

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
ALARY FARM SUBDIVISION**

A Subdivision in Sandoval County, New Mexico

THIS DECLARATION of Protective Covenants, Conditions and Restrictions for Alary Farm Subdivision is made this \_\_\_\_ day of \_\_\_\_\_, 2001, Ernest L. Alary and Gary W. Parker, collectively called "Developer".

W I T N E S S E T H:

WHEREAS, Developer is the owner and Developer (as that term is herein defined) of real property shown and designated on the Plat entitled "Alary Farm Subdivision", hereafter referred to as the "Subdivision", located in Sandoval County, New Mexico, which plat was recorded in the office of the County Clerk of Sandoval County, New Mexico \_\_\_\_\_, 2001. A reduced copy of said plat is attached hereto as Exhibit A and incorporated herein by reference; and

WHEREAS, it is the intent and desire of the Developer to develop thereon a residential community, with open spaces and other common facilities for the benefit of the community, it being understood, however, that the Developer is only obligated to build and provide the common facilities and improvements to which it expressly commits itself in writing; and

WHEREAS, Developer desires to provide for the preservation of the values and amenities in the Subdivision and for the enjoyment and maintenance of the common lands and facilities by purchasers and residents of lots within the subdivision; and, to this end, the Developer desires to subject the real property referred to above and as further provided in Article II herein below to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner and resident thereof; and

WHEREAS, Developer has deemed it desirable, for the efficient preservation of the values and amenities in the Subdivision to create a legal entity to which will be delegated and assigned the powers of maintaining and administering the community facilities, administering and enforcing the covenants, conditions and restrictions, and levying, collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Developer has agreed to incorporate, under the laws of the State of New Mexico, a nonprofit corporation, Alary Farm Subdivision Landowners' Association, Inc., as the legal entity for the purpose of exercising the functions aforesaid.

NOW, THEREFORE, the Developer declares that the real property referred to above, and any additions thereto hereafter made pursuant to Article II below, 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") hereinafter set forth.

ARTICLE I  
DEFINITIONS

The following words when used in this Declaration, or any Supplemental Declaration, shall have the following meanings:

- (a) "Developer" shall mean and refer to Ernest L. Alary and Gary W. Parker, their heirs and/or assigns as Developer.
- (b) "Association" shall mean and refer to the Alary Farm Subdivision Landowners' Association, Inc., its successors and assigns.
- (c) "The Properties" shall mean and refer to all properties including any additions hereafter made as provided in Article II, which are subject to this Declaration or any Amended, Restated and/or Supplemental Declaration.
- (d) "Common Areas" shall mean those areas designated as private streets, roads, parking areas, utility easements, equestrian, pedestrian and drainage access easements, and common property and facilities shown on the recorded Subdivision Plat of Alary Farm Subdivision, and any recorded replat or supplemental plat of the Properties hereafter filed of record, and those areas designated as common properties in any Amended, Restated and/or Supplemental Declaration; all of which land is intended for common use and enjoyment of the owners of the Properties, and shall include the facilities intended for common use and enjoyment which are or hereafter may be constructed upon, affixed to, placed upon, or otherwise located upon any part of those areas of land designated as "common areas".
- (e) "Lot" shall mean and refer to any plot of land intended and subdivided for residential use, shown upon the recorded subdivision plat(s) of The Properties, and including any residential dwelling unit constructed thereon, but does not include the Common Areas as herein defined.
- (f) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot, including contract purchasers, but excluding any mortgagee or subsequent holder of a mortgage, and further excluding any person or entity holding title as security for the payment of the Lot purchase price or performance of an obligation, unless and until such mortgagee or holder has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.
- (g) "Member" shall mean and refer to an Owner who is a member of the Association as provided in Article VIII, Section 1, hereof.
- (h) "Board" shall mean and refer to the Board of Directors of the Association.
- (i) "Vehicles" includes, but is not limited to, any automobile, van, pick-up truck or other truck not larger than one (1) ton, boat, trailer, camper, recreational vehicle, or motorcycle.
- (j) "Property" shall mean and refer to the entire area of any lot as bounded by the actual

property lines including any Common Areas within that area.

