

LOT # 11

30662



**DECLARATION OF
PROTECTIVE COVENANTS, CONDITIONS,
AND RESTRICTIONS OF
THE PUEBLO GARDENS SUBDIVISION**

WHEREAS CF Investments, LLC (hereinafter referred to as the "Declarant") has caused certain real property in Doña Ana County, New Mexico, described on Exhibit "A" annexed hereto and incorporated herein by this reference, to be surveyed, subdivided, and platted into lots as shown on the plat of the Pueblo Gardens Subdivision, the plat of which having been filed for record in the real property records of Doña Ana County, New Mexico, the 6TH of September, 2005, in Plat Record Book 21, pages 319-320;

NOW, THEREFORE, the Declarant, the owner of all of the lands included within the Pueblo Gardens Subdivision as so platted and described above, does hereby declare and acknowledge that all of the lands included within said Subdivision area shall hereafter be subject to all of the following covenants, conditions, and restrictions.

**ARTICLE I
PURPOSE OF COVENANTS**

1. General Requirements. It is the intention of the Declarant, expressed by its execution of this instrument, that the lands within the Pueblo Gardens Subdivision be developed and maintained as a highly desirable residential area. It is the purpose of these covenants that both the natural and the man-made beauty of the Pueblo Gardens Subdivision shall always be protected and preserved insofar as is possible in connection with the uses and structures permitted by this instrument. It is of primary intent that the privacy and views of each Lot in the Subdivision shall be protected insofar as is possible.

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ARTICLE II
DEFINITIONS

1. Lot or Lots shall mean and refer to one or more of the 19 individually numbered lots shown on the plat of the Pueblo Gardens Subdivision.
2. Subdivision shall mean and refer to the Pueblo Gardens Subdivision.
4. Common Areas shall mean and refer to all of the land within the Subdivision with the exception of the Lots; Common Areas include the private drive, the entry gates, the lift station, and the drainage structures, all of which exist for the mutual benefit of the Owners of Lots in the Subdivision.
5. Right-of-Way shall mean and refer to both the paved and the unpaved portions of the private drive located in the front of each Lot.
6. Committee shall mean and refer to the Design Control Committee of the Pueblo Gardens Subdivision.

ARTICLE III

THE PUEBLO GARDENS NEIGHBORHOOD ASSOCIATION

1. Membership in the Pueblo Gardens Neighborhood Association. All persons or other parties who own or acquire any of the Lots in the Pueblo Gardens Subdivision, by whatever means acquired, shall be considered to be Owners and shall automatically become Members of the Pueblo Gardens Neighborhood Association in accordance with the Articles of Incorporation and the Bylaws of the Association, and as the same may be duly amended from time to time and filed or recorded in the Doña Ana County records.

Until (i) the conveyance by the Declarant of all of the Lots in the Subdivision and (ii) the completion of the County's first-anniversary warranty inspection of Subdivision improvements, the responsibility to maintain and repair the Common Areas shall reside with the Declarant. Upon items (i) and (ii) in the preceding sentence having been accomplished, the responsibility to maintain and repair the Common Areas shall reside with the Pueblo

Gardens Neighborhood Association, in accordance with the provisions of the Articles of Incorporation and the Bylaws of the Pueblo Gardens Neighborhood Association and these Covenants. Such responsibility shall include but not be limited to the setting of standards governing the maintenance of the Common Areas, as well as the levying of any assessments necessary for their maintenance and repair.

2. Membership. The Pueblo Gardens Neighborhood Association shall have one class of membership. Voting rights shall be as follows. Members holding an interest in any one Lot shall collectively be entitled to one vote for each Lot. The vote for each Lot shall be exercised by the Owners thereof as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

3. Covenant for Maintenance Assessments. Each Owner of any Lot, by acceptance of a deed for the Lot, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Pueblo Gardens Neighborhood Association Annual Assessments or charges as shall be established at the Inaugural Association Meeting of the Pueblo Gardens Neighborhood Association in accordance with Paragraph 4 of this Article. The assessments levied by the Association upon the Lots shall be used for the purpose of maintaining and repairing the Common Areas referred to in Paragraph 1 of this Article and shall include but not be limited to the cost of labor, equipment, materials, and supervision necessary for the task; and the assessments shall be used as the Association or its Board of Directors determines to be in the best interests of the Members.

