

**RESTRICTIVE COVENANTS
CREEKSIDE ESTATES, UNIT 1
OTERO COUNTY, NEW MEXICO**

WHEREAS, the undersigned owner of the property hereinafter described and located in Otero County, New Mexico, has heretofore filed a plat of the subdivision known and described as Creekside Estates in the Office of the County Clerk, Otero County, New Mexico and

WHEREAS, the undersigned owner of said subdivision desires to file certain restrictive covenants affecting said property for the protection of all future property owners in said subdivision.

NOW, THEREFORE, the undersigned do hereby declare the existence of certain restrictive covenants as herein after set forth and declare that said restrictions and covenants shall run with the land hereinafter described and to be binding on all parties who are or shall become parties in interest to said land. The property covered and affected by the covenants set forth herein and the restrictions applicable thereto is described as follows, to wit:

CREEKSIDE ESTATES, UNIT 1, OTERO COUNTY, NEW MEXICO

These restrictive covenants are for the benefit of any and all of the owners of the real property within the boundaries of the subdivision described above and if any of the owners or any of their assigns or successors in interest violate any of these covenants, it shall be lawful for any other owner within that subdivision to enforce these covenants in the District Court of Otero County, New Mexico. Such enforcement may include, but is not limited to damages, temporary injunction and/or permanent injunction.

ARCHITECTURAL CONTROL COMMITTEE

All plans, including the locations, for the construction of private roads and driveways and all building plans for any building, fence, wall or structure to be erected upon any portion of any of the lots in Creekside Estates, Otero County, New Mexico and any changes after approval thereof of any remodeling, reconstruction, alteration or addition to any building, road, driveway or other structure upon said premises shall require the approval in writing of the Architectural Control Committee. The Architectural Control Committee shall be composed of JBEA, LLC, its heirs and assigns.

The restrictions and protective covenants herein referred to are as follows:

1. Lots 1-11 inclusive shall be known and described as residential Lots. No structures shall be erected, altered, placed or permitted to remain on any residential Lot other than one single family dwelling and such structures as are incidental to the use of said Lot, such as a private garage, well house, storage room or stable.
2. There shall be no commercial activity or business engaged in on any of these Lots. A home business shall be permitted in a room within the home (excluding a garage). "Shop" type businesses are expressly prohibited.

3. Lots may not be re-subdivided in the future for any purpose, except to combine two lots into one.
4. No buildings or structures whatsoever of any kind shall be located nearer than fifty (50') feet to the front lot line of each Lot, not nearer than twenty (20') feet to any side Lot line or rear Lot line of each Lot.
5. Plans for construction of any building in the subdivision, plans for any earthmoving or excavation in the subdivision, and plans for any significant degree of landscaping in the subdivision shall be submitted to the Architectural Control Committee so that the Architectural Control Committee can be certain that the plans abide by the terms of these covenants. The Architectural Control Committee shall notify the party submitting the plans of acceptance or denial of the plans within one week of receipt. If the plans are denied either in whole or in part, the Architectural Control Committee shall clearly state how the plans can be revised in order to be accepted.
6. Pertaining to permanent homes:
 - No dwelling house smaller than 1500 square feet heated area shall be constructed on any tract herein. No trailer, trailer house, prefabricated building, tent, shack, barn or other outbuilding shall be used as a residence, temporarily or permanently, nor shall any temporary residence be erected. A temporary contractor's building or a mobile home for storage may be used during construction. All buildings are to be either stucco, brick or stone veneer or painted or stained on exterior or wall surfaces within thirty days from the date of completion of construction. No second hand structures shall be moved onto any lot.
 - All dwellings shall be finished as to the exterior within one year from start of construction. All structures shall be completely finished front, sides and rear to the same degree as a first class front, so the view from overlooking or adjoining tracts will not be unduly impaired.
 - To help conserve water, water harvesting shall be required. All dwellings must be rain guttered and that water shall be caught and contained and used for outdoor irrigation or other outdoor uses.
7. Out houses, cesspools and standard septic tanks and leach fields are strictly prohibited. Sewage disposal shall consist of individual New Mexico Environmental Department approved Advanced Treatment Units capable of Nitrate reduction per 20.7.3 NMAC. Shared septic systems shall not be permitted. Each lot owner is responsible for maintaining New Mexico Environmental Department required setbacks and clearances between wells and septic systems, including those on adjacent properties.
8. Each Lot owner is required to provide and maintain all underground connections to utilities, except where such is provided prior to the purchase of the individual Lot. No overhead utilities are allowed.

