

DECLARATIONS OF RESTRICTIVE COVENANTS

We, the undersigned owners of real property as our interest may appear in the County of Otero, State of New Mexico, being the property platted as Tracts 1, 2, 5 and 6 of the Amistad Subdivision filed of record in the Office of the Otero County Clerk, Plat Book 663, Pages 758-776, for the purpose of maintaining fair and adequate property values in the Tracts and of continuing the Tracts as a desirable residential part of the County, in consideration of the mutual interest as owners of real estate in the Tracts, hereby declare the following restrictive covenants to be applicable to Tracts 1, 2, 5 and 6:

No owner of Tracts 1, 2, 5 or 6 shall use or cause to be used more than one-fourth (1/4th) of the three acre feet per annum water right from Permit No. T-2341 for each Tract, and agree that such usage may be metered in addition to the following meter requirements of the Office of the State Engineer as may be promulgated from time to time:

Use shall be limited to household, non-commercial trees, lawn and garden not to exceed one acre and/or stock use.

A totalizing meter shall be installed before the first branch of the discharge line from the well and the installation shall be acceptable to the State Engineer; the State Engineer shall be advised of the make, model, serial number, date of installation and initial reading of the meter prior to appropriation of water, and pumping records shall be submitted to the District Supervisor on or before the 10th of January, April, July and October of each year for the three preceding calendar months.

The meter required under this permit shall be installed on the discharge line from the well before the line enters the ground, or, in the case of the discharge line exiting the casing below ground, the meter shall be installed immediately adjacent to the casing. In the latter instance, the State Engineer Office in Las Cruces shall be advised of the meter installation and allowed seven (7) days from receipt of such notice to inspect the installation prior to covering the line. No water shall be diverted from the well until a meter has been installed. The meter report for the initial installation shall be completed and submitted as soon as the meter is installed.

Please read the meter at the end of the month and submit quarterly reports by the 10th day of the following month whether the well is or is not pumped.

It is expressly understood and agreed, that the several restrictive covenants contained herein shall attach to and run with the land, and it shall be lawful not only for Grantor, his heirs and assigns, but also for the owner or owners, individually or collectively, of Tracts 2, 3, 5 or 6 as hereinafter described, deriving title from or through Grantor, to institute and prosecute any proceedings at law or in equity against the person or persons violating or threatening to violate the same.

and the following restrictive covenants to be applicable to the Unit One well site, herein referred to as Unit One described as follows:

Unit One may be used only for the operation of the water system, and no use may be made of Unit One which may be inconsistent with its purpose of producing potable water for the owners of Tracts 1, 2, 5 and 6.

and the following negative reciprocal easements to be applicable to Tracts 1, 2, 5 and 6:

The Grantors' assigns may form a property owners association, and if such association is organized, the charges, based on the actual usage of the water system by the owners of Tracts 1, 2, 5 and 6 proportionally according to the actual metered use to each Tract, shall be payable to such association or in the absence of such an organization, to any individual assignee or assignees of the Grantors who shall assume the responsibility of operating, maintaining and repairing the well and water delivery system benefiting Tracts 1, 2, 5 and 6. Charges shall be the actual amount expended for the normal operation, maintenance and administration of the water system, together with a surcharge of 1.5% which shall be deposited into a reserve account to provide working capital not to exceed the previous years actual expenses. In the event of a major capital expenditure to replace or repair any component part of the water system, the proration shall be based on the actual metered use for a period prior to such repair or replacement equal to the normal expected useful life of the component being repaired or replaced. The charge shall be payable to the Grantors, and such charge shall be devoted entirely to the maintenance and operation of the water delivery system and well located on Unit One. Each Grantee, by the acceptance of a deed or contract of sale, hereby expressly grants to the Grantors, their successors and assigns of Tracts 1, 2, 5 and 6, and each of them jointly and severally, the right and power to bring all actions necessary against the owner of any tract conveyed or a part thereof to impose a lien for the collection of such charge

and to enforce the lien against such property for the collection of such charges in the event that the remedy of reversion is not elected as hereinafter set forth.

In addition, the Grantors, their successors and assigns, of Tracts 1, 2, 5 and 6, and each of them, jointly and severally reserve the right to assert damage actions based on negligence for any damage to the water delivery system or Unit One caused by another assignee of the Grantor. The water system described herein do not include private portions of the water system located on either Tracts 1, 2, 5 or 6.

