DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS AND LIENS FOR HOLIDAY SANDS, UNIT 3 AND HOLIDAY SANDS, UNIT 3 REPLAT A, AN ADDITION TO THE CITY OF ALAMOGORDO, OTERO COUNTY, NEW MEXICO

PART A. Recitals and Preamble.

WHEREAS, SHELBY F. MILLER and wife, CLARE D. MILLER (the "Declarant") are the Owners of Holiday Sands, Unit 3 and Holiday Sands, Unit 3, Replat A, an addition to the City of Alamogordo, Otero County, New Mexico, as shown and designated on the plat thereof on file in the Office of the County Clerk of Otero County, New Mexico in Volume 31, Pages 15 and 16 and Volume _____, Page _____, (the "Subdivision"); and

WHEREAS, the Declarant wishes to adopt this Declaration of Covenants, Conditions, Restrictions, Easements and Liens for the Subdivision in order to promote orderly development and insure the Subdivision will be a desirable residential neighborhood;

NOW, THEREFORE, Declarant does hereby adopt and establish these Covenants, Conditions, Restrictions, Easements and Liens for the Subdivision, which shall run with the land and be binding upon Declarant, their successors and assigns, as well as upon any and all subsequent owners and all parties having any right, title or interest in and to any Lot (as hereinafter defined), their respective heirs, legal representatives, successors and assigns:

PART B. Area of Application.

B-1 Single Family Detached Residential Area. The Single Family Detached Residential Area Covenants contained in Part E shall apply to Lots 1 through 10 inclusive, Lots 29 through 36 inclusive, Lot 37A and Lot 37B of the Subdivision.

B-2 Townhouse Residential Area. The Townhouse Residential Area Covenants contained in Part F shall apply to Lots 11 through 28 inclusive of the Subdivision.

PART C. Definitions.

C-1 Covenants - This Declaration of Covenants, Conditions, Restrictions, Easements and Liens.

C-2 Subdivision - Defined in the Recitals and Preamble.

C-3 Declarants - Defined in the Recitals and Preamble.

C-4 Lot - a Lot as laid down and shown on the plat of the Subdivision as it presently exists or may hereafter be amended or replatted. References to Lot shall include any improvements or buildings constructed thereon.

C-5 Owner - any individual, partnership, incorporation or other entity owning all or an undivided interest in any Lot within the Subdivision.

C-6 Minimum Building Setback Line - The line demarking the closest point from the front, rear or side of any Lot that a building or improvement may be constructed or built.

C-7 Townhouse - one residential unit of a contiguous series of two (2) or more individually-owned single family residences which are joined by common interior walls.

PART D. General Covenants and Restrictions. The following General Covenants and Restrictions shall apply to all Lots in the Subdivision.

D-1 Land Use and Building Type. All Lots covered by these Covenants shall be used for residential purposes only. No building or structure shall be erected, placed, altered or permitted to remain on any Lot except a townhouse or single family detached dwelling unit. No Lot or any portion thereof shall be used for any trade or business of any nature whatsoever, provided however, the owning of any Lot as an investment and offering the same for rental shall not be a violation of these Covenants.

D-2 Architectural Control. No building or structure shall be erected, placed or altered on any Lot until the construction plans and specifications and a plan showing the location of the structures have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finished grade elevation. After such location with respect to topography and finished grade elevation has been approved and the finished grade of the Lot has been completed, such finished grade shall not be altered, changed or disturbed without the approval of the Architectural Control Committee. Approval of the Architectural Committee shall be as provided in paragraph I.

D-3 Building Height. No building in the Subdivision shall exceed two stories in height.

D-4 Nuisance. 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-5. Value. No Owner shall, by omission or comission, allow or permit any occurrence or condition which would tend to depreciate the value of his dwelling unit or any other dwelling units in the Subdivision.

D-6. Temporary Structures. No structure of a temporary character (including but not limited to trailer, basement, tent, shack, garage, barn or other outbuilding) shall be used on any Lot at any time as a residence, either temporarily or permanently. During the period of construction within the Subdivision and until all dwelling units constructed thereon have been sold, temporary construction trailers, completed homes or model homes may be used as sales offices and construction and/or administrative offices for builders, and upon completion and sale of all dwelling units in the Subdivision, all such uses will terminate and any temporary construction trailers or buildings will be removed from the subdivision. All boats, camping trailers, recreational vehicles, motor homes, dune buggies or inoperable motor vehicles of any kind shall be placed in the rear yard. Such vehicles shall not be parked in any public alley, or street in the Subdivision.

