

VISTA DE LA SIERRA SUBDIVISION RESTRICTIONS

**A Declaration of Restrictions, Covenants
and Conditions for a Residential Development**

THIS DECLARATION ("Declaration") is made on September 1998, by the Stogden S&D Development Incorporated, a New Mexico corporation, 1300½ 8th Street Tularosa, New Mexico 88352-2244 ("Developer"), with respect to that certain real property ("Property") situate in Otero County, New Mexico and more particularly described as follows:

Know all men by these presents that Stogden S&D Development, Inc., a New Mexico Corporation, is the Owner and proprietor of a tract of land in the SW1/4 of Section 19, T14S, R10E, NMPM described by metes and bounds a follows,

Starting at the southwest corner of said section 19 and going N00 19' E a distance of 646.57 feet, thence S86 23' 20"E a distance of 250.07 feet, thence N0012' 37' W a distance of 25.38 feet, thence S86' 28' 23"E a distance of 275.05 feet, thence S48' 31' 24"E a distance of 82.08 feet thence S77' 59' 15"E a distance of 111.80 feet, thence S10' 45' 44"W a distance of 50.00 feet, thence N79°14' 16"W a distance of 18.75 feet, thence along the arc of a curve to the left whose central angle is 126° 06' 14' and whose radius is 20.00 feet an arc distance of 44.02 feet, thence S25° 20' 30" E a distance of 156.92 feet, thence N89° 58' 42"W a distance of 896.37 feet to the said place of beginning, and containing 12.369 acres, more or less.

Said Owner does hereby cause the above described tract of land to be subdivided and platted as shown on the foregoing plat, the subdivision of lands as shown upon this plat shall be designated as "Vista de la Sierra, Unit 1" Tularosa, Otero County, New Mexico, and in recording this plat, said Owner and proprietor does cause all of the streets and easements within the bounds of the above described tract of land to be dedicated to the uses shown.

It is hereby declared that the property is subject to this Declaration, which is for the purpose of creating and the improvement and protection of the value, desirability and attractiveness of the Property.

It is the purpose of this Declaration to create a residential development consisting of single family dwellings with each dwelling to be located on a separate lot with portions of certain lots subject to easements for the benefit of the community.

This Declaration shall run with the Property and shall be binding upon and inure to the benefit of Developer, the Association (as hereinafter defined) and each subsequent owner of the Property.

ARTICLE 1

Definitions

Unless the context otherwise specifies or requires, the terms defined in this Article 1 shall have the meanings as defined in this Article for the purposes of this Declaration.

Section 1.1: Architectural Control Committee. The terms "Architectural Control Committee" or "Committee" shall mean the Architectural Control Committee created pursuant to Article 2.

Section 1.2: Association. The term "Association" shall mean the Vista de la Sierra Homeowner's Association, Inc., a New Mexico non-profit corporation described in the Article entitled.

"Organization, Powers and Duties of the Association," and any predecessor or successor unincorporated association.

Section 1.3: Board. The term "Board" shall mean the Board of Directors of the Association and the governing body of any predecessor or successor unincorporated association.

Section 1.4: Easement Area. The term "Easement Area" shall mean certain interests in real property including improvements thereon owned or controlled by the Association or privately owned for the common used and enjoyment of the Association members. The Easement Areas to be dedicated at the time of this Declaration for the benefit of all members of the Association.

Section 1.5: Eligible Mortgagee. The term "Eligible Mortgagee" means any holder of a first mortgage lien against any Lot, provided that such mortgagee has given the Association written notice of its mortgage setting forth its name and address and identifying the lot which is subject to such first mortgage.

Section 1.6: Fiscal Year. The term "Fiscal Year" shall be the calendar year; but the Association by-laws or Board Resolution may adopt a different Fiscal Year.

Section 1.7: Improvements. The term "Improvements" shall include, without limitation, buildings, out-buildings, (including sheds and storage buildings), roads, driveways, parking areas, fences, retaining walls, stairs, decks, windbreaks, poles, antennas, signs, utility or communication installations (whether above or underground), and any structure and excavation of any type or kind.

Section 1.8: Lot. The term "Lot" shall mean each of the lots designated 1 through 42 on the Plat and the Improvements located on each such Lot.