4. Assessments. As provided hereinafter and in the Bylaws of the Association, each Lot shall be subject to an Annual Assessment of a minimum of \$150.00 and a maximum of \$350.00. The Board of Directors of the Pueblo Gardens Neighborhood Association shall fix the Annual Assessment within said range as it deems necessary at its discretion. From and after January 1, 2008, the minimum or maximum Annual Assessment may be decreased or increased by up to twenty percent annually by the assent of two-thirds of the voting Members

who are voting in person or by proxy at an Association Meeting. In addition, the Board of Directors has the authority as set forth in the Bylaws of the Association to levy Special Assessments in extraordinary circumstances.

ARTICLE IV
DESIGN CONTROL

1. Design Guidelines. Design Controls for the Pueblo Gardens Subdivision are appended to, and are a part of, these Covenants; and the Design Controls shall be followed by all Owners of Lots within the Subdivision. In order to achieve a harmony of design within the Subdivision so that the reasonable expectations of Owners regarding improvement and beautification of all property can be fulfilled for the benefit of all Owners, the design of all houses, walls, fences, and front-yard landscaping, as well as additions and alterations thereto, within the Subdivision, shall be performed by a builder, designer, or architect approved by the Design Control Committee, which approval shall not be unreasonably withheld, and such design shall be in accordance with the Design Controls for the Subdivision.

2. Appointment Duties. The Declarant shall appoint from one to three persons to serve as the Design Control Committee for the Subdivision. The Design Control Committee shall have the duty and the power by the exercise of its best judgment to see that any construction on any Lot conforms to and harmonizes with the design theme of the Subdivision and abides by the Design Controls. At any time after the Inaugural Association Meeting, the Declarant may, at its sole discretion, transfer to the Pueblo Gardens Neighborhood Association the responsibility to appoint the person to serve as the Design Control Committee. Furthermore, if at any time the Declarant fails to appoint the person to serve as the Design Control Committee, the Pueblo Gardens Neighborhood Association shall, upon one-week's written notice to the Declarant, assume the authority to appoint the persons to serve as the Design Control Committee.

3. Approval of Plans by the Design Control Committee. No improvements of any

kind, including but not limited to houses, sheds, outbuildings, swimming pools, parking areas, fences, walls, garages, storage structures, patios, decks, carports, driveways, antennae, flagpoles, curbs, and walks, or additions or alterations thereto, shall be constructed or installed upon any lands within the Pueblo Gardens Subdivision, nor may any landscaping be performed on any Lot, unless one complete set of plans for such construction or landscaping is submitted to the Design Control Committee and unless the plans are approved in writing by the Design Control Committee prior to the commencement of such work. In the event that the Design Control Committee fails to take any action within fifteen days after complete plans for such work have been submitted to it and a signed receipt issued, then all of such submitted plans shall be deemed to be approved. All submissions, approvals, and/or rejections shall be submitted in writing, shall be dated, and shall be signed for as proof of receipt. In the event that the Design Control Committee rejects any plans, the Committee is required to state the reason(s) for rejection. Upon resubmittal of plans, the Committee must respond within ten days.

Application to Doña Ana County for a Building Permit shall not be made prior to approval of plans by the Design Control Committee. The Design Control Committee shall reject any plans submitted to it that are not sufficient for it to exercise the judgment required of it by these Covenants.

The Design Control Committee shall monitor all construction within the Subdivision to help see to it that trash and debris are disposed of properly and that no damage is done to the Common Areas or neighboring Lots during construction; and to this end the Committee shall have the authority at its sole discretion, at the time of its approval of plans for construction on a Lot or at any time during construction of a Lot, to collect a damage deposit of \$250.00 to be used by the Committee at its sole discretion for clean up and/or repair made necessary by any construction. This deposit shall be held by the Committee and returned to the Owner of the Lot upon completion of construction, less any sums expended by the Committee for the clean up and/or repair referenced herein. In the event that the deposit is

not sufficient to cover the cost of the clean up and/or repair, the Committee can require an additional damage deposit; or the Pueblo Gardens Neighborhood Association may charge the balance of the cost of the clean up and/or repair to the Owner of the Lot as a special assessment against the Lot, to be collected in the manner of other assessments as provided in the Bylaws of the Pueblo Gardens Neighborhood Association and by any rules and regulations passed by the Association. The Design Control Committee urges each Lot Owner to require contractors working for the Owner to control trash and debris during periods of construction. Specifically, these Covenants require that a trash dumpster and a portable toilet be located on each Lot (not in the Common Areas or Right-of-Way) during construction of a house on the Lot. Furthermore, these Covenants strictly forbid the following practices: unloading or storing construction materials, including plants or landscaping materials of any kind, within any part of the Common Areas, including the private drive, or on a neighboring Lot; rinsing of concrete trucks anywhere in the Subdivision except on the Lot to which the delivery has been made; and parking on any Lot without the permission of the Owner of the Lot.