D-7. Fences and Garden Walls. Masonry fences, wood frame fences with stucco, or wooden fences shall be permitted across the rear of any Lot, the interior lot line of any Lot, or along the side yard of a corner Lot where such sideyard shall abut a side street. No fence or garden wall of any type shall be erected, placed or altered on any Lot nearer to the street than the Minimum Building Setback Line, except that on corner Lots a fence may be placed or erected along the rear lot line to the side street lot line and forward along the side street lot line not farther than within 10 feet of the front of the dwelling. This provision shall not preclude or prohibit any masonry

retaining walls located on or within a Lot or between Lots which are necessary due to the elevation or slope of the natural terrain, provided that the top of said retaining wall or walls shall not project more than one foot above the highest grade if the wall is located in the front of any Lot.

D-8. Maintenance. The exterior of all structures, walks, driveways, walls, retaining walls and lawns and landscaping shall be maintained in good order, repair and condition by the respective Owners thereof.

D-9. Sidewalks. A sidewalk shall be constructed across the front of each Lot or along the side yards of corner Lots in the Subdivision.

D-10. Sight Distance at Intersections. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two and six feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight line limitations shall apply on any Lot within 10 feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foilage line is maintained at sufficient height to prevent obstruction of such sight lines.

D-11. Lot Division. No Lot shall be split or further subdivided so as to reduce the area thereof, except as necessitated by correction of encroachments or other boundary deficiencies caused by errors in surveying and/or construction.

D-12. Miscellaneous. Except as required by ordinance during construction, no privy shall be placed upon any Lot in said Subdivision. No signboard or other visible advertisement larger than one square foot may be placed on any Lot other than signs pertaining to the sale of or the construction of improvements in the Subdivision. No drilling or excavation shall be made on any Lot for the purpose of obtaining sand, rock, clay, dirt, coal, gravel, oil, natural gas or any other material or product, whether for profit or otherwise. No animals, livestock, poultry or foul of any kind shall be raised, bred or kept on any portion of the Subdivision except that a maximum of two customary household pets, such as dogs or cats may be kept on a Lot, provided they are not kept, bred or maintained for any commercial purpose whatsoever.

PART E. SINGLE FAMILY DETACHED RESIDENTIAL AREA COVENANTS. The following Covenants shall apply only to the Single Family Detached Residential Area.

E-1 Building Location. No building shall be located on any Lot nearer than 20 feet from the front or rear Lot line, nor nearer than 5 feet from the side Lot line, nor nearer than 13 feet from the side street lines. For purposes of this Covenant, eaves, steps, projections of fireplaces, and open porches shall not be considered a part of the building, provided however, this shall not be construed to permit any portion of a building on a Lot to encroach upon any other Lot.

E-2 Building Size. The ground floor living area for any one story single family detached dwelling unit shall contain not less than 750 square feet exclusive of open porches, carports and garages. The ground floor living area for a two story single family detached dwelling unit shall contain not less than 600

square feet exclusive of open porches, carports and garages and a minimum of 800 square feet of living area.

E-3 Lot Area. No dwelling unit shall be erected or placed on any Lot having an area of less than 5500 square feet.

PART F. TOWNHOUSE RESIDENTIAL AREA COVENANTS. The following Covenants shall apply only to the Townhouse Residential Area.

F-1 Building Location. No building shall be located on any Lot nearer than 20 feet from the front or rear Lot line, nor nearer than 13 feet from the side street lines. For purposes of this Covenant, eaves, steps, projections of fireplaces, bow, boxed or bay windows, ornamental features, and open porches shall not be considered a part of the building, provided however, this shall not be construed to permit any portion of a building on a Lot to encroach upon any other Lot.

F-2 Building Size. The ground floor living area for any one story Townhouse shall contain not less than 750 square feet. The ground floor living area for any two story townhouse shall contain not less than 600 square feet exclusive of open porches, carports and garages and a minimum of 800 square feet total living area.

F-3 Lot Area. No dwelling unit shall be erected to placed on any Lot having an area of less than 3800 square feet.

PART G. PARTY WALLS.

G-1 Definition and Applicability. Any wall, fence or other division located on or adjacent to the dividing line between Lots shall constitute a party wall. Such walls may be interior walls of buildings (as in the case of a townhouse) but may also be exterior walls and fences separating the Lots.

G-2 General Rules. Except as changed or modified by this Declaration, the general rules of law regarding party walls and liability for damage to such walls shall apply.