Section 1.9: Maintenance Assessments. The term "Maintenance Assessments" shall refer to such assessments as are authorized pursuant to Section 6.3.

Section 1.10: Mortgage; Mortgagee. The term "Mortgage" shall mean a deed of trust, as well as a mortgage, and the term "Mortgagee" shall mean a beneficiary under or a holder of a deed of trust, as well as a Mortgagee.

Section 1.11: Notice. The term "Notice" shall mean a notice delivered pursuant to the requirements of this Declaration.

Section 1.12: Owner. The term "Owner" shall mean the persons or entities, holding the beneficial ownership of the fee, including the purchaser under a contract of sale, and shall not include persons holding only a security interest or a seller under a contract of sale. For the purposes of the Article entitled, "Permitted and Prohibited Use of Property," unless the context otherwise requires, "Owner" shall include the family, invitees, licensees and tenants of any Owner.

Section 1.13: Plat. The term "Plat" shall mean the Subdivision Plat for Vista de la Sierra as recorded in the Otero County, New Mexico real estate record on August 31, 1998 in Book [57], Pages [50 & 51].

Section 1.14: Subdivision. The term "Subdivision" shall mean the residential development subdivision created by the Plat and subject to this Declaration.

Section 1.15: Subdivision Restrictions. The term "Subdivision Restrictions" shall mean, with respect to all Property within the Subdivision, the limitations, easements, restrictions, covenants, and conditions set forth in this Declaration, as this Declaration may from time to time be amended. The term "this Declaration" and the title to this Declaration shall have the same meaning as "Subdivision Restrictions."

Section 1.16: Subdivision Rules. The term "Subdivision Rules" shall mean the rules made by the board pursuant to the authority granted by the Subdivision Restrictions and from time to time in effect pursuant to the provisions of the section entitled, "Subdivision Rules."

Section 1.17: Record; Recorded. The term "record" or "recorded" shall mean, with respect to any document, that the document shall have been recorded in the office or offices of the Recorder of Otero County.

ARTICLE 2

Architectural Control Committee
(Architectural Guidelines)

Section 2.1: Architectural Control. All buildings shall be designed to reflect traditional New Mexico architecture. Different types or variations of styles including Spanish Pueblo Style, utilizing a flat roof, massive walls, and earth tone colored exterior stucco, or southwestern territorial style with pitched metal roof, adobe massing and earth tone stucco is acceptable. Other architectural requirements such as dormers, portals and entry courtyards are acceptable and preferable. The intent of the development is to produce a consistence high quality of architecture reflective of the history of the southwest. No building shall be erected, placed or altered on any lot until the construction plans and specifications and a site plan showing the location of the structure have been approved by the Architectural Control Committee as to the quality of workmanship and materials, harmony or external design with existing and or planned structures, as to location with respect to topography and finish grade elevation. No fences or retaining wall shall be erected without approval of the Architectural Control Committee.

Section 2.2: Membership. The Architectural Control Committee is composed of the following seven (7); Ernest Stogden Sr., Ernest Stogden Jr., Donald R. Stogden, Karen L. Gutierrez, Bobbie J. Grace, Anthony Stogden and Bill J. Stogden, Stogden S&D Members and their appointees, assignees or successors. A majority of the committee may designate a representative to act for it. In the event of death or resignation of any member of the committee, the remaining members shall have full authority to designate a successor. Neither the members of the committee, nor its designated representatives, shall be entitled to any compensation for services performed pursuant to this covenant. At any time, the then recorded Owners of a majority of the lots shall have the power through a duly recorded written instrument to change the membership of the committee or to withdraw from the committee or to restore to it any of the powers and duties.

Section 2.3: 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 thirty (30) days after plan and specifications have been submitted to it, or in any event, 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 complied with.

Section 2.4: Enforcement. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages. Prevailing party shall also be entitled to reasonable attorney fees.

Section 2.5: Severability. Invalidation of any of these covenants by judgement, court order or by ordinance of Otero County, New Mexico, affect any of the other provisions which shall be and remain in full force and effect.

Section 2.6: Amendment. These covenants may be amended in whole or in part at any time that an instrument signed by a majority of the owners of the lots has been recorded agreeing to amend said covenants in whole or in part to include additional property under the terms hereof or to exclude specifically described property from the provisions hereof. Votes shall be counted on the basis of one (1) vote for each property owner within the subject area.