4. Design Control Committee Not Liable. The Design Control Committee shall not be liable for damages to any person or party submitting any plans for approval, or to any Owner of a Lot within the Pueblo Gardens Subdivision, by reason of any action, failure to act, approval, rejection, or failure to approve or reject, with regard to such plans. Any person(s) or party acquiring title to any Lot in the Pueblo Gardens Subdivision, or any person or party submitting plans to the Design Control Committee for approval, by so doing, does agree and covenant that he will not bring any action or suit to recover damages against the Declarant, the Design Control Committee, its members as individuals, or its advisors, employees, or agents.

5. Written Record. The Design Control Committee shall keep and safeguard for at least four years complete permanent written records of all applications for approval (including one set of all plans so submitted) and of all actions of approval or rejection and all other

actions taken under the provisions of this instrument.

ARTICLE V

GENERAL RESTRICTIONS

1. Zoning Regulations. No lands within the Pueblo Gardens Subdivision shall be occupied or used for any purpose or in any manner that is contrary to the applicable zoning regulations, validly in force from time to time, except as the same may be allowed under said regulations as a non-conforming use.

2. No Mining, Drilling, or Quarrying. No mining, quarrying, tunneling, excavating, or drilling for any substances within the earth, including oil, gas, minerals, gravel, sand, rock, and earth, shall ever be permitted within the limits of the Pueblo Gardens Subdivision.

3. Model Home/Office. Notwithstanding other provisions in these Covenants, the Declarant and builders of homes in the Subdivision may, at their sole discretion, construct and occupy one or more houses for use as model homes, builder offices, or real estate offices until six months following the construction and sale of houses on all Lots in the Subdivision.

4. Signs. With the exception of Subdivision identification signs at the entry road and the entry gates and two "For Sale" signs (not to be larger than 60 x 60 inches) per Lot, no advertising signs, billboards, unsightly objects, or nuisances shall be erected, altered, or permitted to remain on any Lot in the Pueblo Gardens Subdivision. These restrictions regarding signs shall not apply to model homes/offices.

5. No Resubdivision. No Lot described on the recorded plat of the Pueblo Gardens Subdivision shall ever be resubdivided into smaller tracts or lots nor conveyed or encumbered in any less than the full original dimensions as shown on the recorded plat of the Pueblo Gardens Subdivision, except that conveyances or dedications of utilities may be made for less than all of one Lot.

6. Trash. Each Owner of any Lot shall have the responsibility to remove all weeds

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and trash from his Lot in the Pueblo Gardens Subdivision and shall not be allowed to burn weeds or trash thereon. In the event that weeds or trash accumulates on any Lot, the Design Control Committee shall have the authority and responsibility to clean up the Lot and charge the Owner up to \$200 per clean-up. If said charge is not paid within thirty days, the Design Control Committee has the authority to file a lien against any Lot for which the Owner has failed to pay said charge.

7. Public Nuisance. No obnoxious or offensive activity shall be carried on within the Subdivision, nor shall anything be permitted which shall constitute a public nuisance thereon.

8. Hunting. There shall be no hunting of any animals within the boundaries of the Pueblo Gardens Subdivision, nor shall there be the discharge of any firearms.

9. Maintenance of Right-of-Way. Each Lot Owner shall be responsible for maintaining the unpaved portion of the Right-of-Way contiguous with the Owner's Lot. This area shall be maintained as if it were a part of the Owner's Lot, except that no walls, fences, boulders, signs, or large trees shall be permitted within it. Upon failure of the Owner to maintain this area, the Board of Directors of the Pueblo Gardens Neighborhood Association may, at its discretion, after giving the Owner thirty days written notice, have the area maintained. The cost of this maintenance may be charged to the Lot Owner as a special assessment against the property by the Pueblo Gardens Neighborhood Association.

10. Sidewalks. There shall be no sidewalks running parallel with the private drive within the Pueblo Gardens Subdivision.

