Grantor, shall be entitled to one vote for each Lot in which the Lot Owner holds the interest required for membership as provided in Section 4.01 above. When more than one person or entity holds such interest, all persons or entities shall be members, but only one vote shall be cast with respect to any Lot.

2. The remaining terms of the Restrictions shall remain in full force and effect.

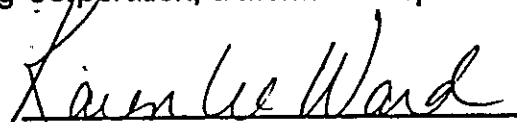
IN WITNESS WHEREOF, the undersigned has executed this Amendment the day and year first above written.

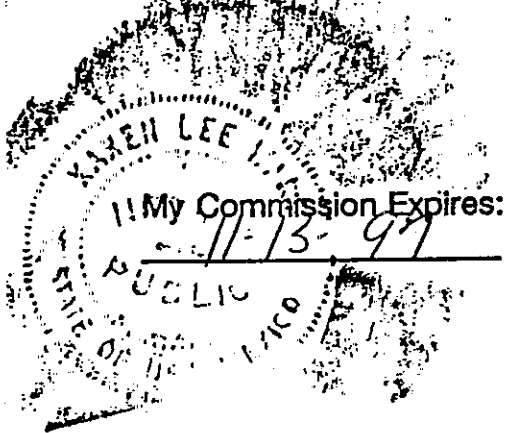
CAMPBELL FARMING CORPORATION,  
a Montana corporation

By:   
H. Robert Warren  
Its: President

STATE OF NEW MEXICO        )  
  ) ss.  
COUNTY OF BERNALILLO    )

THIS INSTRUMENT was acknowledged before me on April 11, 1995, by H. Robert Warren, President of Campbell Farming Corporation, a Montana corporation.

  
Notary Public



CERTIFICATE

The undersigned, Assistant Secretary of the San Pedro Creek Estates Homeowners' Association, Inc., a New Mexico non-profit corporation, hereby certifies that all of the amendments to the Restrictions contained in the foregoing Amendment have been approved by the required vote or consent of the Owners.

CAMPBELL FARMING CORPORATION,  
a Montana corporation

By: [Signature]  
Ron Pisk  
Its: Assistant Secretary

STATE OF NEW MEXICO     )  
  ) ss.  
COUNTY OF BERNALILLO    )

THIS INSTRUMENT was acknowledged before me on April 11, 1995, by Ron Pisk, Assistant Secretary of Campbell Farming Corporation, a Montana corporation.

[Signature]  
Karen W Ward  
Notary Public



amen0405.doc

STATE OF NEW MEXICO } ss  
COUNTY OF SANDOVAL }  
This instrument was filed for record on  
AT: 3:22 APR 11 1995 A.M.  
P.M.  
Recorded in Vol. Misc 328  
of records of said county, folio 824  
Sally Padilla, Clerk & Recorder 826  
By: [Signature] Deputy [Signature]

U 826

DECLARATION OF ANNEXATION OF  
SAN PEDRO CREEK ESTATES II INTO THE  
RESTRICTIONS OF SAN PEDRO CREEK ESTATES SUBDIVISION

THIS DECLARATION is made on March 21, 1996, by Campbell Farming Corporation, a Montana corporation ("Campbell Farming").

WHEREAS, the Restrictions of San Pedro Creek Estates Subdivision, (the "Original Restrictions"), dated February 28, 1995 and recorded in the office of the County Clerk, Sandoval County, New Mexico on February 28, 1995 in Vol. Misc. 326, Folio 238, as Document No. 62292, as amended by the Amendment to Restrictions of San Pedro Creek Estates Subdivision recorded in the office of the County Clerk, Sandoval County, New Mexico on April 11, 1995, in Volume Misc. 328, Folio 824, as Document No. 65562 (together, the "Restrictions"), encumbered certain real property in Sandoval County described in the Restrictions, and

WHEREAS, the Original Restrictions provide in Section 2.02 that Campbell Farming may annex additional property owned by Campbell Farming into the effect of the Restrictions, and that the annexation of such property shall become effective when Campbell Farming shall have recorded a declaration and subdivision plat with respect to said property, and

WHEREAS, Campbell Farming is the owner of all of the property (the "Property") covered by the Plat entitled "Plat of SAN PEDRO CREEK ESTATES II, Lots 1 through 98 & Common Area 'A', Lot 4 of San Pedro Creek Estates Together With a Portion of the San Pedro Grant Lying West of San Pedro Creek and East of La Madera Heights, Sandoval County, New Mexico", which Plat was filed in the office of the County Clerk of Sandoval County, New Mexico on March 19, 1996 in Volume 3, Folio 1399-A, as Document No. 92836.

