

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS FOR SPRING HOLLOW SUBDIVISION UNIT 1 PHASE 1

PART A. RECITALS AND PREAMBLE

Whereas, Spring Hollow Subdivision Unit 1 Phase 1 (the "Subdivision") is a duly platted and designated subdivision in the City Carlsbad, Eddie County, New Mexico and being legally described as follows:

LEGAL DESCRIPTION:

Block 1	Block 2	Block 7
Lots 1-21	Lots 1,3,5,7,9,11,13,15,17,19,21,23,25,27,29,31,33,34	Lot 1-5

and

Whereas, Ken Thurston Development Corporation (the "Declarant") is the Owner of all Lots in the subdivision; and

Whereas, the Declarant wishes to adopt this Declaration of Covenants, Conditions, Restrictions, and Easements for Spring Hollow Subdivision Unit 1 Phase 1 (the "DECLARATION") in order to promote the orderly development of the subdivision and to ensure that it will be a desirable residential neighborhood:

NOW, THEREFORE, the Declarant does hereby adopt and establish this declaration for the Subdivision including the Covenants, Conditions, Restrictions and Easements herein contained, which shall run with the land and shall be binding upon the Declarant, its successors and assigns, as well as upon any and all subsequent owners and all parties having any right, title or interest in or to any portion of the subdivision and their respective heir, legal representatives, successors and assigns forever:

PART B. DEFINITIONS

The following definitions shall apply in this Declaration.

- B-1 Subdivision - is defined in Part A hereof.
- B-2 Declaration - is defined in Part A hereof.
- B-3 Lot - shall mean and refer to a Lot as shown on the plat of the Subdivision as it presently exists or as it may hereafter be amended or replated.
- B-4 Declarant - is defined on Part A hereof.
- B-5 Front Building Line - shall mean the line running in front of and abutting the front building or wall line, excluding any architectural decorative projections which shall not exceed two feet in depth perpendicular to the front building line, on a Lot after construction of the structure.
- B-6 Owner - shall mean and refer to the first person (including partnerships and corporations) to whom a Lot is conveyed by the Declarant, including a builder or contractor. The term Owner shall also include the heirs, legal representatives, successors and assigns of the initial Owner.
- B-7 Dwelling Unit - shall mean a Structure used as a residence and comprised of a single family detached residence-

- B-8 Structure - any building, including a Dwelling Unit, that has a roof over all or part of its horizontal plane.
- B-9 Zoning - shall mean zoning classification and corresponding uses and restrictions as imposed by the Zoning Ordinance of the City of Las Cruces, New Mexico.

PART C. AREA OF APPLICATION

C-1 Fully Protected Single Family Residential Area. The Fully Protected Residential Single-Family Area Covenants contained in Part D hereof, in their entirety, shall apply to the following Lots and Blocks:

Block 1	Block 2	Block 7
Lots 1-21	Lots 1,3,5,7,9,11,13,15,17,19,21,23,25,27,29,31,33,34	Lots 1-5

PART D. FULLY PROTECTED RESIDENTIAL AREA

- D-1 Land use and Building Type. All Lots in the Subdivision shall be used solely for single family residential purposes only. No Structure shall be erected, altered, placed or permitted to remain on any Lot other than one single-family detached Dwelling Unit not to exceed two stories in height together with the private garage or carport for that Dwelling Unit. Accessory Structures shall conform in exterior color and design to the Dwelling Unit.
- D-2 Architectural Control. No Structure shall be erected, altered or placed on any Lot and no modification of the walls, walkways or driveway shall be made until the construction plans and specifications and a drawing showing the location of the Structure of modification have been approved by the City of Carlsbad Building Department and the Architectural Control Committee as to the harmony of external design with existing and proposed structures and as to compliance with the terms, spirit and intent of this Declaration. Approval shall be as provided in Part E. The Architectural Control Committee shall have the right to obtain injunctive relief to halt construction or to remove nonconforming Structures, if it is determined that any construction is not substantially in accordance with the approved plans and specifications.
- D-3 Dwelling Unit Size. The ground floor living area for any one-story Dwelling Unit shall contain not less than 1400 square feet for a Dwelling Unit exclusive of open porches, carports and garages. The ground floor living area for any two-story Dwelling Unit shall contain not less than 600 square feet exclusive of open porches, carports and garages.
- D-4 Structure Locations. No Structure shall be located on any Lot nearer than 20 feet from the front Lot line or 15 feet from the rear Lot line, side yards 10 feet minimum between vertical building walls and 8 feet minimum between eaves to be maintained.
- D-5 Lot Area and Width. No Dwelling Unit shall be erected or placed on any Lot having an area of less than 4,000 square feet.
- D-6 Harmony of Exterior. The owner of each Lot shall keep all exterior walls and roofs of the Dwelling Unit and all other Structures on his lot in good condition at his own expense. Any changes to the exterior color or appearance of any Structure on any Lot (including any additions thereto) shall be made so as to harmonize with the design and color of the Structures located in the Subdivision and be in conformity with the architectural control provisions herein contained. Any changes in the construction (including but not limited to, the installation, removal or change in walls, fences, walkways and driveways) between the front of the Dwelling Unit and the street shall be made so as

to harmonize with the design, location, color and use of the other Structures located in the Subdivision and in conformity with the architectural control provisions herein contained.