11. On-Street Parking. The combined area of the garage and driveway of each house in the Subdivision shall be sufficient to accommodate at least four motor vehicles. There shall be no overnight on-street parking of any motor vehicle, trailer, or the like, nor shall any motor vehicle, trailer, or the like ever be parked with the Common Areas. Short-term (up to eight-hour) on-street guest parking shall be allowed, but not on regular basis, and only if no other motor vehicle(s) is parked on the opposite side of the Right-of-Way within 100 feet. The purpose of this provision is to try to ensure safe and convenient passage of motor vehicle

traffic and pedestrians on the Right-of-Way.

12. Animals. The keeping of ordinary household pets shall be permitted in the Subdivision. When off the Owner's Lot, such pets must be kept on a leash and shall not be permitted to run at large. In addition, dogs shall not be permitted to bark outside to the extent that an average person would find annoying. The Declarant, the Pueblo Gardens Neighborhood Association, or the Board of Directors may enforce this provision by whatever means may be legally available to it.

13. No Garage Sales. There shall be no sales commonly known as garage sales anywhere in the Subdivision.

14. Easements Reserved. The Declarant hereby reserves to itself and to other applicable parties and its successors in interest perpetual easements on the Common Areas, as well as for constructing, maintaining, operating, replacing, enlarging, and repairing electric, telephone, cable TV, water, irrigation, sewer, gas, and similar lines, pipes, wires, poles, ditches, and conduits. The Declarant may convey or grant by license, lease, deed, lien, deed of trust, mortgage, or otherwise any right, title, or interest in or to any and all easements and reservations contained within documents of conveyance, these Covenants, or the plat of the Pueblo Gardens Subdivision to public utilities and governmental entities as may be reasonably necessary to effect the developmental and residential intentions as set forth in the plat and these Covenants.

15. Shared Walls/Fences. Pursuant to Article V of the Design Controls, privacy walls or fences shall be built along the side property lines of each Lot. These side walls or fences shall be built half on one side of the property line and half on the other side (that is, half shall be built on the adjoining lot) and shall extend along both sides of every Lot from the rear property line to a point approximately parallel with the front elevation of each house, except that no wall or fence shall be built at the points occupied by a house on the zero-lot-line side of a Lot. If at the time of construction of a house on a Lot, one or both of the side walls or fences along the Lot have not been built, it shall be the responsibility of the Lot

Owner whose house is under construction to build the side walls or fences that have not yet been built, and that Lot Owner shall be reimbursed by the adjoining Lot Owner for one-half the cost of each side wall or fence so constructed. This reimbursement shall be calculated based on a cost of \$4.50 per cubic foot of rock wall, including footings, actually built (or, if the wall or fence is built of material other than rock, the reimbursement shall be calculated based on the documented cost of the wall or fence), with the amount to be reimbursed being one-half the result of said calculation. If the Declarant has sold the Lot that benefits from the construction of one or both side walls or fences, then the Lot Owner of such Lot shall reimburse the Lot Owner who builds the wall or fence within a period of 30 days of completion of said construction and of written notification of the amount to be reimbursed. If the Declarant has not sold the Lot that benefits from the construction of one or two side walls or fences, then the Lot Owner who builds the side walls or fences shall be reimbursed by the purchaser of the Lot that benefits from the construction of one or both side walls or fences, and this reimbursement shall be made at the time of the sale of the Lot or by the Declarant. In summary, this provision is meant to provide a framework through which side walls and fences shall be built in a timely manner, with the cost thereof to be shared equitably by the benefiting parties.

Any alteration to an existing side wall or fence shall be paid for solely by the Lot Owner who wants the alteration, and any alteration must be approved by the Design Control Committee.

16. Temporary Walls/Fences. When a house is being built on a Lot prior to construction of a house on the non-zero-lot-line side of the Lot, the Owner or builder of the house under construction has the right to build a temporary wall or fence near that property line in order to create an enclosed yard for the house under construction. Such a temporary wall or fence must be constructed of wood, iron, or other material approved by the Design Control Committee, must be of a style approved by the Committee, must be set back at least one foot from the property line, must be removed promptly upon receipt of notice from the

Owner or builder of the adjoining Lot that framing of the house on that Lot is scheduled to begin within one week, and is the sole responsibility of the Owner on whose behalf the wall or fence was built.

