

**FIRST AMENDMENT TO THE DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR ALARY FARM SUBDIVISION**

This First Amendment of Protective Covenants, Conditions and Restrictions for Alary Farm Subdivision is made this _____ day of August, 2003, by Gary W. Parker, hereinafter called "Developer".

W I T N E S S E T H:

WHEREAS, Gary W. Parker is the owner and the developer of real property shown and designated on the Plat entitled "**Alary Farm Subdivision Phase II**", located in Sandoval County, New Mexico, which plat was recorded in the office of the County Clerk of Sandoval County, New Mexico July 9, 2003, at Vol. 3, folio 2302-B, document number 23462;

WHEREAS, Gary W. Parker is the surviving developer of real property shown and designated on the Plat entitled "**Alary Farm Subdivision**", located in Sandoval County, New Mexico, which plat was recorded in the office of the County Clerk of Sandoval County, New Mexico July 6, 2001. A reduced copy of said plat is attached hereto as Exhibit A and incorporated herein by reference; and

WHEREAS, Gary W. Parker as the surviving developer of Alary Farm Subdivision has specific rights granted under Article II of the Protective Covenants, Conditions and Restrictions for Alary Farm Subdivision as recorded in the office of the Sandoval County Clerk on the 11th day of July, 2001 at Vol. 404, pages 60061-60078 to bring additional properties within the scope and application of said Declaration.

NOW, THEREFORE, Gary W. Parker, declares that the real property referred to above as Alary Farm Subdivision and Alary Farm Subdivision Phase II, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") of the Protective Covenants, Conditions and Restrictions for Alary Farm Subdivision incorporating the following amendments:

1. Scope of Protective Covenants, Conditions and Restrictions for Alary Farm Subdivision Extended. The real property shown and designated on the Plat entitled "**Alary Farm Subdivision Phase II**", located in Sandoval County, New Mexico, which plat was recorded in the office of the County Clerk of Sandoval County, New Mexico July 9, 2003. A reduced copy of said plat is attached hereto as Exhibit B and incorporated herein by reference shall be fully included within the scope of the Protective Covenants, Conditions and Restrictions for Alary Farm Subdivision, with the following amendments being made to reflect the different character of the additional properties

within Alary Farm Subdivision Phase II, being west of Corrales Road. The use of the word Subdivision refers to all properties, which fall under the control of the original Covenants, and any amendments, unless a specific reference is made otherwise.

[Note: *italics* indicate changes or additions]

2. Article III, Section 2 entitled “Setback and Building Location Requirements” is hereby deleted with regard to Alary Farm Subdivision Phase II, being west of Corrales Road and in its place substituted the following:

Section 2. Setback and Building Location Requirements. Except by specific written consent of the Developer or architectural control committee, no building shall be located on any Property nearer than *sixty (60)* feet to the north boundary line of the Property (this is the same as *thirty (30)* feet south of the edge of the private road easement, except at lot 20), thirty (30) feet to the south Property line, or twenty (20) feet to any east or west Property line. At the *lot 20* cul-de-sac there shall be a minimum twenty (20) foot setback from the edge of the cul-de-sac easement, *which has a radius of 50 feet*, along with the standard lot setbacks as listed in this section. The front shall be considered to be facing *West Alary Lane (north)* and the rear facing the south Property line, regardless of the actual orientation of any structure (actual orientations may be in any direction to take advantage of mountain views, solar effects or other desired qualities). The Developer or architectural control committee may encourage and recommend greater setbacks where appropriate for preserving natural vegetation and enhancing an open and spacious feeling in the area, including preserving mountain views for existing residences.

3. Article III, Section 3 entitled “Size and Completion of Buildings” is hereby deleted with regard to Alary Farm Subdivision Phase II, being west of Corrales Road and in its place substituted the following:

Section 3. Size and Completion of Buildings. All residences shall have a heated floor area of not less than two thousand (2000) square feet. The term “floor area” as used herein shall mean the floor area of the primary residence structure only, exclusive of porches, covered or uncovered, basements or attics, outbuildings, garages or other similar buildings even though attached to the primary residence building. No residence or other structure shall exceed *eighteen (18)* feet above the grade level of the natural surface of the ground to the highest point on the parapet or pitched roof, *the height restrictions do not apply to lot 21 where the 26-foot governmental restriction applies. All residences shall have a finished floor elevation that is at least 12” above the existing natural grade. Residential access to Lot 15 is from West Alary Lane, not Corrales Road.* Construction of buildings and improvements shall be diligently and expeditiously performed, and completed within *twelve (12)* months after the start of construction.