WHEREAS, Campbell Farming desires to annex the Property into the operation of the Restrictions.

NOW THEREFORE:

1. Campbell Farming declares that the Property covered by the Plat is hereby annexed into the operation of the Restrictions.

The Property is and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved, subject to the Restrictions, and owners of lots as shown and described on the Plat shall be members of the San Pedro Creek

Estates Homeowners' Association, Inc. Said Association shall have and shall exercise jurisdiction over the Property as a part of the San Pedro Creek Estates Community.

2. Definitions: The following definitions contained in the Original Restrictions shall be construed in light of the addition of the Property to the Restrictions:

a. Section 1.04: Common Area. The term "Common Area" shall include the property designated on the Plat of San Pedro Creek Estates II as "Common Area 'A'".

b. Section 1.16: Plat. The term "Plat" shall include the Plat of San Pedro Creek Estates II, more fully described in this Declaration.

c. Section 1.18: Roadway Slope Easements. The term "Roadway Slope Easements" shall include the easements created over portions of the Lots shown on the Plat of San Pedro Creek Estates II pursuant to paragraph 4 of this Declaration.

d. Section 1.19: Subdivision. The term "Subdivision" shall include the Property.

e. Notwithstanding the above, the specific numbered Lots referenced in the Restrictions in the definitions of and the sections relating to the Entrance Area Easements, the Trail Easements, and the Roadway Slope Easements, do not refer to the specific numbered lots created by the Plat of San Pedro Creek Estates II, unless specifically otherwise set forth herein.

3. Entrance Area Easements. No Entrance Area Easements have been created over the lots created by the Plat of San Pedro Creek Estates II (the "Phase II Lots").

4. Roadway Slope Easements. Campbell Farming reserves unto itself and its successors and assigns, and hereby grants and conveys to the Association, an easement over and across the Phase II Lots that are adjacent to the Private Streets within San Pedro Creek Estates II for the purpose of minor roadway alignment, roadway slope and/or roadway foundation, and if such a Private Street is realigned, then for utilities within ten feet (10') of the realigned boundary of the Private Street. The Roadway Slope Easements shall be the 30' (thirty feet) of depth of the Phase II Lots adjacent to each such Private Street. Campbell Farming reserves and excepts the right for Campbell Farming to use the Roadway Slope Easements to serve Campbell Farming's Remaining Property (as defined in Section 10.05 of the Restrictions).

5. Trail Easements. No Trail Easements have been created to date over the Phase II Lots, but Trail Easements may be created by separate documents executed by Campbell Farming and individual Phase II Lot owners.

6. The Restrictions shall run with and burden the Property and shall be binding upon the Property as if fully set out herein.

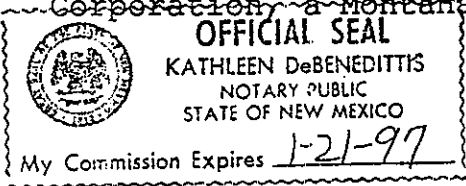
IN WITNESS WHEREOF, the undersigned has executed this Declaration the day and year first above written.

CAMPBELL FARMING CORPORATION,  
a Montana corporation

By: Ron K. Pisk  
Ron K. Pisk  
Secretary/Treasurer

STATE OF NEW MEXICO )  
                                  ) ss.  
COUNTY OF BERNALILLO )

This instrument was acknowledged before me on March 21, 1996, by Ron K. Pisk, Secretary/Treasurer of Campbell Farming Corporation, a Montana corporation.



Kathleen DeBenedittis  
Notary Public

My Commission Expires:  
1-21-97

campbell\kjm\legaldoc\annex.agr

*Vol. Misc. 347  
Folio 314-316  
per Ron 3/25/96*

STATE OF NEW MEXICO } ss  
COUNTY OF SANDOVAL }  
This instrument was filed for record on  
IT: **MAR 22 1996**  
recorded in Vol \_\_\_\_\_ of records of Sandoval County. folio \_\_\_\_\_  
Sally Padilla, Clerk & Recorder  
By: [Signature] Deputy

DECLARATION OF ANNEXATION OF  
SAN PEDRO CREEK ESTATES III INTO THE  
RESTRICTIONS OF SAN PEDRO CREEK ESTATES SUBDIVISION

THIS DECLARATION is made on October 1, 1996, by Campbell Farming Corporation, a Montana corporation ("Campbell Farming").