17. Construction and Maintenance of House Exterior on the Zero-Lot-Line. Because of the zero-lot-line design of the Subdivision, a Lot Owner or his representative shall require reasonable access upon the adjacent Lot for the purposes of constructing and maintaining the zero-lot-line wall of the house, and these Covenants establish a six-foot wide access easement for those purposes. A Lot Owner has the sole responsibility to construct and maintain the zero-lot-line side of his house even though that side is on the zero-lot-line. For the purposes of construction or maintenance, a Lot Owner shall make mutually acceptable arrangements for access with the Lot Owner on the other side of the zero-lot-line. If such arrangements prove difficult to make, the Lot Owner requiring access for construction or maintenance shall contact the Declarant or the Pueblo Gardens Neighborhood Association, either of whom shall have the authority under these Covenants to intervene and arrange for fair access from the neighboring Lot Owner so that construction or proper and necessary maintenance can be undertaken. In the event of damage to the neighboring Lot in the course of construction or maintenance of the zero-lot-line side of the house, the Lot Owner engaged in the construction or maintenance shall in a timely manner either repair or pay for the repair of any and all such damage.

ARTICLE VI

RESTRICTIONS ON RESIDENTIAL LOTS

1. Number of Buildings. No buildings or structures shall be placed, erected, altered, or permitted to remain on any residential Lot other than one single-family dwelling house with attached garage.

2. Parking and Storage of Vehicles. No campers, recreational vehicles, boats, trailers, commercial-type vehicles, or trucks shall be stored or parked on any Lot except in a

closed garage, nor parked anywhere in the Common Areas, except for a period of up to twelve hours for loading or unloading, during which period the vehicle must be parked in the Lot Owner's driveway. For purposes of this restriction, a truck having a three-quarter-ton manufacturer's rated capacity, commonly known as a pick-up truck, shall not be deemed to be a commercial vehicle or a truck. In addition, personal-type vehicles, including cars, vans, pick-up trucks, SUVs, motorcycles, and the like, shall not be parked or stored on a regular basis on any Lot (except in a closed garage) or in the Common Areas. This restriction shall not apply to Owners or occupants of model homes or offices in the Subdivision, who shall be allowed to have up to five vehicles parked in the Subdivision during normal business hours (two vehicles in the garage, two in the driveway, and one in the street)

3. Deadline for Commencement of Building. Construction must commence on the building of a house on each Lot within 24 months of the purchase of the Lot from the Declarant.

In the event that the Owner of any Lot in the Subdivision fails to commence construction of a house as specified above, that Owner shall be required, upon expiration of the deadline specified above that pertains to the Lot, to list the Lot for sale with a licensed New Mexico real estate broker at a listing price no more than twenty percent greater than the price at which the Owner originally purchased the Lot. The purchaser of any such Lot sold under these circumstances shall be required, without exception, to commence construction of a house on the Lot within four months of the new Owner's purchase of the Lot.

In the event that the Owner of any Lot in the Subdivision fails to commence construction of a house as specified above and has not sold the Lot within eight months of listing the Lot for sale as specified above, the Declarant or its successors or assigns shall have the right, but not the obligation, to repurchase the Lot at the original purchase price at which the Owner acquired the Lot.

ARTICLE VII
ENFORCEMENT

1. Enforcement Actions. The Declarant or the Design Control Committee shall have the right to prosecute any action to enforce the provisions of these Covenants by injunctive relief, on behalf of itself and all or part of the Owners of Lots within the Pueblo Gardens Subdivision. In addition, each Owner of a Lot within the Pueblo Gardens Subdivision, as well as the Pueblo Gardens Neighborhood Association, shall have the right to prosecute any action for injunctive relief and for damages by reason of any violation of these Covenants. Any Owner of a Lot determined to be in violation of these Covenants by a court of appropriate jurisdiction agrees to pay the reasonable attorneys' fees incurred by the person or entity bringing such successful action.

ARTICLE VIII
GENERAL PROVISIONS

1. Covenants to Run. All of the Covenants contained in this instrument shall be a burden on the title to all of the lands in the Pueblo Gardens Subdivision, and the benefits thereof shall inure to all Lot Owners in the Pueblo Gardens Subdivision, and the benefits and burdens of all said Covenants shall run with the title to all of the lands in the Pueblo Gardens Subdivision.

2. Amendment or Termination of Covenants. The Covenants contained in this instrument shall remain in full force and effect for thirty years after the date of execution of this instrument and shall thereafter automatically be renewed for successive ten-year periods without limitation. Except for the provisions dealing with the Design Controls, model homes and offices, and the maintenance and repair of the Common Areas, all of which provisions shall not be altered, these Covenants may be amended by a vote of two-thirds of the votes cast by the members of the Pueblo Gardens Neighborhood Association at annual or special meetings thereof, said vote to be cast at any meeting of the members duly held in accordance

with the Articles of Incorporation and the Bylaws of the Neighborhood Association, provided a properly certified copy of the resolution of amendment be placed on record in Doña Ana County upon adoption.