4. Article III, Section 6 entitled “Signs” is hereby deleted with regard to Alary Farm Subdivision Phase II, being west of Corrales Road and in its place substituted the following:

Section 6. Signs. No advertising or other signs, (except a total of not more than five square feet of "for sale" or “political election endorsement” sign(s) per Lot) shall be erected, placed or permitted to remain on any Lot, however a sign *which may include the names of the subdivision, developer, builder or other information* of no more than thirty-two (32) square feet (per side) near the entrance *to the subdivision* shall be permitted as approved by the Developer. Street and residence names and numbers, addresses and other identification, markings and insignia shall be permissible only as installed or approved by the Developer. (when the Developer no longer owns any Lots, then by the Board or its designated representative or architectural control committee).

5. Article III, Section 11 entitled “Fences, Hedges, Trees or Walls” is hereby deleted with regard to Alary Farm Subdivision Phase II, being west of Corrales Road and in its place substituted the following:

Section 11. Fences, Hedges, Trees or Walls. No fences, hedges or walls shall be erected, grown or maintained upon the properties except such as are installed in accordance with the initial construction of the buildings located thereon or as approved in accordance with Article IV of this declaration. No Chinese elms, cotton-bearing cottonwood trees or Bermuda grass shall be planted on any Property or allowed to *exist or naturally spread by seed or existing roots within the ground. This section does not apply to any trees within a strip running north to south comprising the most westerly sixty (60) feet of lot 21.*

6. Article III, Section 12 entitled “Accessories” is hereby deleted with regard to Alary Farm Subdivision Phase II, being west of Corrales Road and in its place substituted the following:

Section 12. Accessories. No radio, television or similar tower or antenna, satellite disks or dishes over six (6) feet at its highest point in height above ground or six (6) feet at its highest point above its highest attachment to a dwelling, shall be erected on any Property or attached to the exterior of any dwelling, and any such allowed installation will normally be set at ground level or mounted on the surface of the roof, or near the top of a dwelling wall and in each instance must be attractively screened, concealed or painted to match the approximate color of the dwelling or its roof, the color shall be selected to make the tower, antenna or disk and its mount inconspicuous as is reasonably possible. Unless some substantial reason exists not to do so, any radio, television or similar tower or antenna, satellite disk or dish shall be placed near the center of the South side of the residence. No exterior clotheslines, wood piles (except for firewood), individual free-standing mailboxes, newspaper receptacles, exterior storage areas, sheds or structures, exterior heating or air conditioning equipment, or other exterior fixtures, machinery or equipment shall be permitted except with the prior written approval of the

Developer or the architectural control committee. Any such use of equipment as is approved and authorized shall be attractively screened or concealed (subject to all required approvals as to architectural control) so as not to be visible from neighboring property within this Subdivision. Basketball apparatus is only permitted behind the longest rear wall of the residence and not within forty (40) feet of the side property line of any lot. The front of every residence shall be considered to be facing *West Alary Lane (north)* and the rear to be facing south, regardless of the actual layout of the residence.

7. Article III, Section 13 entitled “Easements” is hereby deleted with regard to Alary Farm Subdivision Phase II, being west of Corrales Road and in its place substituted the following:

Section 13. Easements. Perpetual easements for underground installation and maintenance of electrical, telephone, gas, cable television, and other utilities and drainage facilities, for the benefit of the adjoining land owners and/or municipal or private utility company ultimately operating such facilities, are reserved as shown on the Subdivision plat of the properties filed with the County Clerk of Sandoval County, New Mexico. No building or structure shall be erected within those easement areas occupied by such facilities.

Private equestrian, irrigation and pedestrian easements are reserved as shown on the plat of the subdivision. These easements are for the sole and exclusive use of Owners, or others with right of possession, of *real property* in this Subdivision for access to the *Corrales Acequia area and for irrigation use by owners, or others with right of possession, of lands served by the common irrigation ditch or pipeline.* No building, structure or obstruction of any kind that would interfere in any way with another owners access to the Corrales Acequia area shall be erected within this easement other than a property line fence *and gate(s), which may be locked,* being on the exterior perimeter of The Property, *however the existing irrigation well at lot 21, and future modifications to it, including an enclosure shall be permitted so long as there is at least a 12 foot wide easement for pedestrian and equestrian use to the north or south of the well and any associated enclosure. Irrigation turnouts, associated piping or culverts, and irrigation borders shall be designed to keep water from accumulating within the easement and thereby interfering with another Owners access to the Corrales Acequia area.* Motorized vehicles are prohibited within any part of this easement other than emergency, utility company, irrigation, septic and well installation or maintenance equipment (while performing their associated services) and farm tractors including their attachments or trailers. Portions of this easement *may* contain irrigation ditches, irrigation pipeline(s) and utility easements.