- D-7 Maintenance of Property. The Owner of each Lot shall keep all improvements and the surrounding grounds in good condition and repair, free of debris, including, but not limited to, seeding, watering, mowing of all lawns, the pruning and cutting of trees and shrubs, the painting and other external care of all Structures and other improvements, all in a manner and with such frequency as is consistent with good property maintenance.
- D-8 Drainage. No Owner shall create or permit any condition to exist to change the drainage of the Lot so that the Lot is not in compliance with the drainage plan for the Subdivision filed with the City of Carlsbad, New Mexico. No owner shall create or permit any condition to exist which will cause surface water to drain to any adjacent Lot unless it is part of the approved drainage plans.
- D-9 Value. No Owner shall do or permit to be done any act which would tend to depreciate the value of his Dwelling Unit, an adjacent Dwelling Unit, or any Structure or property in the Subdivision.
- D-10 Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat of the Subdivision.
- D-11 Nuisances. No noxious or offensive activity shall be carried on or upon any Lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood or other Owners.
- D-12 Temporary Structures. No Structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanent. During the period of construction in the subdivision and until all Dwelling Units constructed thereon have been sold, the use of temporary construction trailers, the use of completed homes or model homes as sales offices and construction and/or administrative offices for the builders is permitted. Upon completion and sale of all Dwelling Units in the Subdivision, all such uses will terminate and any temporary construction trailers will be removed from the Subdivision.
- D-13 Completion of Structures. A Structure once commenced by anyone other than the Declarant and a homebuilder who has purchased or is purchasing 10 or more lots in the Subdivision shall be completed in accordance with the provision of this Declaration in not more than 180 days from the date of commencement. No Dwelling Unit shall be occupied as a residence unless it is fully completed in accordance with the approved plans and specifications and a Certificate of Occupancy has been issued by the City of Carlsbad, New Mexico.
- D-14 Sight Distance at Intersections. No Structure, fence, wall, hedge, shrub or other planting which obstructs sight lines at elevations between 2 and 6 feet above the roadway shall be placed or permitted to remain on any corner Lot. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.
- D-15 Oil, Mining and Excavation Operations. No oil or natural gas drilling, oil development operation, oil refining, quarrying or mining operation of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted on or upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted on any Lot.

- D-16 Vehicle Parking. Inoperable vehicles, dune buggies, boats, camping trailers, recreational vehicles or motor homes shall not be parked or placed in the street or in the front yard of any Dwelling Unit. Temporary parking for a period not to exceed seven days for preparation prior to use or for cleaning after use of a recreation vehicle is permitted. No vehicle shall be left parked in disrepair or for the purpose of repair. Temporary parking for a period not to exceed four days for maintenance is permitted.
- D-17 Fences. Fences, walls or structures placed on the property shall be in compliance with the setback and zoning requirements of the City of Carlsbad and shall not impair the drainage function of the lot. All perimeter walls and fences shall be placed on the property lines between lots. Retaining walls shall be party walls if placed on the common property line between two lots and shall not be removed by either property owner without the written consent of the other party and the Architectural Review Committee. All lots are required to have perimeter walls or fences. Required walls must extend along the side lot lines from the rear most point of the dwelling to the rear lot line and along the rear lot line in its entirety. Other walls and fences are optional. The fences or wall shall be a minimum of 48 inches in height, except where otherwise physically limited to a lower height. The party walls shall be no more than 72 inches in height measured from the highest grade. Materials and styles shall be of masonry, block or stucco.
- D-18 Miscellaneous. Except as required by ordinance during construction, no privy shall be placed upon any Lot. No signboard or other visible advertisement larger than ten square feet may be placed upon any Lot for the purpose of the resale of a Dwelling Unit. Signs pertaining to the sale of Lots and builder's signs which are of reasonable size and dimensions may be placed in the Subdivision during the construction of improvements and sales of Lots. Must be in compliance with City of Carlsbad.