3. Severability. Should any part or parts of these Covenants or the Design Controls attached hereto be declared invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining Covenants.

4. Paragraph Headings. The paragraph headings in this instrument are for convenience only and shall not be construed to be a part of the Covenants contained herein.

5. Gender and Number. The use of the masculine gender in this instrument is deemed to include the feminine or neuter genders, and the use of the singular shall be deemed to include the plural, and vice versa, whenever the context so requires

IN WITNESS WHEREOF, the Declarant, the owner of all of the lands described and subdivided as the Pueblo Gardens Subdivision, has executed this instrument this 16th day of August, 2005.

CF Investments, LLC

by

G. Thomas Collins, Jr.

G. Thomas Collins, Jr.

Manager

STATE OF NEW MEXICO)

) ss.

DOÑA ANA COUNTY)

Subscribed and sworn to before me this 16th day of August, 2005, by G. Thomas Collins, Jr., as Manager for CF Investments, LLC.

Witness my hand and official seal.



OFFICIAL SEAL
CHRISTINE A. FAHEY
NOTARY PUBLIC - STATE OF NEW MEXICO

My commission expires: 5/16/07

My commission expires:

By

Christine A. Fahey

Notary Public

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**DESIGN CONTROLS FOR
THE PUEBLO GARDENS SUBDIVISION**

**ARTICLE I
STATEMENT OF INTENT**

The goal of these Design Controls is to achieve a harmony of design within the Subdivision so that the reasonable expectations of Lot Owners regarding improvement and beautification of all property can be fulfilled for the benefit of all Lot Owners. To that end, all new houses, walls, fences, and front-yard landscaping, as well as alterations or additions thereto, within the Subdivision shall be built by a licensed contractor approved by the Design Control Committee, which approval shall not be unreasonably withheld; and the design of all new houses, walls, fences, and front-yard landscaping, as well as alterations or additions thereto, within the Subdivision shall be performed by a builder, designer, or architect approved by the Design Control Committee, which approval shall not be unreasonably withheld.

**ARTICLE II
DESIGN REVIEW**

No construction of a new house, walls, fences, or landscaping on any Lot in the Subdivision, and no alterations or additions of any kind thereto, shall commence without adherence to the process of approval set forth in the provisions of Article IV of the Declaration of Protective Covenants, Conditions, and Restrictions of the Pueblo Gardens Subdivision. Lot Owners should note that, although this process of approval requires only

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one submittal of one complete set of plans, it is advisable and strongly recommended that a preliminary design conference be held with a representative of the Design Control Committee so that the party submitting plans can get an initial reaction to the proposed design prior to going to the expense of creating a complete set of plans. At the preliminary review stage, it is sufficient to provide only one copy of plans showing the conceptual design of the exterior elevations, the floor plan, and landscaping.

Drawings submitted for final review shall be in the form of one complete set and include the level of detail required for obtaining a building permit from the applicable governmental regulatory department, as well as details relating to texture and color of all exterior surfaces.

Any plans regarding landscaping shall include a site plan drawing; site contours; and details of plant materials (with indication of size), rocks or pebbles, boulders, ground cover, lawns, paths, decks or patios, swimming pool or spa, driveway, walls, fences, exterior lighting, and any other relevant features that may be applicable.

Neither the Declarant nor the Design Control Committee seeks to restrict individual preferences but does want to avoid harsh contrasts within the Subdivision and to encourage careful design so that there is harmony between buildings and their sites, and among buildings themselves. To this end, the Declarant has established a general design theme for the Subdivision that can best be described as traditional Southwest in style, featuring such exterior elements as rounded corners, viga stubs, and a tan/beige color scheme. Examples of styles and features that will not be approved include extreme contemporary styles, styles that the Committee believes bear little resemblance to traditional Southwest design, minimalist styles devoid of Southwest features, and coloration that is predominantly bright white or very dark in tone. All houses in the Subdivision must adhere to this general design theme, the best guide to which will be the style of houses approved for the Subdivision.

ARTICLE III
FITTING THE SITE

On each Lot, the area on which a house can be built (the building pad) has been constructed during the course of the building of the Subdivision. In essence, the building pad for each Lot is the entire Lot less the front, rear, and side setbacks as noted on the Subdivision plat. Lot Owners should take particular note that Lots 4, 5, and 7 through 19 have been designed for zero-lot-line patio homes, with the south side of each house to be positioned on the south lot line of each Lot.