ARTICLE 3

Property Subject to Subdivision Restrictions

Section 3.1: Property Subject to Subdivision Restrictions. The Property located in the village of Tularosa, Otero County, State of New Mexico, as shown on the subdivision plat for Vista de la Sierra as described previously.

ARTICLE 4

Subdivision Restrictions

Section 4.1: Dwelling Cost, Quality and Size. No dwelling shall be permitted on any lot at a cost of less than \$90,000 based on cost levels prevailing on the date these covenants are recorded. It is the intention and purpose of these covenants to assure that all dwellings shall be of a quality of workmanship and materials substantially the same or better than that which can be produced on the date the covenants are recorded at the minimum cost stated herein for the minimum permitted dwelling size. The ground floor of the main structure, exclusive of one-story open porches and garages, shall contain not less than 1,500 square feet of heated area.

Section 4.2: Nuisances. Noxious or offensive activity shall not be permitted upon any lot, nor shall anything be done thereon which may be or may become an annoyance of nuisance to the neighborhood.

Section 4.3: 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 permanently. No trailer, trailer house, prefabricated building, tent shack, barn or other outbuilding shall be used as a residence, temporary or permanently, nor shall any temporary residences be erected. A temporary contractor's building or a mobile home for storage may be used during construction. No second hand structures shall be moved on any lot. No mobile homes or prefabricated houses will be permitted for any use on any lot. All homes shall be built on-site.

Section 4.4: Lot Area and Width. Lot area shall not be reduced below that which is shown on the plat of Vista de la Sierra. No lot shall be re-subdivided, except to combine two lots into one.

Section 4.5: Garbage and Refuse Disposal. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. Portable containers, except for scheduled pick up days, shall be screened from view. Incinerators or other trash disposal equipment are not allowed.

Section 4.6: Business. No business other than a home-business shall be permitted. "Shop-type" businesses are expressly prohibited.

Section 4.7: Liquid Waste Disposal. All dwellings will be connected to the Tularosa Village sewer system. No liquid disposal systems are allowed on site.

Section 4.8: Existing Conditions. Property owners are cautioned not to disturb existing natural drainage to the detriment of adjacent properties. Property owners are cautioned not to create any situation, including the construction of dams, ponds or other potential water traps in the vicinity of any building or other permanent improvement, whether the imposition is located on their property or on adjacent property. Property owners are advised to set the finished floor of any building at least two feet above the highest adjacent ground, and to maintain positive drainage at all times away from all improvements.

Section 4.9: Fully Restricted Area. No lot shall be used except for residential purposes. No building shall be erected, altered, placed, or permitted to remain on any lot or site other than one detached single-family dwelling not to exceed two story in height and a private garage for not more than three cars, and other outbuilding incidental to residential uses of the lot.

Section 4.10: Signs. No sign of any kind shall be displayed to the public view on any lot. Exceptions shall be; one professional sign of not more than one square foot, one sign of not more than five square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period.

Section 4.11: No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

Section 4.12: No horses, cattle, swine, goats, sheep or poultry of any kind shall be raised, bred or kept on any lot. Limit of dogs, and cats to two per lot, or other household

pets may be kept. No breeding, no kennels.

Section 4.13: No building shall be located on any residential lot closer than:

- A. Thirty-five (35) feet to the front lot line.
- B. Thirty (30) feet from the rear property line of the lot (except at lots 2,4, 6, 8, 9, 10, 11, the rear setback to be 60'-0" minimum).
- C. Twenty-five (25) feet from side property line of interior lots.
- D. Thirty (30) feet of the side property line which abuts a street on a corner lot.

ANY RESIDENCE, STRUCTURE, OR IMPROVEMENT ON ANY LOT SHALL NOT EXCEED TWO STORES, AND SHALL BE LIMITED TO A MAXIMUM HEIGHT OF TWENTY-SIX FEET (26), AND SHALL FACE THE SUBDIVISION ROAD.

Section 4.14: Air conditioning, heating, and other machinery may be maintained in or on roof areas of flat-roofed structures, but they must be shielded from view. The visual screening of such equipment must be accomplished by parapets which are an integral part of the improvement or structure, and must be shown in detail on the plans submitted to the Architectural Control Committee.