## ARTICLE II

### ADDITIONAL PROPERTY

The Developer, its successors and assigns, shall have the right at its sole election to bring within the scope and application of this Declaration additional properties in any future stages of development. The additions authorized under this section shall be made by filing of record a supplementary declaration of covenants and restrictions with respect to the additional property, which shall extend the scheme of the covenants, and restrictions of this Declaration, or any Amended or Restated Declaration, to such property. Such supplementary declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration or any Amended or Restated Declaration, as may be necessary to reflect the different character, if any, of the added properties.

## ARTICLE III

### USE OF PROPERTY

Section 1. Structures and Uses. All lots in the Subdivision are hereby restricted to single family residential dwellings for residential use only. This provision shall not prevent the combination of two or more adjoining lots for one such dwelling. All buildings or structures erected upon said premises shall be of new construction and, except for mobile construction offices or storage sheds during the process of actual construction on the premises, no buildings or structures, including prefabricated, manufactured, or mobile homes, shall be moved from other locations onto said premises. No structures of a temporary character, including any trailer, basements, tent, shack, garage, or other out-building, shall be used on any portion of the premises at any time as a residence either temporarily or permanently. No structure shall be erected, altered, placed or permitted to remain on any residential lot other than one detached single family dwelling and related garage and out-buildings and barns, and if desired, a guest house and/or a servants' house, provided that all local zoning regulations, environmental regulations and any other governmental regulations are complied with. This provision shall not prevent the use of a portion of the main dwelling or a guesthouse as quarters for relatives or friends, if desired. No business, occupation, profession, trade, solicitation or other nonresidential use of any kind or noxious or offensive activity shall be carried on upon any Property, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. Carport, garages and other structures incidental to a residence not initially designed as a living area shall not be used as a living area regardless of alterations thereto. Public or private auctions, garage sales or similar events or activities are prohibited.

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 seventy (70) feet to the north boundary line of the Property (this is the same as forty (40) feet south of the edge of the private road easement, except at lot 13), thirty (30) feet to the south Property line, or twenty (20) feet to any east or west Property line. At the lot 13 cul-de-sac there shall be a minimum twenty (20) foot setback from the edge of the cul-de-sac easement along with the standard lot setbacks as listed in this section. Any portion of a building or other structure exceeding fifteen (15) feet above the

grade level of the natural surface of the ground shall have a minimum fifty (50) foot setback from the west Property line, however this restriction shall not apply to Lot 1 or Lot 14. The front shall be considered to be facing East Alary Lane 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.

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 twenty-six (26) feet above the grade level of the natural surface of the ground to the highest point on the parapet or pitched roof. Construction of buildings and improvements shall be diligently and expeditiously performed, and completed within nine (9) months after the start of construction.

Section 4. Occupancy. In the event a residence is occupied by one not the Owner thereof, both the Owner and the occupant shall be personally liable, jointly and severally, for the dues, charges and assessments of the Association. No residence shall be leased or rented except in its entirety and there shall be no subleasing. Any lease or rental of a residence must be for the term of not less than one (1) year. Owners are responsible for the conduct of lessees, occupants, guests, children and other family members, agents, contractors and all others in, on or about a residence or any part of the properties at the request, invitation or sufferance of an Owner. Any violation of this Declaration or the Association rules and regulations by any such person shall constitute a violation by such Owner.

Section 5. Alterations and Additions. No alterations or addition to, restucco, or repainting of the exterior of any residence shall be made unless it shall conform in architecture, material and color to the dwelling as originally constructed upon the Lot, and must have architectural control approval as provided in Article IV below.

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 denoting the name of the subdivision of no more than thirty-two (32) square feet (per side) near the entrance 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).

Section 7. Vehicles. No junk or inoperative motor vehicles shall be parked or stored on any street, driveway or lot in the subdivision. No trailers, campers, boats or recreational vehicles shall be parked longer than one (1) day upon any lot (unless it is completely enclosed within a building or by parking in the rear on the main dwelling unit and shielded from view by a fence of not less than six (6) feet above ground level) or upon any public parking area in the Subdivision; provided, however, that the Board in its discretion may permit such vehicles limited parking privileges for a longer period of time.

Garage doors shall normally be kept in the fully closed position. No vehicle shall be placed on blocks and no vehicle shall be repaired or overhauled except when within an enclosed garage (such is not allowed under a carport).