PART E. ARCHITECTURAL CONTROL COMMITTEE

- E-1 Membership. The Architectural Control Committee (the Committee) is composed of Kenneth R. Thurston, of Las Cruces, New Mexico. All correspondence or notice to the Committee as it is initially constituted shall be given to the Committee at 1401S Don Roser Ste C, Las Cruces, New Mexico 88011. In the event of the death or resignation of any member of the Committee, the remaining member or members of the Committee shall have full authority to designate a successor. If all of the initial members of the Committee, and their successors shall resign, the Owners of a majority of the Lots may designate a new committee. Such designation shall be by written instrument recorded in the County Clerk's Records of Eddie County, New Mexico. At any time, the Owners and/or Declarant who own a majority of the Lots shall have the power to change the membership of the Committee and to remove or restore to the Committee any of its powers and duties. Such actions shall be taken by a written instrument recorded in the County Clerk's Records of Eddie County, New Mexico. For the purposes of this Section, "E-1", the Declarant shall be considered the Owner with respect to all Lots owned by that Declarant and Declarant shall be entitled to one vote for each Lot owned by it. The Committee may designate a representative to perform its functions.
- E-2 Procedure. The Committee's approval or disapproval as required in these Covenants shall be in writing, and in the event the Committee or its designated representative, fails to approve or disapprove within 15 days after plans and specifications have been transmitted in writing as a submittal to it, or if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related Covenants shall be deemed to have been fully compiled with.
- E-3 Members Compensation and Liability. None of the members of the Committee or its designated representatives shall be entitled to any compensation for service performed pursuant to these Covenants. Architectural control of construction, as provided in paragraph D-2 hereof and other duties of the Committee, being largely subjective in nature, the action or nonaction by the members of the Committee shall not subject any member of the Committee be required to enforce the provisions hereof. The enforcement of architectural control provisions by an aggrieved party shall be

as provided in paragraph F-3 hereof and shall be pursued solely against the person or persons allegedly violating or attempting to violate the provisions and standards contained in these Covenants. The members of the Architectural Control Committee shall not be proper parties to any litigation or action.

- E-4 Powers. The Committee shall have the following powers:
- a. All of the power and authority herein designated for the Architectural Control Committee.
 - b. To grant variances, waivers and exceptions to the restrictions and other provisions contained in the Declaration.
 - c. To enforce, in such manner as the Committee deems best, all of the provisions of this Declaration.

E-5 Termination of Initial Membership. After Dwelling units have been built upon 100% of the Lots in the Fully Protected Residential Area of the Subdivision, membership on the Committee of those persons named in E-1 shall automatically terminate without action or resignation by such initial members. The resulting vacancy or vacancies thereafter occurring shall be filled by the vote or written consent of a majority of the record owners of the Lots in the Subdivision. Successors to membership in the Architectural Control Committee shall be named in an instrument executed and acknowledged by a majority of its then members. Such instrument shall be recorded in the Public Records of Eddie County, New Mexico.

PART F. GENERAL CONDITIONS

F-1 Term. These covenants shall run with the land and shall be binding on the Declarant, all Owners and all persons claiming under them for a period of ten (10) years from the date these Covenants are recorded (unless amended as provided in paragraph F-2 below), after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then Owners of the Lots has been recorded agreeing to change said covenants in whole or in part.

F-2 Amendment. This Declaration may be amended by agreement of those who own not less than 65% of the Lots. For the purpose of this Section, "F-2" the lots owned by the Declarant shall be included in determining voting rights, and the Declarant shall be included in determining voting rights, and the Declarant shall have one voting right for each lot owned. Such amendment shall be in writing, signed by those casting the requisite percentage of votes and acknowledged, and shall be filed in the County Clerk's Records, Eddie, New Mexico. In calculating the vote for such amendments, an Owner and the Declarant shall be entitled to cast one vote for each Lot owned by that Owner or by the Declarant.

F-3 Enforcement. These covenants shall run with the land in favor of and enforceable by any owner of any Lot within the Subdivision or the holder of any first lien mortgage or any Lot or portion thereof, or by the Architectural Control Committee. Enforcement shall be by any proceeding at law or in equity, against any person or persons violating or attempting to violate any covenant herein (either to restrain any violation or attempted violation or threatened violation) of any of the terms of this Declaration. No bond or other security shall be required of the party bringing such action in order to secure the issuance of a temporary restraining order, temporary injunction or final injunction. If the party bringing any action seeking enforcement of these Covenants or monetary damages prevails, the party against whom such actions are brought shall pay all the costs of court and all reasonable attorney's fees incurred in the court and all reasonable attorney's fees incurred in the enforcement of these Covenants.

F-4 Severability. The invalidation of any of the provisions of this Declaration by judgment or court order shall in no way affect any other provisions. Such other provisions shall remain in full force and effect.

F-5. Paragraph Headings. Paragraph headings in this Declaration are inserted for convenience and identification only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Declaration or any paragraph or provisions hereof.

F-6 Zoning. Nothing contained in the Covenants shall allow or permit any use within the Subdivision in violation of the zoning laws of the City of Carlsbad.

F-7 Subordination of Liens. All liens created in these Covenants shall be subordinate to the lien of any purchaser money mortgage or deed of trust.