9. No driveway entrances shall be constructed against or across drainage easements or drainage ditches in such a manner as to in any way prohibit the flow of water through such drainage easements. The developer reserves the right to require all such driveways to meet specifications as set forth by the developer. Installation and maintenance of any such culverts and/or driveway entries shall be the responsibility of the Lot owner.
10. The premises and improvements of each Lot must be maintained in an orderly condition and in a good state of repair at all times. They shall be kept clean and free of accumulations including, but not limited to, car parts and major appliances. Inoperative vehicles shall not be stored on any Lot. Woodpiles and refuse containers shall be screened from view from neighboring Lots and from the front of a house.
11. No television, satellite dish or radio antenna shall extend higher than 5 feet above the highest roof of any structure on the Lot.
12. No obnoxious or offensive activity shall be carried on or allowed to exist or be operated upon any Lot, nor shall anything be done on any Lot which may be or become an annoyance or a nuisance to the neighborhood.
13. No firearms of any type or kind shall be discharged by any owner, person in possession, or invitees of the same within the confines of the real estate.
14. No billboards or advertising signs of any character shall be erected, placed, permitted, or maintained on any real estate or portion thereof or improvement thereof except that a discreet and unobtrusive name and address sign of modest dimensions be placed on each owners real estate. Nothing herein shall be construed to prevent the developers, their successors and assigns, from erecting, placing, or maintaining sign structures and offices as may be deemed necessary by it for the operation of the real estate.
15. Livestock, such as horses, cattle sheep, etc. shall be permitted, provided that none are to be kept for commercial purposes. Livestock shall be limited to 5 animals per lot and must be contained and not allowed to graze or forage in the vicinity of Tularosa Creek.
 - Household pets are allowed but must be contained. Kenneling is not permitted.
 - Pigs, swine and poultry are not permitted.
16. No work or exploration for any minerals, mining, or quarrying of any rock minerals soil or material or any nature shall be conducted on any Lot or portion thereof, nor shall any excavation of any nature be made upon any Lot or portion thereof, except as may be incident to the installation of utility services, drainage lines, excavations incident to the grading and preparation of building site, the construction of dwellings and/or swimming pools, and the grading of roads and streets.
17. All Lots shall be maintained in as natural a state as possible. Native growth shall not be destroyed or removed from a Lot except as necessary for roadways, utility ways, structures, walled in or fenced-in yards, gardens and patios, or replacement by landscaping. Natural drainage shall not be altered. The elevation of a Lot shall not be changed so as to materially affect the surface elevation or grade of the surrounding Lots.

No rock, gravel, or earth shall be excavated or removed from any property for commercial purposes.

18. **Water Conservation Measures:** Water conservation is defined as any beneficial reduction in water use or water losses. Water waste is defined as the indiscriminate, unreasonable, or excessive running or dissipation of potable water; and non-essential water use is defined as the indiscriminate or excessive dissipation of potable water which is unproductive, or does not reasonably sustain economic benefits or life forms, where there is shortage of potable water.

Drought is not the only circumstance under which water shortages occur. Population growth or migration can also cause shortages by overburdening water supplies that were once abundant.

Indoor water use can be reduced without household members having to make any changes in their daily habits by installing water-saving plumbing fixtures and appliances in new construction. Outdoor water use can be kept to a minimum by installing low-water use landscaping and by careful consideration of any use of hot tubs, swimming pools and water gardens.

- a. **Toilets.** The National Energy Policy Act of 1992 (NEPA) now requires that toilets manufactured after January 1, 1994 for dwelling units, use no more than 1.6 gpf.
- b. **Showerheads.** NEPA now requires that the maximum flow rate for showerheads shall not exceed 2.5 gpm.
- c. **Faucets.** NEPA now requires that the maximum flow rate of kitchen and bathroom faucets shall not exceed 2.5 gpm, and 2.0 gpm, faucets are recommended for bathroom sinks.
- d. **Insulated Hot Water Pipes.** Insulation reduces loss of heat from hot water pipes and reduces water wasted while users wait for the flow of hot water at the tap.
- e. **Air Conditioners.** To conserve water, evaporative coolers that recirculate bleed-off water, or refrigerated air conditioning systems, which require no water, can be installed in new construction; and bleed-off water from evaporative coolers without recirculation can be used for landscape irrigation.
- f. **Dishwashers.** To conserve water, low-water use dishwashers which require no more than 13 gallon in the regular cycle, and have a cycle adjustment which reduces the water used for small loads, can be installed in new construction.
- g. **Hot Water Heaters.** There is no noteworthy ways to save in the selection or use of a typical hot water heater. However, installing a point-of-use water heater which produces hot water instantaneously can reduce water waste. This can be especially important in homes where the hot water tank is a long way from the bathroom, and occupants have to run the water a long time before it gets hot enough for a bath or shower.
- h. **Washing Machines.** To conserve water, low-water use washing machines which require no more than 43 gallons in the regular cycle and 53 gallons in the permanent-press cycle, and have a cycle or water-level adjustment which reduces the water used for small loads, can be installed in new construction.

i. Water Softeners. To conserve water, a softener selected that regenerates automatically with a low regeneration water requirement per 1,000 gallons of water softened can be obtained.