Section 8. Animals. No livestock, poultry, reptiles, or swine of any kind shall be raised, bred or kept in any dwelling or on any Lot, except that not more than two (2) horses per acre may be kept on any Property. One foal of less than two years in age is also permitted for each acre, in addition to the permitted 2 horses. Horses are not permitted on any Lot without a residence unless it is on a Lot owned by the same owner and contiguous to said Owners Lot with a residence. Horses shall be kept penned and maintained. Corrals should be located outside of drainage ways and pond areas. Dogs, cats, birds or other domesticated household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose.

The homeowners association shall have the authority to approve applications by any homeowner for the raising or keeping of living creatures otherwise prohibited by this section, such approvals shall be limited to a maximum of two (2) years (or a shorter time if the association desires), a new application and approval are required to extend any approval past its expiration date. In any such vote any adjoining lot owner voting against approving an application shall have five (5) times their normal total number of votes. Small mammals not classed as domesticated household pets or swine, weighing less than twenty (20) pounds and less than six (6) in total number per acre are permitted so long as they are restricted to their owners property, do not cause disruptive noise or odors, and are leashed and under control when not on their owners property. If any dog or other animal becomes obnoxious or a nuisance to any residents or makes loud and disturbing noises, the Owner or person having control of the animal shall be given written notice by the Association to correct the problem. If not corrected, the owner, upon written notice, will be required to remove the animal from the properties. Dogs shall be kept on leashes when outside the exterior boundaries of the owner's Lot. Damages to any easements, right-of-way, common areas or lots of other owners, including non-removal of fecal matter, shall be considered the same as improper maintenance of the Owner's premises as prohibited by section 9 of this Article I, and the remedies for such damages shall be recoverable as stated therein, including liens for non-payment of such charges. The Association may adopt rules and regulations to supplement this covenant.

Section 9. Garbage and Rubbish. Each Property shall be maintained free of rubbish, trash and weeds growing more than eight (8) inches above ground level, and the same shall be removed from the premises and not allowed to accumulate thereon. Garbage and trash shall not be placed outside any residence except in an approved container or receptacle in a location screened from view and not visible by the public or from neighboring property except on the day of pick up if local regulations require a curbside type pickup location. The Association may adopt regulations concerning garbage and trash handling and storage. No garbage and rubbish or any substance that is noxious, unsightly or which emits foul or obnoxious odors shall be dumped or allowed to remain on any Property. No rubbish, trash or garbage shall be burned on the premises. Buildings or structures to accommodate trash and garbage containers shall conform to the architecture of the main buildings on the Lot.

Section 10. Sewage Disposal and Water Wells. The property owner in accordance with the requirements of the State of New Mexico Department of Environment shall place a septic tank and drain field on each Lot when a residence is constructed. Septic tank, drain fields and water well locations are also subject to the approval of the Developer or architectural control committee. It is preferred, but not

required, that water wells be placed to the north or northwest of the septic tank and drain field installations.

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 naturally spread by seed or existing roots within the ground. Existing trees located on Lot 1, or any replat of said Lot, do not need to be removed.

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 East Alary Lane and the rear to be facing south, regardless of the actual layout of the residence.

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 a Lot in this subdivision for access to the Sandoval Lateral and Corrales Bosque area. Access for each lot owner extends in an Easterly direction only from the West boundary of their Property. No building, structure or obstruction of any kind that would interfere in any way with another owners access to the Sandoval Lateral and Corrales Bosque area shall be erected within this easement other than a property line fence and locked gate being on the exterior perimeter of The Property. 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 contain irrigation ditches, irrigation pipeline and utility easements.

Section 14. No Further Subdivision. None of the lots shall be re-subdivided into lots of less than one acre.

Section 15. Fireworks. Fireworks of any kind, whether reasonable or non-explosive, shall not be stored, brought or permitted on any part of The Properties, including within residences, nor shall any fireworks be ignited, displayed or exploded on any part of The Properties.

Section 16. Noise. Owners and occupants shall exercise reasonable care to avoid making or permitting to be made loud, disturbing or objectionable noises, and in using or playing or permitting to be used or played musical instruments, radios, phonographs, televisions, amplifiers and any other instruments or devices in such manner as may disturb Owners, tenants, guests or occupants of other Lots.

Section 17. Solar Installation. The Lot Owners may install solar collectors, subject to the architectural control requirements of Article IV below. In the event of such installation, the Owner shall have the right to continue use thereof without interference by other Lot Owners or occupants, recognizing, however, that a two-story structure may be built upon an adjacent or nearby Lot.