It is understood and agreed that any conveyance of Tracts 1, 2, 5, 6 or Unit One is made and accepted and the real property is hereby granted, on and subject to the covenants, conditions, restrictions, and reservations contained herein which covenants, conditions, restrictions and reservations shall apply to and run with the conveyed land and with Tracts 1, 2, 5 and 6, and all successive future owners and occupants, individually or collectively, shall have the same right to invoke or enforce the covenants, conditions, restrictions and reservations applicable to this conveyance as the original parties hereto.

It is further agreed by each Grantee that each and all of the covenants and conditions contained herein shall, as between the parties hereto, their heirs, successors and assigns, be deemed to be and construed as express conditions subsequent, on each of which the conveyances of Unit One and water rights located on Tracts 1, 2, 5 and 6, are made. If any Grantee shall default or fail to perform or comply strictly with the several covenants on his part, or any of them, requiring contribution to maintain, operate and repair the well and water delivery system, and to limit each Grantee's use to one-fourth of the allowable well production of three acre feet per annum, the Grantors and their successors and assigns of Tracts 1, 2, 5 or 6, may at any time thereafter, serve on the Grantee a notice in writing specifying the particular or particulars in which ~~default or breach thereof has been made and directing him to remedy such default or breach within the specified period~~ for a period of sixty (60) days, time being of the essence, fail fully and entirely to remedy such breach or default, a notice in writing may be served on him by the Grantors, their successors or assigns of Tracts 1, 2, 5 or 6, notifying him that the Grantors, their successors or assigns of Tracts 1, 2, 5 or 6, elects that the title to the whole of Unit One, together with all water rights appurtenant to Tracts 1, 2, 5 or 6, which are produced on Unit One, shall revert to the Grantors, their successors and assigns of Tracts 1, 2, 5 or 6, and thereupon the title to the whole of Unit One, together with all water rights appurtenant to Tracts 1, 2, 5 or 6, shall immediately and without the necessity of any further action on

the part of the Grantors, their successors and assigns of Tracts 1, 2, 5 or 6, revert to and re-vest in the Grantors, their successors and assigns of Tracts 1, 2, 5 or 6, and the Grantee shall lose or forfeit all his right, title and interest in and to the whole of Unit One, and to the improvements and the fixtures thereon, and to any right to any water produced thereon, regardless of where such water may be used, and the Grantors, their successors and assigns of Tracts 1, 2, 5 or 6, shall have the right of re-entry to Unit One and such water right. The right of reversion to the Grantors is conveyed by the Grantors proportionally to each successor and assign of Tracts 1, 2, 5 or 6 of the plat of Amistad Subdivision filed of record in the Office of the Otero County Clerk in Plat Book 663, Pages 758-776, who has an undivided interest in Unit One, provided that the right of reversion shall itself revert to the other successors and assigns of the Grantors to Tracts 1, 2, 5 or 6 who have not breached or defaulted under the terms of their covenants. It being the intent of the Grantors, Grantee and successors and assigns of Tracts 1, 2, 5 or 6 that only those owners of Tracts 1, 2, 5 or 6 who share in the payment of charges or any combination of them and the appropriate allocation of water produced from the well, shall retain the use and benefit of Unit One, the well and water delivery system.

It being the expressed intent that the covenants and rights contained herein running with the land with respect to Unit One, including the right of reversion, are designed to be forfeited in the event that any owner of Tracts 1, 2, 5 or 6 shall fail to perform and comply with any covenant relating to the maintenance, operation and repair of the well, the water delivery system and the easements necessary for the operation of such water delivery system.

Any deed, lease, conveyance, or contract made in violation of this agreement shall be void and may be set aside on petition in equity of one or more of the parties hereto, and all successors in interest, heirs, executors, administrators, or assigns, shall be deemed parties to the same effect as the original signers; and when such conveyance or other instrument is set aside by decree of a court of competent jurisdiction, all costs and all expenses of such proceedings including, but not limited to, attorney's fees, shall be taxed against the offending party or parties, and shall be declared by the court to constitute a lien against the real estate so wrongfully deeded, sold, leased, or conveyed, until paid, and such lien may be enforced in such manner as the court may order.

This Declaration constitutes a mutual covenant running with the land, and all successive future owners shall have the same right to invoke and enforce its provisions as the original signers hereof.