WHEREAS, the Restrictions of San Pedro Creek Estates Subdivision, (the "Original Restrictions"), dated February 28, 1995 and recorded in the office of the County Clerk, Sandoval County, New Mexico on February 28, 1995 in Vol. Misc. 326, Folio 238, as Document No. 62292, as amended by the Amendment to Restrictions of San Pedro Creek Estates Subdivision recorded in the office of the County Clerk, Sandoval County, New Mexico on April 11, 1995, in Volume, Misc. 328, Folio 824, as Document No. 65562 (together, the "Restrictions"), encumbered certain real property in Sandoval County described in the Restrictions, and

WHEREAS, the Original Restrictions provide in Section 2.02 that Campbell Farming may annex additional property owned by Campbell Farming into the effect of the Restrictions, and that the annexation of such property shall become effective when Campbell Farming shall have recorded a declaration and subdivision plat with respect to said property, and

WHEREAS, Campbell Farming is the owner of all of the property (the "Property") covered by the Plat (the "Plat") entitled "Plat of SAN PEDRO CREEK ESTATES III, a Portion of the San Pedro Grant Lying Adjacent to and Contiguous With the Recorded Plat of San Pedro Creek Estates, Lots 1 thru 99 & Common Area 'A' & San Pedro Creek Estates II, Lots 1 thru 98 & Common Area 'A', Sandoval County, New Mexico", which Plat was filed in the office of the County Clerk of Sandoval County, New Mexico on October 1, 1996 in Volume 3, Folio 1532-A.

WHEREAS, Campbell Farming desires to annex the Property into the operation of the Restrictions.

NOW THEREFORE:

1. Campbell Farming declares that the Property covered by the Plat is hereby annexed into the operation of the Restrictions.

The Property is and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved, subject to the Restrictions, and owners of lots as shown and described on the Plat shall be members of the San Pedro Creek Estates Homeowners' Association, Inc. Said Association shall have and shall exercise jurisdiction over the Property as a part of the San Pedro Creek Estates Community.



2. Definitions: The following definitions contained in the Original Restrictions shall be construed in light of the addition of the Property to the Restrictions:

a. Section 1.04: Common Area. The term "Common Area" shall include the property designated on the Plat of San Pedro Creek Estates III as "Common Area 'A'".

b. Section 1.16: Plat. The term "Plat" shall include the Plat of San Pedro Creek Estates III, more fully described in this Declaration.

c. Section 1.18: Roadway Slope Easements. The term "Roadway Slope Easements" shall include the easements created over portions of the Lots shown on the Plat of San Pedro Creek Estates III pursuant to paragraph 4 of this Declaration.

d. Section 1.19: Subdivision. The term "Subdivision" shall include the Property.

e. Notwithstanding the above, the specific numbered Lots referenced in the Restrictions in the definitions of and the sections relating to the Entrance Area Easements, the Trial Easements, and the Roadway Slope Easements, do not refer to the specific numbered lots created by the Plat of San Pedro Creek Estates III, unless specifically otherwise set forth herein.

3. Entrance Area Easements. No Entrance Area Easements have been created over the Lots created by the Plat of San Pedro Creek Estates III (the "Phase III Lots").

4. Roadway Slope Easements. Campbell Farming reserves unto itself and its successors and assigns, and hereby grants and conveys to the Association, an easement over and across the Phase III Lots that are adjacent to the private streets and paved access within San Pedro Creek Estates III for the purpose of minor roadway alignment, roadway slope and/or roadway foundation, and if such a private street or paved access is realigned, then for utilities within ten feet (10') of the realigned boundary of the private street or paved access. The Roadway Slope Easements shall be the 30' (thirty feet) of depth of the Phase III Lots adjacent to each such private street or paved access. Campbell Farming reserves and excepts the right for Campbell Farming to use the Roadway Slope Easements for the private streets to serve Campbell Farming's Remaining Property (as defined in Section 10.05 of the Restrictions).