Section 18. Perimeter Fencing. The entire Property has fencing around most of its perimeter which shall remain in place as is reasonably possible. A locked gate will be installed at the 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 gate is to remain closed and locked unless someone is actually passing through it, or some emergency exists.

Section 19. Outside Lighting. The Developer or the architectural control committee prior to placement or installation must approve all exterior light fixtures and lamps of any kind in writing.

Section 20. Irrigation. An irrigation easement for an underground irrigation pipe exists as indicated on the subdivision plat. 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, which 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 extending West of Corrales Road, the property owners on both Sides (north and south) of the existing irrigation ditch have a right to irrigate from that pipeline.

(b) Any pipeline on the East side of Corrales Road shall only serve the Owners

within this subdivision, including the owners of any lots resulting from a replat of Lot 1.

Section 21. Exemptions. In developing the Properties and constructing residences, the Developer shall not be subject to the limitations of this Article III, and nothing contained in this Declaration shall prohibit or interfere with such activities by Developer or its agents. The Developer may utilize any portion of The Properties for any and all construction and sales activities. During all times that the Developer, his heirs, and/or assigns as Developer, retain ownership and/or right to possession of any Lot, their Property shall be free of the use and other restrictions of this entire Declaration, except those listed within this Section 21 of ARTICLE III, and the Developer may make such use of its lot(s) as is permitted by law notwithstanding that such use otherwise would be prohibited by this Declaration. All improvements constructed or installed by the Developer expressly shall be permissible without necessity for approval by the Board or others and notwithstanding any restriction or prohibition to the contrary otherwise set forth herein.

(a) Should Developer construct any completely new residence on any lot, that new construction shall conform to the restrictions of this Declaration. Developer may modify, convert and/or add to any existing building for any purpose, including the creation a new residence without restriction imposed by this declaration.

(b) Developer shall not be permitted to move onto any Lot any building or structure, including any prefabricated, manufactured, or mobile homes, to create a residence.

(c) Developer shall be bound by the requirements of Article III, Section 13 with regard to utility and drainage easements and shall not prevent the other Owners' permitted uses of the Common Areas as described elsewhere herein.

## ARTICLE IV

### ARCHITECTURAL CONTROL

Section 1. Architectural Control Committee. The Developer shall appoint a three-member architectural control committee within six months of final plat approval to serve until their successors shall be appointed and qualified. The Developer or its successors may remove members of the architectural control committee without cause, and vacancies on the committee shall be filled by the Developer or its successor. The architectural control committee shall not be dissolved during the effective term of this Declaration of Covenants, Conditions and Restrictions.

Section 2. Review and Approval. No building, fence, hedge, wall or other structure of any kind, or any landscaping shall be commenced, erected or maintained upon any Property, nor shall any exterior addition thereto or alteration or change therein be made, until the plans and specifications showing the nature, kind, shape, height, elevation, materials and location of the same shall have been submitted to and approved in writing as to its construction and harmony of external design and location in relation to surrounding structures, landscaping, and topography by the Developer or the architectural control committee appointed by the Developer. **When the Developer no longer owns any Lot in the**



**Subdivision, the Association shall succeed the Developer and assume all its rights, powers and responsibilities hereunder and may replace the Developer if he is a member of the architectural control committee with a new member if they so desire.**

Section 3. Standard and Procedure of Review. Any person who desires to construct, erect or maintain any building, fence, hedge, wall or other structure of any kind, or any landscaping, or to alter, remodel or modify in any manner the exterior thereof, shall submit two complete sets of plans and specifications for said work, including colors and samples of exterior materials for review and approval or disapproval by the architectural control committee or Developer. The Developer (and subsequently the Board or its designated representative or architectural control committee) shall disapprove any new construction, exterior addition or alteration which materially deviates from the architectural design and construction of the homes within the Alary Farm Subdivision as a whole, or which noticeably detracts from the exterior appearance of the Subdivision. The Developer (and subsequently the Board or its designated representative or architectural control committee) shall take action on the approval or disapproval of any proposed construction, exterior additions or alterations within thirty (30) days of submission of the plans and specifications; provided, however, that the time for such approval or disapproval can be extended for an additional period of thirty (30) days upon written notice mailed to the owner seeking to make the new construction, exterior addition or alteration prior to the expiration of the original thirty (30) day period. In the event the Developer (or its successor) fails to act on the proposed plans within said time period(s), the plans shall be deemed approved. Owners are advised that any proposed modification or addition to the original unit will be discouraged.