- A. Air Conditioning, heating and other machinery may not be maintained on roof areas of pitched roof structures. Such equipment must be located either within the structure, or shielded from public view.
- B. Solar energy collectors shall be allowed only if constructed in such a manner as to create an aesthetically pleasing appearance and to be screened from adjoining properties.

Section 4.15: THE FOLLOWING WILL NOT BE PERMITTED:

- A. White roofing material
- B. Translucent or transparent garage doors
- C. Choice of exterior colors which do not blend into the natural terrain.
- D. Outside clothes lines that are visible from any direction.
- E. Visible butane tanks.

Section 4.16: Trade or offensive activity of any kind shall not be carried on upon any lot, nor shall anything be done on any lot, which shall constitute an annoyance or nuisance to the neighborhood.

Section 4.17: No trash or garbage shall be burned on the premises. Garbage shall be placed in covered containers, said containers to be concealed from public view by an attractive enclosure.

Section 4.18: No trailer, manufactured homes, tent, shack, garage or other out-building shall be used as a residence, temporarily or permanently.

Section 4.19: No unused automobiles or vehicles of any kind except as herein above provided shall be stored or parked on any lot except in a closed garage. An "unused vehicle" shall be defined as any vehicle that has not been driven under its own power for a period of thirty consecutive days or longer.

Section 4.20: The exterior of all buildings on all lots shall be finished within twelve months of start of construction.

Section 4.21: Drainage channels shall not be changed by any construction.

Section 4.22: Fences maximum height of 6' or 72", at side and rear of property lines, and 4' or 48" at front property line. Chain link, or wood fences shall be maintained in the residential area of the subdivision. Walls will be permitted on the side and rear lot boundaries. Walls and fences may be constructed out of plain block and stucco, colored block, stone, brick, or rot-iron as long as Earthtone colors are maintained.

Section 4.23: No residential lot may be subdivided, nor may a portion of any residential lot be sold except to adjacent property holders for the purpose of increasing the size of an adjacent lot. No room or rooms in any residence may be rented or leased to any person.

Section 4.24: It shall be the responsibility of owners of lots, vacant or otherwise, to keep said lots, and all easement areas encompassed within the exterior boundaries of said lots, clear of trash, weeds, rubbish or noxious materials.

Section 4.25: All clotheslines, antenna receiver discs, satellites discs, basketball backboards, equipment, garbage cans, service yards, woodpiles or storage piles shall be kept screened by adequate planting or fencing so as to conceal them from view of neighborhood residential units and streets. All clotheslines shall be confined from view in any direction.

Section 4.26: In the event that any structure is destroyed, wholly or partially by fire or any casualty, such structure shall be promptly (as defined by the Architect Control Committee) rebuilt or repaired to conform to this Declaration or shall be removed from the lot.

Section 4.27: Detached garages, sheds, or other buildings may be constructed on the lots, provided:

- A. Such structures must be compatible to the residence with respect to design and construction.
- B. Such structures exterior appearance and siting on the lot must be consistent with the visual appearance of the dwelling unit.
- C. Such structures may not exceed one story in height, and they may not be larger than 1,000 square feet, unless approved by the Architect Control Committee.

Section 4.28: Exterior finishes of all residences, structures, or improvements on the lot shall be adobe, stucco, stone, slumprock, or brick and shall be natural Earthtone colors or other subdued colors that will not clash with the exterior color of the other structures either on the subject lot or adjoining lots.

Section 4.29: The roofing materials of all residential units, improvements and other structures having pitched roofs which are visible from the street, or common areas shall be one of the following: clay tile, metal panel, concrete tile, or wood shakes. No other roofing material will be allowed, unless approved by the Architect Control Committee.

ARTICLE 5

Membership in the Association Voting Rights

Section 5.1: Membership. Each owner, by virtue of being an owner and during such time as such owner remains an owner, shall be a member of the Association, or, a member of the Unincorporated Association.

- A. The rights, duties, privileges, and obligations of an owner as a member of the Association or its proceeding or succeeding Unincorporated Association shall be those set forth in, provisions of this Declaration and the Association's Articles of Incorporation and by-laws.