19. Landscaping: The term xeriscape is a systematic approach to landscaping to conserve water. Xeriscape, from the Greek word "xeri" for dry, is a style of landscaping based on seven common-sense steps to create a beautiful, yet low-water use landscape. A well-designed xeriscape minimizes the area in irrigated turf; only trees, shrubs, flowers and groundcovers with low water requirements are planted; and plants are zoned in the landscape according to their different water needs so they can be irrigated separately, and efficiently. The goal in developing a water-wise landscape is to reduce the need for irrigation. As the irrigated area is reduced, water savings increase. Xeriscape can reduce the outdoor water use by 50% or more without sacrificing the quality and beauty of a home environment. It is environmentally sound, requiring less fertilizer and chemicals, and it is low-maintenance. The seven steps to xeriscaping are:

Planning and Design: A landscape design is developed to suit homeowner's needs, life style, and climate. A well-planned xeriscape can increase the value of a property and reduce water-use. Prepare a site plan drawn to scale showing the location of the house, its orientation to the sun, other structures, utilities, and existing vegetation. Delineate those slopes and the perimeter of lots to eliminate the need for planting vegetation that must be watered. Divide the landscape into water use zones. High water-use zones are small, highly visible areas, that receive the most care and require frequent watering. The high water-use zone is normally the area nearest to the house and is typically where most family activity occurs; plants in this zone are functional, i.e., attractive and durable, such as turf grass. The moderate water-use zone blends verdant areas with the more arid parts of the landscape; plants in this zone are watered only occasionally. The low water-use zone requires the least care; plants are only irrigated during establishment (typically 12-18 months); and thereafter, they survive on rainfall only. It is important to avoid abrupt changes from low to high water-use zones because this results in over watering along edge of the low water-use zone.

Soil Analysis: Evaluate the soil, including its structure, texture, water-holding capacity and drainage. The physical and chemical characteristics of the existing soil will determine the type of soil improvement needed. When most homes are built, the soil around them is usually altered. The area against the foundation of the house is especially likely to be filled with poor soil and debris and may be far from ideal for growing turf, perennials and other plants.

Appropriate Plant Selection: Select plants that are well-suited to the site and local environment. Soil type and exposure to direct sunlight are important considerations. Match the water-use zones with the condition of the planting site. Place high water-use plants in areas of the landscape that stay moist, and low water-use plants in areas that stay drier naturally. In order to avoid waste, plants with similar light and water requirements should be grouped together. The irrigation system should then be designed to deliver the amount of water that each grouping needs to be healthy.

Practical Turf Areas: Use turf for a specific function or aesthetic benefit. A small "oasis" or turf near the entrance to the home or a playing surface of durable turf in recreational areas, are both examples of practical turf areas. Avoid planting a steep slope with turf because it will be difficult to water and maintain sufficient soil moisture to keep the turf green. Design turf areas in practical shapes that can be efficiently irrigated and maintained. Avoid sharp angles and long narrow strips that are difficult to mow and water. Minimize the area of irrigated turf where possible; restrict turf grass to low-water use varieties that are well adapted to the climate, soil, exposure, intended use, and expected level of care they will receive. Acclimation to sunny or shady exposures, heat, frost, and drought tolerance, resiliency under wear, aesthetic appeal, and maintenance requirements- cutting, watering, fertilizing, and weeding are all important considerations in selecting a turf grass. **NOTE: WITHIN THIS SUBDIVISION TURF AREA IS LIMITED TO NOT EXCEED 1200 SQ.FT.**