The Developer or architectural control committee may employ professional experts for such review, such as consultants, architects, planners, engineers or surveyors and the cost for such review shall be borne entirely by the Owner submitting the plans. In addition, the Developer or architectural control committee may charge not more than \$100 for its review of such plans and specifications.

Section 4. Design. All buildings must conform in style and design to Southwestern Pueblo style architecture, Territorial style or Northern New Mexico Territorial. No white stucco, red brick, colonial, Victorian, modern or other construction and style of similar nature will be permitted. Roof colors shall be limited to natural soft tones of browns, tans, beiges, and grays. No bright roof colors such as white, crimson, gold, orange or fluorescent or metallic variations thereof shall be permitted, and **any and all colors proposed for roof surfaces must be specifically approved by the Developer or architectural control committee.** Galvanized and copper roofs are specifically permitted, however standard galvanized corrugated iron type, or corrugated plastic type roofing material is not permitted unless specifically approved by the Developer or architectural control committee. Composition pitched roofs shall be composed of blended color, shadow effect, random cut appearance, using a material such as, or similar to, Elk Prestique or Owens Corning Oakridge shingles. No exposed roof-mounted heating equipment shall be permitted. The exterior of the garages and outbuildings shall conform in design to that of the main building. No chain link fences will be permitted. Fences exceeding seven (7) feet in height are prohibited without the approval of the Developer or the architectural control committee.

Solar heating equipment will be considered for approval based on the merit of its design and the manner in which it is constructed so as not to be obtrusive to other homes in the subdivision. Roof-mounted solar equipment must be kept to a maximum of thirty-six (36) inches in height. Collectors must

be of black glass face and all other exposed equipment, piping, etc. must be screened with waterproof material and color coated to match the house. All ducting must be color coated to match the house.

The Developer or architectural control committee shall have the right to disapprove any plans, specifications or details submitted, in the event such plans and specifications are not in accord with all the provisions of the declaration, or if a design or color scheme in the proposed structure is not in harmony with the general surroundings, or if the plans and specifications submitted are incomplete, or if the committee deems said plans and specifications contrary to the interest, welfare and rights of all or any part of this subdivision. The decision of the Developer or architectural control committee in any of these matters shall be final.

The purpose of the review of plans by the Developer (and subsequently the Board or its designated representative or architectural control committee) is to consistently maintain the established design character of the development. Proposed departure from the established design character will result in disapproval by the Developer or architectural control committee.

Section 5. Non-Liability. Approval of plans and specifications shall not be construed as exercising professional expertise. Neither the Developer, the Association, the Board nor anyone appointed and/or employed by them shall be responsible or liable in any manner whatsoever for any defect in any plans or specifications submitted or as revised, or for any work or construction done in accordance with approved plans or specifications.

## ARTICLE V

### PROPERTY RIGHTS IN THE COMMON AREAS

Section 1. Easements of Enjoyment. Subject to the provisions of Section 2 of this Article V and the provisions of Section 13 of Article III above, every Lot Owner and occupant shall have a right and easement of enjoyment in and to the Common Areas and such easement shall be appurtenant to and shall pass with the title to every Lot. Every Lot Owner and occupant shall also have and enjoy the right of ingress and egress and the right of vehicular use for such ingress and egress, provided that vehicles shall be allowed only on developed paved roads and gravel, concrete or paved driveways, or within the equestrian, pedestrian, irrigation easement(s) as provided elsewhere herein.

Section 2. Extent of Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) the right of the Association, as provided herein or in its Articles of Incorporation and its Bylaws, to suspend the enjoyment rights of any member and/or occupant for any period during which any assessment remains unpaid, and for any reasonable period for any infraction of published rules and regulations;

(b) the right of the Association to dedicate or transfer all or any part of the Common Areas or Property to any public agency, authority or utility for such purposes and subject to such

purposes and conditions as may be agreed to by the Members; provided, however, that any such action must be approved by a three-fourths (3/4ths) vote of the Members at a meeting duly called for such purpose upon thirty (30) days prior written notice mailed to each Member at the Member's address as shown by the records of the Association;

(c) the right of the Developer and of the Association, to grant and reserve easements and rights-of-way through, under, over and across the Common Areas, for the installation, maintenance and inspection of lines and appurtenances for public or private water, sewer, drainage, garbage collection, gas, electricity, telephone, television cable, and other utilities;

(d) the right of the Association, acting through its Board, to enter into contracts deemed necessary and appropriate for the discharge of its duties regarding the Common Areas, including maintenance and management of the Common Areas.