G-3 Joint Maintenance and Repair. The costs of maintenance and repair of each party wall (other than caused by the negligence of either party thereto) shall be borne equally by the Owners of the dwelling units on either side of the wall. All repairs to party walls necessitated through maintenance, damage or destruction shall be made by the responsible Owner within a reasonable time after such repairs become necessary. Upon reasonable notice and at reasonable times, the Owner of each dwelling unit shall have the right to enter upon the adjoining dwelling unit for the purpose of maintaining the party wall.

G-4 Damage or Destruction. In the event of damage to or destruction of a party wall from any cause (other than the negligence of either party thereto), the Owners of the dwelling units on each side of said wall shall, at joint expense, repair or rebuild said wall to its original condition and each Owner shall have the right to full use of said wall as so repaired or rebuilt. If either party's negligence (or the negligence of any member of his family or his invitees) shall cause damage to or destruction of the wall, such negligent party shall bear the entire cost of repair or reconstruction.

G-5 Lien. If either party shall neglect or refuse to pay his share (or all of the costs in the case of negligence), the other party may have such wall repaired or restored and shall have a mechanic's lien on the dwelling unit of the party so failing to pay, for the full amount of such defaulting party's share of the repair or replacement costs plus interest at the highest legal rate and attorney's fees.

G-6 Alterations. Neither party shall alter or change a party wall in any manner (the decoration on his side of the wall excepted) and the party wall shall always remain in the same location as when erected. Each party to said wall shall have a perpetual easement in that part of the premises of the other upon which the wall is located, for party wall purposes.

G-7 Utilities. The Owner on each side of a party wall shall have the right to use said wall for utility purposes including the right to break into or through such wall for the purpose of installation, maintenance, repair or replacement of utility facilities. The Owner who breaks into or through the party wall for utility purposes shall promptly restore the wall to its original condition and shall pay all costs of such work.

G-8 Exposure. Notwithstanding any other provision contained herein, an Owner who, by his negligence or willful act causes any portion of an unexposed party wall to be exposed to the elements, shall bear the whole cost of furnishing the necessary protection against such elements and the costs of repairing the damage caused by such elements.

PART H. Roofs.

H-1 Joint Maintenance and Repair. The Covenants contained in Part H shall apply only to townhouse dwelling units which are attached in such manner that the roofs of the two dwelling units abut on a single plane, the entire roof on such single plane is herein referred to as an Adjoining Roof and shall be subject to these provisions. The costs of maintenance and repair of the entire Adjoining Roof (other than caused by the negligence of either party thereto) shall be borne by the Owner of each dwelling unit in the same proportion that the square footage of the Adjoining Roof located on his dwelling unit bears to the total square footage of the Adjoining Roof. All maintenance and repair shall be made by the responsible Owner within a reasonable time after such become necessary. Upon reasonable notice and at reasonable times the Owner of each dwelling unit shall have the right to enter upon the adjoining dwelling unit for the purpose of maintaining and repairing the Adjoining Roof.

H-2 Damage or Destruction. In the event of damage to or destruction of an Adjoining Roof from any cause (other than the negligence of any party thereto) the Owners of the Adjoining Roof shall repair or rebuild said roof to its original condition within a reasonable time after such damage or destruction. If any party's negligence (or the negligence of any member of his family or his invitees) shall cause damage to or destruction of the Adjoining Roof, such negligent party shall bear the entire cost of repair or reconstruction.

H-3 Lien. If any party shall neglect or refuse to pay his share (or all of the costs in the case of negligence), the other party or parties may have the Adjoining Roof repaired or restored and shall have a mechanic's lien on the dwelling unit of the party so failing to pay for the full amount of such defaulting party's share of the repair or replacement costs plus interest at the highest legal rate and attorney's fees.

H-4 Roofs at Different Elevations. If the roofs of adjoining dwelling units are at different elevations, the foregoing provisions shall not apply to such roofs. The Owner of each dwelling unit shall properly maintain the roof over his dwelling unit and shall provide appropriate facilities to prevent water from his roof from draining onto another dwelling unit.

H-5 Easement. Easements for roof overhanging, not to exceed two feet, are hereby reserved and created by the Declarant on behalf of any Owner with a roof overhang. The Owners of such

dwelling units with a roof overhang shall have the right of ingress and egress upon the adjoining dwelling unit at reasonable times for the purpose of maintaining and repairing the overhanging roof.

PART I. Architectural Control Committee.