ARTICLE IV
BUILDING DESIGN

1. Size. The minimum and maximum sizes of the living area of a house within the Subdivision (exclusive of basements, attics, carports, garages, and open courtyards and porches) shall be as follows: for a one-story house, a minimum of one thousand four hundred square feet, and a maximum of two thousand three hundred square feet; for a two-story house, a minimum of one thousand seven hundred square feet, and a maximum of two thousand nine hundred square feet, with at least fifty percent of the total square footage of any two-story house being allocated to the first story.

2. Setbacks. The setbacks for each Lot within the Subdivision shall be as required by the Las Cruces Extra-territorial Zoning ordinances or other governmental regulations, as modified by any variances applied for and granted to the Declarant, and as specifically noted on the Subdivision plat.

3. Height. All houses on Lots 6 through 19 shall be limited to one story, with the maximum height, as measured from the finished floor slab, being fourteen feet for approximately two-thirds of the roof area and eighteen feet for approximately one-third of the roof area. All houses on Lots 1 through 5 shall be limited to two stories, with the maximum height, as measured from the finished floor slab, being twenty-nine feet. The finished floor

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slab shall be constructed within 6 inches of the elevation of the building pad as built at the completion of the Subdivision infrastructure. For the purpose of measuring maximum height, a roof will be measured to the top of parapets. Flues and chimneys shall not be permitted to extend more than two feet above the maximum height.

4. Parapets. Parapets must extend a minimum of one foot above any point in the adjoining truss system.

5. Zero-Lot-Line Elevation. Because the south side of each house on Lots 4, 5, and 7 through 19 will overlook the side and rear yard area of the Lot directly to the south, windows (with the exception of clerestory windows and windows with translucent glass) shall not be permitted on the south building elevation of any house on Lots 4, 5, and 7 through 19, and no door shall be permitted on the south side of any house on Lots 4, 5, and 7 through 19. In addition, no plumbing vents, dryer vents, or other penetrations shall be permitted on the zero-lot-line south elevation of houses on Lot 4, 5, and 7 through 19.

6. Roofs. Because of the zero-lot-line design of Lots 4, 5, and 7 through 19, no pitched roofs shall be permitted on homes on those Lots except for such accent areas as entrances, and only if no water from such areas drains onto an adjacent Lot. Moreover, no water from any roof shall be permitted to drain onto an adjacent Lot but must be directed entirely onto the Lot containing the house.

7. HVAC Units. HVAC unit(s) shall be permitted on the rooftop of a house within the Subdivision only where effective screening by parapets or other means largely hides the view of such unit(s) from the Lots of the Subdivision and from Picacho Hills Drive. Both the location of the unit(s) on the rooftop and the proposed method of screening must be clearly depicted on the construction drawings submitted to the Design Control Committee. In the absence of such detail, construction drawings will not be accepted for review. The recommended method of screening is the use of parapets of varying heights, designed so that it does not appear that the purpose of the parapets is to screen the units that they are in fact designed to screen

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8. Period of Construction. All construction and alteration work shall be prosecuted diligently. Any building of a new house on any Lot within the Subdivision shall be entirely completed within seven months after commencement of construction. Any alterations or additions to an existing house on any Lot within the Subdivision shall be entirely completed within four months after commencement of construction.

9. Towers and Antennae. Pursuant to Federal Communications Commission rules adopted as directed by Congress in the Telecommunications Act of 1996, the Design Control Committee cannot unreasonably delay, prevent, or increase the cost of a Lot Owner's ability to receive video programming signals. However, since the Design Control Committee does have the authority to minimize the visual impact of equipment used to receive video programming signals, the Committee has adopted the following guidelines for the Subdivision: none of the aforementioned equipment shall be installed within the front yard (that is, the street-side yard) of any house; no satellite dish more than one meter in diameter shall be installed anywhere in the Subdivision; all houses shall be equipped with conduit for the purpose of directing the installation of a satellite dish or an antenna to the least obtrusive (yet still effective) location on the roof of a house; and all houses shall also be equipped with conduit for the purpose of directing the installation of a satellite dish to an unobtrusive (yet effective) location in the back yard of a house, this being the preferred location for such installation in the view of the Committee.

Ham radio antennas and towers, as well as any other antennas and towers that are not covered by the FCC rules cited above, shall not be installed anywhere in the Subdivision.