(e) the right of the Developer to grant an easement for use of the private road to the single house located on Lot 4, Trossello Estates, approximately north of Lot 6, Alary Farm Subdivision.

Section 3. Delegation of Use. Any Member may, subject to any applicable provision of the Association Bylaws, delegate his or her rights and easement of enjoyment in the Common Areas to members, of his or her family, his or her tenants or contract purchasers from him or her who reside in the Member's home in the Subdivision. Any Member so delegating such rights and easement of enjoyment in the Common Areas shall promptly notify the Association of the relationship of such persons to the Member. Any person to whom such rights and easement of enjoyment in the Common Areas has been delegated shall be subject to the same conditions, restrictions, and limitations, as are applicable to the delegating Member.

Section 4. Utility Modifications. Any changes, additions, relocations or modifications to gas, electric, or other service lines within the common easements that may be desired by a Lot owner and which are for the Lot Owner's individual benefit must first be approved by the Board and shall be at the Lot Owner's expense.

## ARTICLE VI

### PRIVATE ROADS

All streets and roads as shown on the recorded Plat of the Subdivision are private reciprocal easements over each of the Properties to be maintained and managed by to the Association as part of the Common Areas. All vehicular traffic within the Subdivision shall conform to the current Sandoval County and State of New Mexico Traffic Code, if any, and in accordance with such traffic rules as may from time to time be adopted by the Association. Neither the Developer nor the Association shall be responsible or held liable for traffic accidents occurring within the Subdivision.

## ARTICLE VII

## OIL, GAS AND MINERAL RIGHTS

All oil, gas, and minerals in and under the entire Subdivision are reserved by and to the Developer, its successors or assigns; provided, however, no operations for exploitation of any oil, gas or minerals shall be conducted from, nor shall any structure of any nature for the exploitation or production of any oil, gas, or other minerals be placed or constructed on the surface of The Properties.

## ARTICLE VIII

### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every person or entity who is a record Owner (as defined in Article I) of any Lot shall be a Member of the Association.

Section 2. Voting Rights. The Association shall have two classes of voting membership:

Class A Members shall be all Owners except the Developer. Class A Members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Section 1 of this Article VIII; provided, however, in the event a Class A member owns two or more adjoining Lots then that Member's vote shall be equivalent to the rate of annual assessments paid by that Member, as specified in Section 3 of Article IX below. When more than one person or entity holds such interest or interests in any Lot, all such persons and entities shall be Members, and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one Lot.

The Class B Member shall be the Developer, their heirs and/or assigns as Developer. The Class B Member shall be entitled to ten (10) votes for each full acre in which it holds the interest required for membership by Section 1 of this Article VIII; provided that upon the conveyance to an owner other than the developer of the last lot owned by the Developer, the Class B membership shall cease and be converted to Class A membership.

Section 3. Suspension of Membership Voting Rights. The rights of membership, including the right to vote, the right to participate in Association affairs, and the right to use the Common Areas are subject to suspension by the Board of Directors of the Association for: (1) The failure or refusal to pay any assessment levied by the Association for a period of thirty (30) days after the due date of such assessment; or (2) an infraction of, default in, or breach of any provisions of this Declaration, the Articles, the Bylaws or the Rules and Regulations of the Association. Such suspension will continue until all payments are made and any default or breach cured.

## ARTICLE IX

### COVENANT FOR ASSESSMENTS

Section 1. Creation of Lien and Personal Obligation of Assessments. Each owner of any Lot by acceptance of a deed or by entering into a real estate contract shall be deemed to covenant and agree to pay to the Association annual assessments and special assessments for the purposes hereinafter set forth.

The annual and special assessments shall be fixed, established and collected as hereinafter provided. All such annual and special assessments, together with interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and constitute a continuing lien on the Lot against which each such assessment is made. In addition, each such assessment, together with interest and costs of collection as aforesaid, shall also constitute a personal obligation of the Owner and the occupant of the Lot at the time the assessment becomes due and payable. No Owner or occupant may exempt himself from liability for assessments by waiver of the use or enjoyment of any of the Common Areas. Lots owned by the Developer shall not be subject to any assessment. Notwithstanding any provision herein to the contrary, the Developer shall not be liable or be required to pay any assessments or charges of any kind for any reason.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the enjoyment, health, safety and welfare of the residents of the properties and maintenance and enjoyment of the common areas. It is intended that the common areas and the private roads be maintained in good condition and repair in order to preserve and enhance the property value and amenities of The Properties. Without limiting the generality of the foregoing purposes, the Association may pay out of and from such assessments the following:

(a) The cost of maintaining, repairing and landscaping the roads and other common areas.