5. Trail Easements. Trail Easements have been created over certain Phase III Lots as designated on the Plat of San Pedro Creek Estates III.

6. The Restrictions shall run with and burden the Property and shall be binding upon the Property as if fully set out herein.

IN WITNESS WHEREOF, the undersigned has executed this Declaration the day and year first above written.

CAMPBELL FARMING CORPORATION  
a Montana corporation

By: H. Robert Warren  
H. Robert Warren  
President

STATE OF NEW MEXICO           )  
  ) ss.  
COUNTY OF BERNALILLO       )

This instrument was acknowledged before me on October 1, 1996, by H. Robert Warren, President of Campbell Farming Corporation, a Montana corporation

Barbara Drummond  
Notary Public

My Commission Expires:

July 22, 2000

campbell\kjm\legaldoc\phaseiii\annex.agr

STATE OF NEW MEXICO ) COUNTY OF SANDOVAL ) SS
This instrument was filed for record at _____ A.M. P.M. on
<u>11:39</u> OCT 3 1996
Recorded in Vol _____ at records of said county, folio _____
By <u>D. Angelo</u> Clerk & Recorder Deputy

AMENDED AND RESTATED  
DECLARATION OF ANNEXATION OF  
SAN PEDRO CREEK ESTATES III INTO THE  
RESTRICTIONS OF SAN PEDRO CREEK ESTATES SUBDIVISION

THIS DECLARATION is made as of October 1, 1996, by Campbell Farming Corporation, a Montana corporation ("Campbell Farming").

WHEREAS, the Restrictions of San Pedro Creek Estates Subdivision, (the "Original Restrictions"), dated February 28, 1995 and recorded in the office of the County Clerk, Sandoval County, New Mexico on February 28, 1995 in Vol. Misc. 326, Folio 238, as Document No. 62292, as amended by the Amendment to Restrictions of San Pedro Creek Estates Subdivision recorded in the office of the County Clerk, Sandoval County, New Mexico on April 11, 1995, in Volume, Misc. 328, Folio 824, as Document No. 65562 (together, the "Restrictions"), encumbered certain real property in Sandoval County described in the Restrictions, and

WHEREAS, the Original Restrictions provide in Section 2.02 that Campbell Farming may annex additional property owned by Campbell Farming into the effect of the Restrictions, and that the annexation of such property shall become effective when Campbell Farming shall have recorded a declaration and subdivision plat with respect to said property, and

WHEREAS, Campbell Farming is the owner of all of the property (the "Property") covered by the Plat (the "Plat") entitled "Plat of SAN PEDRO CREEK ESTATES III, a Portion of the San Pedro Grant Lying Adjacent to and Contiguous With the Recorded Plat of San Pedro Creek Estates, Lots 1 thru 99 & Common Area 'A' & San Pedro Creek Estates II, Lots 1 thru 98 & Common Area 'A', Sandoval County, New Mexico", which Plat was filed in the office of the County Clerk of Sandoval County, New Mexico on October 1, 1996 in Volume 3, Folio 1532-A.

WHEREAS, Campbell Farming desires to annex the Property into the operation of the Restrictions.

NOW THEREFORE:

1. This Amended and Restated Declaration of Annexation of San Pedro Creek Estates III supersedes and replaces the Declaration of Annexation of San Pedro Creek Estates III recorded in the office of the County Clerk, Sandoval County, New Mexico on October 3, 1996 as Document No. 9499.

2. Campbell Farming declares that the Property covered by the Plat is hereby annexed into the operation of the Restrictions.

The Property is and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved, subject to the Restrictions, and owners of lots as shown and described on the Plat shall be members of the San Pedro Creek Estates Homeowners' Association, Inc. Said Association shall have and shall exercise jurisdiction over the Property as a part of the San Pedro Creek Estates Community.

3. Definitions: The following definitions contained in the Original Restrictions shall be construed in light of the addition of the Property to the Restrictions:

a. Section 1.04: Common Area. The term "Common Area" shall include the property designated on the Plat of San Pedro Creek Estates III as "Common Area 'A'".

b. Section 1.16: Plat. The term "Plat" shall include the Plat of San Pedro Creek Estates III, more fully described in this Declaration.

c. Section 1.18: Roadway Slope Easements. The term "Roadway Slope Easements" shall include the easements created over portions of the Lots shown on the Plat of San Pedro Creek Estates III pursuant to paragraph 4 of this Declaration.

d. Section 1.19: Subdivision. The term "Subdivision" shall include the Property.

e. Notwithstanding the above, the specific numbered Lots referenced in the Restrictions in the definitions of and the sections relating to the Entrance Area Easements, the Trial Easements, and the Roadway Slope Easements, do not refer to the specific numbered lots created by the Plat of San Pedro Creek Estates III, unless specifically otherwise set forth herein.

