

Cover Page

Declaration – Searchable Transcription

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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

Transcription

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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 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 nonprofit 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, 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 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 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 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 ft²; (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 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 purposes 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 semi permanently 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 $\frac{3}{4}$ 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 maybe 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 ft² 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 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

Section5.01: Organization.

- a. The Association shall be organized as a nonprofit 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 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 nonprofit 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 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, engine nears, 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 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 the 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 nonpayment 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 law suits 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 nonpayment 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 attorneys 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: Owners 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 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 always 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 retexure 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 enough 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 Committees 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 façade 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 materials 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; Nonwaiver; 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 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 Owners 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.

Signed by CAMPBELL FARMING CORPORATION,
A Montana Corporation
By: [Signature of H. Robert Warren, President]

Notarized by State of New Mexico on 11-15-97

Transcription