10. Utility Meters, Utility Boxes, and Wires. All exterior electric meters, electric disconnect controls, electric service boxes, gas meters, telephone service boxes, telephone hubs, cable TV service boxes, cable TV hubs, and all wiring and cabling associated with electric, telephone, cable TV, home security, and similar uses or with other utilities that may serve homes in the Subdivision shall be positioned completely behind a courtyard wall or similar wall of a house so that all such utility apparatus is screened from the Subdivision

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right-of-way or from other Lots in the Subdivision, and under no circumstances shall any wiring or cabling associated with these utilities be installed in such a way that it is exposed or located in exposed conduit so that the wiring, cabling, or conduit is visible from the Subdivision right-of-way or from other Lots in the Subdivision.

11. Outbuildings and Temporary Structures. No used or previously erected or temporary house, structure, house trailer, or permanent or nonpermanent outbuilding shall ever be placed, erected, or allowed to remain on any Lot, except during construction periods and only then with written approval of the Design Control Committee. No building shall be occupied in any manner prior to its completion.

12. Exterior Lighting. A front-yard exterior light fixture shall be installed for every residence in the Subdivision at the time of construction of each residence. It shall be the responsibility of the Owner of each Lot to maintain said fixture. Use of other than white or pale white exterior lights shall be allowed only with specific approval of the Committee. Holiday lighting during the Christmas season shall be allowed only from November 22nd through January 3rd and only in moderation. The Design Control Committee shall be the sole arbiter in deciding whether or not holiday lighting is excessive. Security lighting shall be designed and installed so that it is not obtrusive. The Design Control Committee shall be the sole arbiter in deciding whether or not security lighting is obtrusive.

13. Utilities. All secondary utility extensions (from trunk lines to individual structures) must be underground.

14. Solar Panels. No roof-mounted solar panels or ground-mounted solar panels shall be permitted in the Subdivision.

15. Driveways. All driveways in the Subdivision shall be concrete unless a specific variance is granted by the Design Control Committee for a driveway to be built with stone or brick pavers. Colored or stamped concrete shall be used in a driveway only with the specific approval of the Design Control Committee regarding the color or pattern to be used.

ARTICLE V

LANDSCAPING AND WALLS/FENCES

In order to achieve an attractive and harmonious appearance of landscaping throughout the Subdivision, use of plants native to the region is required. The use of exotic plants foreign to the region, except those proven over time as viable and appropriate, shall not be permitted. Scale, selection, and placement of plants and landscaping materials should be such that one senses the plants and materials have been integrated with the overall design theme of the Subdivision rather than contrast with or overpower it. In particular, because of the zero-lot-line design of Lots 4, 5, and 7 through 19, no tree or shrub shall be planted close enough to the north property line of a Lot adjoining one of those Lots in a manner that is likely to cause damage to the zero-lot-line wall. Furthermore, no Lot shall contain any tree or shrub that, upon reaching maturity, is likely to obstruct the views from any other Lot. Any Owner of a Lot who believes his view is being obstructed by a tree or shrub on another Lot can bring the matter to the attention of the Design Control Committee, which has the authority to require the Owner of the Lot containing the tree or shrub to trim it to eliminate the obstruction. In addition, the landscaping of each Lot shall be substantially completed prior to first occupancy of a house on each Lot.

In order for the Owner of each Lot to be able to enjoy a private outdoor space, and to establish a consistency of design throughout the Subdivision, a privacy wall or fence constructed of masonry, frame/stucco, or acceptable metal materials shall be built to a maximum height of four and one-half feet along the rear property line of each Lot and to a maximum of five and one-half feet along the side property lines of each Lot up to the front of each house, except for a transition area along the side property lines of each Lot within ten feet of the rear property line, in which area the maximum height of the solid portion of any such wall or fence shall be four and one-half feet. All walls or fences shall be completed prior to first occupancy of a house on each Lot.

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It is the specific responsibility of the Owner of each Lot to landscape and otherwise manage the terrain of his Lot to prevent damaging runoff onto neighboring properties, including any part of the Common Areas and the Right-of-Way. Any soil or debris from an Owner's Lot that runs onto any part of the Common Areas or the Right-of-Way shall be promptly cleaned up by the Owner of the Lot from which the soil or debris originated. In the event of a dispute regarding the point of origin of soil or debris that has run onto any part of the Common Areas or the Right-of-Way, the Design Control Committee shall be the sole arbiter to determine the point of origin and the responsible party or parties.

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