Efficient Irrigation: A water-wise landscape requires a minimal amount of irrigation water. Water should be applied efficiently and effectively to make every drop count. Just as plants are zoned in the landscape according to their different water needs, zone the irrigation system so that plants with different water needs are irrigated separately. For instance, water turf grass separately from shrubs and flowers. Using irrigation water efficiently also requires the selection of an appropriate type of irrigation system for the plants and for each area of the landscape. Trees and shrubs in the low water-use zone would need supplemental water only during establishment, while plants in moderate water-use zones require water only during periods of limited rainfall. For these plants, a temporary system such as a soaker hose or hand watering may be all that is required. On the other hand, high water-use zones require frequent watering and may warrant a permanent system with automatic controls. Whenever possible, use highly efficient watering techniques, such as drip irrigation. Soil moisture sensors such as gypsum blocks and tensiometers may be used to determine when to irrigate. Irrigation controllers may be used to water plants on time and in sequence, day by week by month, but they must be properly programmed to reflect seasonal changes in plant water requirements, otherwise water may be wasted. Bermadon valves are generally preferable to clock-type controllers; the Bermadon valve must be turned on manually but it turns itself off after a set amount of water passes through it. Sensors which automatically turn the irrigation system off if rain falls or if the soil is too wet to need watering, can improve irrigation efficiency and reduce waste. Considerable water savings can be realized by studying the water needs of plants, breaking bad watering habits, and learning how to water, when to water, and the most efficient ways to water. Use the following guidelines for lawn watering: (1) water only when the grass really needs it; (2) deep-soak the roots and water less frequently-daily sprinkling may result in a shallow root system and weakens the grass, making it more susceptible to disease and more fragile in dry conditions and during winter; (3) water during the cool, early morning hours to minimize evaporation ; (5) aim sprinklers- don't waste water on open dirt, sidewalks or driveways; (6) adjust sprinklers to throw a low pattern of water to minimize evaporation; and (7) monitor the amount of water applied.

Use of Mulches: Mulching is a very beneficial landscape practice. Mulches conserve moisture by preventing evaporative water loss from the soil surface and reducing the need for irrigation during periods of limited rainfall. By maintaining an even moisture supply in the soil, mulches prevent fluctuations in soil moisture that can damage roots. Mulches also prevent crusting of the soil surface and allow water to penetrate readily to plant roots. They insulate the roots of plants from summer heat and winter cold and help control weeds that compete with plants for moisture. By serving as a barrier between the plant and soil, mulches help discourage soil-borne diseases that stress plants and cause them to use more water. A 3-4 inch depth of mulch is normally optimum. Depending on the mulch and growing conditions, a depth greater of 5 inches will discourage plants from growing and retard the percolation of water down to the soil. Use fine-textured, organic non-matting mulches when possible. Fall leaves, pine bark nuggets, and shredded hardwood bark are excellent choices. Mulch as large an area as possible under trees and shrubs. Islands of unplanted mulch require no water and little routine maintenance.

Appropriate Maintenance: Keep plants healthy, but do not encourage water-demanding new growth. Once plants are established, reduce the amount of nitrogen applied as well as the application rate and frequency of application. Avoid plant stress by mowing properly, by thinning shrubs instead of shearing, and by controlling weeds and pests before they affect plant health.

20. There is reserved in favor of the Tularosa Community Ditch Corporation, its successors and assigns, an easement to install and maintain a pipeline to convey water along the north side of the Tularosa River, together with the rights of ingress and egress to and from the easement for the purpose of maintaining, inspecting, altering, repairing, operating, protecting, removing or relaying the pipeline and such valves, meters, equipment and appurtenances as may be necessary for operations. No excavation will be permitted within the limits of the easement. Lot owners will not construct or permit to be constructed any building, structure or foundation upon the easement or any other improvements upon the easement which interferes with the grantee's safe operation of the pipeline and its appurtenances. Construction of fences, driveways or roads over the pipeline is permitted so long as the depth of ground cover is maintained between the top of the pipeline and the bottom of the fence or driveway.
21. These covenants shall be binding upon the undersigned and all persons claiming under it, their heirs, successors or assigns from the date these Restrictive Covenants are recorded. These Restrictive Covenants may be modified, amended or repealed in whole or in part by filing in the office of the County Clerk of Otero County, New Mexico, such amendment, modification or notice of repeal duly executed and subscribed by the owners of record, of the 11 Lots within the subdivision, each 2 1/2 acres having 1 vote. Modification, amendment or repeal of any one or more of the foregoing restrictive covenants shall not affect the validity of the remaining covenants. Failure to enforce the provisions of the above covenants immediately upon violation shall not be considered as a waiver of such covenants.
22. Invalidation of any one of these covenants by judgment or Court order shall in no way

affect any of the other provisions which shall remain in full force and effect.

JBEA, LLC

By William C. Crabbe, Manager
William C. Crabbe, Manager

State of Colorado)

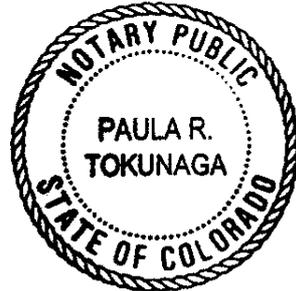
County of Weld)ss
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On this 28 day of June, 2007, before me personally appeared William C. Crabbe, Manager, JBEA, LLC, known to me to be the person who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

WITNESS my hand and seal the day and year last written above.

Paula R. Tokunaga, Notary Public

My commission expires 5/4/09



My Commission Expires 05-04-2009