4. Entrance Area Easements. No Entrance Area Easements have been created over the Lots created by the Plat of San Pedro Creek Estates III (the "Phase III Lots").

5. Roadway Slope Easements. Campbell Farming reserves unto itself and its successors and assigns, and hereby grants and conveys to the Association, an easement over and across the Phase III Lots that are adjacent to the Private Streets within San Pedro Creek Estates III and that are adjacent to the easements that are designated on the Plat of San Pedro Creek Estates III as

Ingress/Egress & Utility easements ("Paved Access"), for the purpose of minor roadway alignment, roadway slope and/or roadway foundation, and if such a Private Street or Paved Access is realigned, then for utilities within ten feet (10') of the realigned boundary of the Private Street or Paved Access. The Roadway Slope Easements shall be the 30' (thirty feet) of depth of the Phase III Lots adjacent to each such Private Street or Paved Access. Campbell Farming reserves and excepts the right for Campbell Farming to use the Roadway Slope Easements for the Private Streets to serve Campbell Farming's Remaining Property (as defined in Section 10.05 of the Restrictions).

6. Trail Easements. Trail Easements have been created over certain Phase III Lots, which Trail Easements are designated on the Plat of San Pedro Creek Estates III as Pedestrian/Equestrian easements. Also, the easement over Lots 106, 110 and 111 for Paved Access, as such easement is shown and designated on the Plat of San Pedro Creek Estates III, is additionally for the purpose of pedestrian and equestrian ingress and egress.

7. Paved Access:

Any Phase III Lot to which or over which runs a Paved Access may use the Paved Access as access to said Lot. After Campbell Farming initially paves a Paved Access, it shall be maintained by the Association for as long as the Association maintains the Private Streets serving the Phase III Lots. If the Association no longer has the obligation to maintain said Private Streets, and a governmental entity does not assume the maintenance responsibility for a Paved Access, then it shall be the responsibility of the Lot owners who take access to their Lots from the Paved Access to maintain the Paved Access.

Except as provided below, and as may be permitted by law, a Lot owner who take access to the Lot owner's Lot from a Paved Access shall have the right to control access over the Paved Access, upon the prior review and approval by the Association's Architectural Control Committee of the proposed access control facilities or structures, which review may include, but is not limited to, design and sightliness. However, if there is more than one Lot that takes access from a Paved Access, then the owners of all such Lots must unanimously agree to any access control over the Paved Access. Notwithstanding the above, pedestrian and equestrian access to any Paved Access that is also a pedestrian/equestrian easement, as shown on the Plat of San Pedro Creek Estates III or as stated in paragraph 5 above, shall not be blocked or controlled.

8. The Restrictions shall run with and burden the Property

and shall be binding upon the Property as if fully set out herein.

IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the day and year first above written.

CAMPBELL FARMING CORPORATION  
a Montana corporation

By: *Ron Pisk*  
Ron Pisk  
President

STATE OF NEW MEXICO )  
                                  ) ss.  
COUNTY OF BERNALILLO )

This instrument was acknowledged before me on  
November 26, 1996, by Ron Pisk, President of Campbell  
Farming Corporation, a Montana corporation

*Bonnie M. [Signature]*  
Notary Public

My Commission Expires:

*July 27, 2000*

campbell\kjm\legaldoc\phaseiii\ameannex agr

STATE OF NEW MEXICO } SS  
COUNTY OF SANDOVAL }  
This instrument was filed for record at  
1:10 PM on  
**NOV 26 1996**  
Recorded in Vol. \_\_\_\_\_  
of records of said county, folio \_\_\_\_\_  
By: *[Signature]* Clk & Recorder  
Deputy

✱

29573

**AMENDMENT TO**  
**RESTRICTIONS OF SAN PEDRO CREEK ESTATES SUBDIVISION**

THIS AMENDMENT is made as of the 7<sup>th</sup> day of Dec., 2001. This Amendment is executed by San Pedro Creek Land Co , a Delaware corporation ("San Pedro Creek Land Co "), successor in interest to Campbell Farming Corporation, a Montana corporation ("Campbell Farming"), and has been approved by the written consent of seventy-five percent of the voting power of the members of the San Pedro Creek Homeowners' Association, Inc., a New Mexico non-profit corporation (the "Association").