8. Article III, Section 18 entitled “Perimeter Fencing” is hereby deleted with regard to Alary Farm Subdivision Phase II, being west of Corrales Road and in its place substituted the following:

Section 18. Perimeter Fencing. The entire Property has *either fencing, an elevated irrigation ditch, or pipeline mound* around most of its perimeter which shall remain in place as is reasonably possible. A locked gate *may* be installed at the *West and/or East* end of the equestrian, pedestrian and irrigation easement. The Developer or the Association will supply owners with keys or combinations to the lock. The *west* gate is to remain closed and locked unless someone is actually passing through it, or some emergency exists.

9. Article III, Section 20 entitled "Irrigation" is hereby deleted with regard to Alary Farm Subdivision Phase II, being west of Corrales Road and in its place substituted the following:

Section 20. Irrigation. An irrigation easement for *an existing ditch or* underground irrigation pipeline exists as indicated on the Subdivision plat(s). All irrigation water from the Sandoval Lateral or the Corrales Acequia shall be delivered to any Property through a buried pipe of at least twelve inches in diameter. Irrigation water shall not be delivered from the Sandoval Lateral or Corrales Acequia through any open ditch crossing another owners' property. Any Lot Owner, group of Owners, or the Association may construct an underground irrigation pipeline so long as it is engineered to serve the needs of all of the property owners along its path as further described within this Section 20. It shall be the obligation of any Owner or property owner to pay for and/or install and maintain any irrigation turnout or check as necessary for the irrigation of their Lot and to maintain the portion of the pipeline *that* crosses their property if they use the pipeline at any time for irrigation. Any portion of an irrigation easement not within an equestrian or pedestrian easement shall not be considered in any way an equestrian or pedestrian easement.

- (a) For any pipeline West of Corrales Road, the *adjoining* property owners on both Sides (north and south) of the existing irrigation ditch *or pipeline* have a right to irrigate from that pipeline *or in the case of a common open ditch the owners to the south shall be entitled to its use.*
- (b) Any pipeline on the East side of Corrales Road shall only serve the Owners within *the Alary Farm Subdivision*, including the owners of any lots resulting from a replat of Lot 1 *unless the Developer constructs the pipeline and chooses to allow other owners outside the Subdivision to use the pipeline so long as they obey the same irrigation regulations as the Lot owners.*
- (c) *All irrigators shall be responsible for keeping their irrigation turnouts closed and any irrigation checks that would restrict delivery to another irrigator open when they are not actually irrigating. Damages resulting from the failure of any irrigator to follow these requirements are solely their responsibility.*

- (d) *Proposed onsite drainage ponds and/or irrigation borders or berms shown on the drainage plan, or approved alternatives, are to be built by individual lot owners as a part of their residential site grading following site plan approval. Owners of multiple lots shall be permitted to irrigate and control drainage within their contiguous lots as if they were a single lot. Irrigation of individual Lots will almost certainly require grading and/or additional onsite pipeline infrastructure depending on the area to be irrigated, the location of the residence, and other factors. Irrigation borders and/or drainage ponds shall be of sufficient size and be maintained as required in order to properly perform their functions.*
- (e) *Driveway crossings, being a minimum of 12 feet wide, through the drainage and irrigation control easements on the south side of West Alary Lane pavement will be required at lots 17, 18, and 19 (18" diameter), other lots may require crossings at the discretion of the architectural control committee or as required by governmental authorities.*

10. The Following Section 22 “Right to Farm” is Added to Article III with regard to Alary Farm Subdivision Phase II, being west of Corrales Road;

Section 22. Right to Farm. The Alary Farm Subdivisions and the surrounding area have historically been in agricultural use. The use of pesticides, other agricultural chemicals, irrigation, and other agricultural practices can be expected, including possible overspray and minor irrigation leakage onto each individual property from nearby properties. The Owners or others with right of possession within this Subdivision are located within an historical agricultural area and shall take no action to inhibit in any way the areas agricultural use as farmland by other persons for production of crops unless substantive damages occur as the result of actual negligence.

11. The Following Section 23 “Tree Height Restrictions” is Added to Article III with regard to Alary Farm Subdivision Phase II, being west of Corrales Road;

Section 23. Tree Height Restrictions. Lot owners shall space trees with sensitivity to mountain views from other lots. All tree locations shall be shown on a site plan submitted to the Architectural Control Committee (ACC) prior to residential construction. The trees shall be indicated on the site plan by type, as existing, proposed or to be removed, and indicate the approximate height of any existing trees or the estimated total height at full maturity of any proposed trees. The ACC may prohibit plantings of any tree, which, in its sole discretion, will unreasonably interfere with views from other lots. Trees identified as reaching a height of more than 30 feet are prohibited unless specifically approved by the ACC. In the event any tree planted after the creation of the subdivision reaches a height of greater than 30' (other than trees specifically approved by the ACC to exceed 30 feet), measured from the lowest natural grade adjacent to heated space of the residence nearest the tree, the property owner may be required by the ACC, in its absolute discretion, at his/her expense, to crop or trim the tree to limit its height to no