(b) The cost of any and all other such materials, supplies, labor, services, maintenance, repairs, or similar expenditures which the Association is required, by law or otherwise, to pay or which in the discretion of the Board is necessary and proper for the operation of the common areas or the business of the Association.

Section 3. Annual and Special Assessments. Commencing with the conveyance of the first Lot to an Owner and until changed by the Board, the regular annual assessment shall be at the rate of \$100.00 per lot annually due and payable on the sale of any lot, payable in advance until the next April 30 prorated at 8.33 per month or any portion of a month. No credit will be given for any prior payments made by the previous owner, if any, nor will any refund be given on any amounts paid previously by any Owner. Payments shall continue at \$100.00 per year, due each and every April 30, payable in advance, unless and until the Board changes the assessment and associated monthly proration. The annual assessment and associated proration may be increased or decreased as hereinafter provided for the next succeeding year at any Meeting of the Board of Directors to become effective on the first day of the second month following any such Meeting of the Board of Directors.

The Board may, after considering current maintenance costs and future needs, fix the actual assessment for any year at a different amount, or declare a special assessment, provided that it shall be an affirmative obligation of the Association and its Board of Directors to fix such assessments at an

amount sufficient to maintain the Common Areas. A substantial amount may accumulate within the fund from annual assessments in anticipation of the eventual repaving of the private paved road.

The Board of Directors shall set the due date for any special assessment, however any funds collected as a special assessment shall be either paid out for the specified purpose set forth for the assessment within one year of the due date or the unused amount returned to each Owner in proportion to the amount they actually paid within thirty (30) days.

Assessments shall be at a uniform rate for all Lots; provided, however, that in the event an Owner has more than one adjoining lot or lots that are used and occupied for only one residence, then, in such event the Owner of the qualified adjoining Lot(s) shall be assessed at a reduced rate of fifty percent of the full assessment on the residential Lot, provided that the full rate is paid on time for the residence Lot.

Section 4. Effect of Nonpayment of Assessment: The Personal Obligation of the Owner: The Lien; Remedies of the Association. If any annual or special Assessment, or any installment thereof, is not paid when due, then such Assessment shall, together with interest thereon and costs of collection as hereinafter provided, become delinquent and constitute a continuing lien on the Lot against which the Assessment was levied, which such lien shall attach to and shall run with the Lot and shall bind the Owner of the Lot, his heirs, devisees, personal representative, successors and assigns.

If any annual or special assessment, or any due on sale, or other installment thereof, is not paid within thirty (30) days after its due date, such assessment, or the portion thereof then delinquent, shall bear interest from its due date until paid at rate of one percent (1%) per month, compounding monthly, provided further that the maximum rate shall not exceed the maximum rate allowed for a secured indebtedness under applicable State law. The Association shall have the option to accelerate and declare the entire amount of such assessment then due and payable, without notice or demand. Should the Association exercise its option to accelerate as provided therein, the Association may thereupon bring an action at law against the then Owner and the occupant of the Lot. In any such suit or action at law, the Association shall be entitled to recover interest as aforesaid, costs and a reasonable attorney's fee. Further, the Association may elect to bring a suit to collect a money judgment only without thereby waiving its right to subsequently seek foreclosure of the lien.

Section 5. Subordination of Lien to Mortgages. Notwithstanding any provision to the contrary contained in this Declaration, the Articles of the Association or its Bylaws, the lien of any annual or special Assessment created by this Article IX shall be subordinate to any first mortgage now or hereafter placed on any Lot within The Properties; provided, however, that such subordination shall apply only to assessments which become due and payable prior to the time a first mortgagee comes into possession of the Lot pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or a conveyance in lieu of foreclosure. Provided, further, that any such Lot shall remain subject to the lien of assessments which become due and payable subsequent to said possession by the first mortgagee.