WHEREAS, the Restrictions of San Pedro Creek Estates Subdivision (the "Restrictions") were executed by Campbell Farming, were recorded on February 28, 1995 as Document No 62292 in Book Misc. 326, page 238, Sandoval County, New Mexico real estate records, and set forth restrictions on certain real property in Sandoval County described therein, and

WHEREAS, the Restrictions were amended by the Amendment to Restrictions of San Pedro Creek Estates Subdivision recorded on April 11, 1995 as Document No. 65562 in Book Misc. 328, page 824, Sandoval County, New Mexico real estate records and the Amendment to Design Guidelines San Pedro Creek Estates recorded on October 30, 1996 as Document No. 11446, Sandoval County, New Mexico real estate records.

WHEREAS, additional property was annexed into the operation of the Restrictions pursuant to the document entitled "Declaration of Annexation of San Pedro Creek Estates II into the Restrictions of San Pedro Creek Estates Subdivision" recorded March 22, 1996 as document No. 93176 in Book Misc. 347, page 314, Sandoval County, New Mexico real estate records and pursuant to the document entitled "Amended and Restated Declaration of Annexation of San Pedro Creek Estates III into the Restrictions of San Pedro Creek Estates Subdivision" recorded on November 26, 1996 as Document No. 13381, Sandoval County, New Mexico real estate records.

WHEREAS, seventy-five percent of the voting power of the members of the Association have consented to amend the Restrictions, and San Pedro Creek Land Co , successor to Campbell Farming, the Grantor under the Restrictions, consents to the amendment.

THEREFORE, it is agreed:

1 The Restrictions are hereby amended as follows:

The third paragraph of Section 8 02(b) on page 14 of the Restrictions, beginning with the phrase "The Committee is authorized to charge," is hereby deleted in its entirety, and the following is hereby added in its place:

The persons requesting the proposed installation of, construction of, remodeling of, addition to or alteration of any Improvement shall be responsible for all fees for the review of the plans and specifications and all design review fees relating to such

request or Improvement Payment for the required charges shall be a part of, and condition to, the submittal of plans and specifications for Committee approval.

2 The remaining terms of the Restrictions shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned has executed this Amendment as of the day and year first above written

SAN PEDRO CREEK LAND CO., a Delaware corporation

By [Signature]  
Robert Gately, President

STATE OF NEW MEXICO )  
 ) ss.  
COUNTY OF BERNAILLO )

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of Dec., 2001 by Robert Gately, President of San Pedro Creek Land Co., a Delaware corporation

Notary Public

[Signature]

My commission expires:

July 5, 2005



OFFICIAL SEAL  
CYNTHIA POPE  
NOTARY PUBLIC-STATE OF NEW MEXICO

My commission expires: 7/5/2005

**CERTIFICATE**

The undersigned, Secretary of the San Pedro Creek Estates Homeowners' Association, Inc., a New Mexico non-profit corporation, hereby certifies that the amendment to the Restrictions contained in the foregoing document has been approved by the written consent of seventy-five percent (75%) of the voting power of the members of the Association.

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SAN PEDRO CREEK ESTATES  
HOMEOWNERS' ASSOCIATION, INC.,  
a New Mexico non-profit corporation

By Howard Bernstein  
Its Secretary

STATE OF NEW MEXICO )  
COUNTY OF Bernalillo ) ss

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of December, 2001 by Howard Bernstein as Secretary of San Pedro Creek Estates Homeowners' Association, Inc., a New Mexico non-profit corporation.

Notary Public Roberta Saede

My commission expires:

Roberta Saede  
06/18/02

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STATE OF NEW MEXICO } COUNTY OF SANDOVAL } ss
This instrument was filed for record at <u>9:01</u> <del>A.M.</del> P.M. on
<b>DEC 14 2001</b>
Recorded in Vol. <u>404</u>
of records of said county, folio <u>115747-115749</u>
By: <u>Dorene</u> Clk & Recorder Deputy <u>AS</u>

115749