I-1 Membership. The Architectural Control Committee is composed of SHELBY F. MILLER of Alamogordo, New Mexico, DAVID SIVAGE of Alamorgordo, New Mexico, and JAMES P. SORENSON, JR. of El Paso, Texas. A majority of the Committee may designate a representative to act for it. In the event of the death or resignation of any member of the Committee, the remaining members of the Committee shall have full authority to designate a successor. At any time the then record owners of a majority of the Lots shall have the power through a duly written recorded instrument to change the membership of the Committee or to restore to it any of its powers and duties.

I-2 Procedure. The Committee's approval or disapproval as required in these Covenants shall be in writing. In the event the Committee, or its designated representative, fails to approve or disapprove within 30 days after such plans and specifications have been submitted to it, or in the event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related Covenant shall be deemed to have been fully complied with.

I-3 Members Compensation and Liability. None of the members of the Committee or its designated representative shall be entitled to any compensation for service performed pursuant to this Covenant. Architectural control of construction, as provided in paragraph D-2 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 to personal liability nor shall the members of the Committee be charged with the responsibility of enforcement of the provisions hereof. The enforcement of architectural control provisions by any aggrieved party shall be as provided in paragraph J-4, and shall be pursued solely against the person or persons allegedly violating or attempting to violate the provisions and standards specified in these Covenants. The members of the Architectural Control Committee shall not be proper parties to such action.

I-4 Termination of Initial Membership. Any member of the Architectural Control Committee may resign by filing written notice thereof in the public records of Otero County, New Mexico. After dwelling units have been built upon 100% of the Lots in the Subdivision, the membership of any of those persons named in I-1 hereof who are still members of the Committee shall automatically terminate without action or resignation by such initial members. The resulting vacancy or vacancies thereafter occurring shall be filled by a vote of a majority of the Owners in the Subdivision. Successors to membership in the Architectural Control Committee shall be named in an instrument executed and acknowledged by the then chairman of the Committee, who shall be elected by a majority of its then members. Such instrument shall be recorded in the public records of Otero County, New Mexico.

I-5 Powers. The Architectural Control Committee shall have the following powers:

a. All of the power and authority herein designated for the Architectural Control Committee.

b. The power to grant variances, waivers and exceptions to the restrictions and other provisions contained in this Declaration.

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c. To enforce, in such manner as the Committee deems appropriate, all of the provisions of this Declaration, and

d. To enforce, in such manner as the Committee deems appropriate, subdivision and zoning ordinances of the City of Alamogordo.

PART J. Miscellaneous Provisions.

J-1 Term. These Covenants shall run with the land and shall be binding on all parties and all persons claiming under them for a period of 40 years from the date these Covenants are recorded, unless amended as hereinafter provided in paragraph G-2, after which time said Covenants shall be automatically extended for successive periods of ten years unless an instrument signed by a majority of the Owners of the Lots at that time has been recorded to change said Covenants in whole or in part.

J-2 Amendment. This Declaration may be amended at any time by the then current Owners of not less than 75% of the total ownership votes. Such amendment shall be in writing and shall be filed in the County Clerk's records of Otero County, New Mexico.

J-3 Voting. For purposes of voting hereunder, the Owner(s) of each Lot shall have one vote for each such Lot owned.

J-4 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 on any Lot 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 to recover monetary damages. If any suit for injunction is brought for the enforcement (either to prevent a 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 action is brought shall pay all costs of court and reasonable attorney's fees incurred in the enforcement of these Covenants.

J-5 Severability. Invalidation of any one of these Covenants by judgment or court order shall not affect any of the other provisions which shall remain in full force and effect.

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

J-7 Subordination of Liens. All liens recreated in these Covenants shall be subordinate to the lien of any purchase money mortgage.

EXECUTED this 26th day of September, 1984.

DECLARANT

Shelby F. Miller
SHELBY F. MILLER

Clare D. Miller
CLARE D. MILLER

BOOK 563 PAGE 723

THE STATE OF NEW MEXICO $
$
COUNTY OF OTERO $

This instrument was acknowledged before me on the 26 day of September, 1984, by SHELBY F. MILLER and wife, CLARE D. MILLER.

Jimmy A. Stafford
Notary Public
State of New Mexico

My commission expires:
April 1986

STATE OF NEW MEXICO, County of Otero, as I hereby certify that this instrument was filed for record on the 1 day of October 19 84 at 3:30 o'clock P. M., and duly recorded in Book 563, Page 716-723, of the Records of said county.

By Margaret D Sanchez Deputy Katie A. Sanchez County Clerk

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