Section 6. Holder of Mortgage Entitled to Written Notification from the Association of Default by Mortgagor. Upon request, the holder of a recorded first mortgage on any Lot within The Properties is entitled to and shall receive written notification from the Association of any default by the Mortgagor of such Lot in the performance of such mortgagor's obligations to the Association, including particularly any

failure to pay an assessment when due, when such default is not cured within sixty (60) days. Any first mortgagee making any such request shall provide the Association with such information as is reasonably required by the Association in order to respond to the request.

## ARTICLE X

### GENERAL PROVISIONS

Section 1. Duration and Amendment. The covenants and restrictions of this Declaration shall run with and bind the land and shall insure to the benefit of and be enforceable by the Association and its successors and assigns or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, until December 31, 2025, unless otherwise expressly limited herein, after which time said covenants shall be automatically extended for successive periods of ten years each unless an instrument signed by the then Owners of two-thirds (2/3rds) of the Lots has been recorded, agreeing to change said covenants and restrictions in whole or in part. Provided, however, that no such agreement to change shall be effective unless made and recorded one year in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every Owner at least ninety days in advance of any action taken. Unless specifically prohibited herein, all provisions of this Declaration and any Supplemental Declaration, may be amended by an instrument signed by Owners holding not less than seventy-five percent (75%) of the votes of the membership at any time until December 31, 2025, and thereafter by an instrument signed by the Owners holding not less than two-thirds (2/3rds) of the votes of the membership. This Declaration and any supplemental or Amended Declaration may, however, be amended and restated by the Developer without the consent or approval of any Owner or others at anytime and from time to time prior to the sale of the last lot to an Owner other than the Developer.

Section 2. Notices. Any notice required to be sent to any Owner under the provisions of this Declaration shall be properly sent when hand delivered or mailed by first class mail, postpaid, to the last known address of the person who appears as Owner on the records of the Association at the time of such mailing.

Section 3. Enforcement. The Association, the Developer, or any Owner, shall have the right to enforce these covenants and restrictions by any proceeding at law or in equity, against any person or persons violating or attempting to violate any covenant or restriction, to restrain violation, to require specific performance and/or to recover damages; and against the land to enforce any lien created by these covenants; and failure by the Developer, the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The expense of enforcement (including attorney's fees) by the Developer or the Association shall be chargeable to the Owner of the Lot violating these covenants and restrictions and shall constitute a lien on the Lot, collectable in the same manner as assessments hereunder.

Section 4. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect the validity of any other provisions, which shall remain in full force and effect.

Section 5. Restrictions on Acts of Association. The Association shall not:

(a) Change the method of determining the obligations, assessments, dues or other charges, which may be levied by the Association against the Owner or any Lot.

(b) By act or omission change, waive, or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of the improvements on any Lot, the exterior maintenance thereof, or the maintenance of the common property walks or common fences and driveways without a two-thirds majority vote (that being 2/3's of the total of all possible votes from all lot owners, regardless of their presence or representation in any such vote) in favor of such a change.

(c) By act or omission abandon, partition, subdivide, encumber, sell or transfer the Common Areas owned, directly or indirectly by the Association; provided, however, that the granting of easements for public utilities or for other public purposes consistent with the intended use of such property shall not be deemed a prohibited change within the meaning of this clause.

(d) Change the voting rights of any Owner from that which is described herein.

Section 6. Gender. The singular, wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 7. Topical Headings. The topical headings of the paragraphs contained in this Declaration are for convenience only and are not intended to define, limit, or construe the contents of the paragraph.

Section 8. Assignment. The Developer shall have the right to assign its rights under this Declaration, and any such assignment shall be binding upon and inure to the benefit of the successors and assigns of the Developer.

Section 9. Addresses. The initial address for the Developer, architectural committee, and Association are all 433 Asbury Road NE, Rio Rancho, New Mexico 87124-5631 and may be changed from time to time by written notice to the Board of Directors of the Association.

IN WITNESS WHEREOF, the Developer has executed this Declaration this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

\_\_\_\_\_  
Ernest L. Alary by Gary W. Parker as

\_\_\_\_\_  
Gary W. Parker



Attorney in Fact for Ernest L. Alary

STATE OF NEW MEXICO }  
  } ss:  
COUNTY OF SANDOVAL }

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2001,  
by Gary W. Parker, and Ernest L. Alary by Gary W. Parker as Attorney in Fact for Ernest L. Alary.

\_\_\_\_\_  
Notary Public

My commission expires:

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