Section 5.2: Voting of Membership. All owners shall be entitled to a number of votes equal to the number of lots owned within the subdivision. When more than one person or entity is an owner of any lot, all such persons shall be members. The vote for such lot shall be exercised as such owners determine, and in no event shall such multiple

owners vote more votes than they are entitled by the lots owned.

Section 5.3: Voting Rights. Each owner shall be entitled to vote as provided in this Article on all matters properly submitted for vote to the membership of the Association. The right to vote may not be severed or separated from any lot, and any sale, transfer or conveyance of the beneficial interest of the fee of any lot to a new owner shall operate to transfer the appurtenant voting rights without the requirement of any express reference thereto. Voting may be by written proxy.

Section 5.4: Voting Rules. When any provision of the Subdivision Restrictions calls for the vote or the consent of the members in any stated percentage, the following rules apply, unless the specific language of the provision provides to the contrary:

- A. Whenever a vote of the members is required, it is sufficient to obtain the written consent of the same percentage of members; and
- B. The percentage requirement shall be a percentage of the votes submitted on a particular issue, not a percentage of the total voting power of the Association and not a percentage of the number of members of the Association.

ARTICLE 6

Organization, Powers and Duties of the Association

Section 6.1: Organization. The Association shall be organized as a non-profit corporation charged with the duties and empowered with the rights set forth herein. This Declaration, the Articles of Incorporation and the by-laws shall govern the Association's affairs.

- A. In the event that the Association, as a corporate entity, is not formed or after formation loses its corporate powers or is dissolved, a non-profit, unincorporated association shall forthwith and without further action or notice, be formed and shall succeed to all the rights and obligations of the Association hereunder until a qualified non-profit corporation is governed by the laws of the State of New Mexico, and to the extent not inconsistent therewith, by this Declaration, the Articles of Incorporation and the by-laws, respectively, as if they were created for the purpose of governing the affairs of an Unincorporated Association.
- B. The President and Secretary of the Association, or any three (3) members of the Board of Directors, may execute, seal, acknowledge and record a certificate of identity stating the names of all of the members of the then current Board. The most recently recorded affidavit shall be conclusive evidence of the identity of the persons then composing the Board in favor of any person relying thereon in good faith.

- C. The Board shall be elected at an annual or special meeting coinciding with the fiscal year.
- D. The Board of Directors, which shall exercise all of the rights and powers and perform all of the duties, shall manage the affairs of the Association and responsibilities set out in this Declaration for the Association.

Section 6.2: Powers and Authority of the Association. The Association shall have all of the powers set forth in its Articles of Incorporation, together with its general powers as a non-profit corporation, subject only to the limitations upon the exercise of such powers as are expressly set forth in this Articles of Incorporation, its by-laws and in this Declaration, to do any and all lawful things which may be authorized, required, or permitted to be done by the Association under and by virtue of the Subdivision Restrictions and to do and perform any and all acts which may be necessary or proper for, or incidental to the exercise of any of the expressed powers of the Association or for the peace, health, comfort, safety, and general welfare of owners.

- A. Any of the following actions by the Board shall require a majority vote or written assent:
 - 1. Entering into a contract for the furnishings of goods or services for Easement Area of the Association for a term longer than one (1) year with the exception of prepaid casualty or liability policies of not more than three (3) years duration provided that the policy permits cancellation by the insured with not more than thirty (30) days written notice;
 - 2. Incurring aggregated expenditure for Capital Improvements (as hereinafter defined) to Association property in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year;
 - 3. Selling personal property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year;
 - 4. Paying compensation to members of the Board or officers for services performed in the conduct of the Association's business, provided that the Board may cause a member of officer to be reimbursed for expenses incurred in carrying on the business of the Association.
- B. In fulfilling any of its obligations or duties under the Subdivision Restrictions, including, without limitation, its obligations or duties for the maintenance, repair, operation, or administration of the Easement Areas, the Association shall have the power and authority:

1. To contact and pay for, or otherwise provide for, the improvement, maintenance, restoration, and repair for the Easement Area, Conduits and all other Improvements located thereon;
 2. To obtain, maintain, and pay for such insurance policies or bonds, whether or not required by this Declaration, as the Association shall deem to be appropriate for the protection or benefit of the Subdivision, the Association, the members of the Board, and the Owners;
 3. To incur indebtedness; but any indebtedness in excess of the Association's estimate of this estimated gross revenue for the year incurred or any indebtedness to be repaid over a period longer than one (1) year must be approved by a vote of two-thirds (2/3) of the number of members of the Association;
 4. To contact and pay for, or otherwise provide for, such utility services, including, but not limited to electrical services, as may from time to time be required;
 5. To contact and pay for, or otherwise provide for, the services of architects, engineers, attorneys, bookkeeper and certified public accountants, and such other professional and non-professional services as the Association deems necessary;
 6. To contact and pay for, or otherwise provide for, such materials, supplies, equipment, and labor as and to the extent the Association deems necessary;
 7. To pay and to discharge any and all liens from time to time placed or imposed upon any Easement Area, or on account of any work done or performed by the association in the fulfillment of any of its obligations and duties of maintenance, repair, operation, or administration;
 8. To lease or contract for the use of land and improvements for recreation or other purposes to the extent the Association deems necessary; and
 9. To place and maintain upon Easement Area such signs as the Association may deem necessary for the identification of the Subdivision and/or roads, the regulation of traffic, including parking, for the health, welfare and safety of owners and other persons.
- C. In fulfilling any of its obligations or in exercising any of its rights with respect to the development, construction, installation or acquisition of a Capital Improvement, the Association shall have the power and authority:

1. To contract and pay for such improvements upon such terms and conditions as the Association shall deem appropriate;
 2. To obtain, maintain, and pay for such insurance policies or bonds as the Association may deem appropriate for the protection and benefit of the Association, the members of the Board, and Owners, including, but not limited to, builder's risk insurance, additional comprehensive liability insurance, workers' compensation insurance, and performance and fidelity bonds;
 3. To incur indebtedness under terms and conditions as provided by this Article; and
 4. To contract and pay for the services of architects, engineers, attorneys, and certified public accountants, and other professional and non-professional services.
- D. With respect to the Easement Area and subject to the rights of Owners therein in the event of a termination of this Declaration, the Association shall exercise control over the Easement Area, but only for the purpose of carrying out the purposes of this Declaration. The Association shall have no authority to mortgage, sell or convey Easement Area or any part thereof, except that the Association shall have the power and authority from time to time without a vote of the members to grant and convey easements in, on, over, or under any Easement Area, for the purpose of constructing, erecting, operating and maintaining thereon, therein, and thereunder wires, conduits and other equipment for the transmission of electricity and signals for lighting, heating, power, communication, cable television and other purposes, and for the necessary attachments in connection therewith; and public and private sewers, storm water drains, storm water ponding areas, land drains and pipes, water systems, irrigation or sprinkling systems, water, heating and gas lines or pipes and any all equipment in connection with the foregoing.
- E. The Association may, from time to time and upon such terms and conditions as it may deem appropriate, agree with the governing body of any other Subdivision to jointly hire a manager, or jointly to engage in other activities not inconsistent with the Subdivision Restrictions.
- F. The Association shall have the right from time to time to pay, compromise, or contest any and all taxes and assessments levied upon any real or personal property belonging to or assessed to the Association.
- G. The Association shall have the power and authority from time to time, in its own name, on its own behalf, and on behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Subdivision Restrictions and to enforce, by

mandatory injunction or otherwise, all of the provisions of this Declaration.

- H. The Association shall have the power, but not the duty, to enter upon and maintain, or provide for the maintenance of, any Lot that is not maintained by the Owner thereof in accordance with the requirements of this Declaration, at the expense of any such Owner.

Section 6.3: Subdivision Rules. The Board may, from time to time and subject to the provisions of the Subdivision Restrictions, adopt, amend, and repeal rules and regulations, to be known as "Subdivision Rules" providing for the use of Easement Areas, the Conduits, and the access easements.

- A. A copy of the Subdivision Rules, as they may from time to time be adopted, amended, or repealed, shall be delivered to each Owner in the manner provided for the giving of notice. Upon such delivery, the Subdivision Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.
- B. The Board shall have the power to adopt, amend and repeal, from time to time as part of the Subdivision Rules, rules and regulations that interpret or implement the provisions of Section 8.1.

Section 6.4: Liability of Members of Board. No member of the Board shall be personally liable to an Owner, or to any other person, for any error or omission of the Association, its representatives and employees, or the manager; provided, however, that such member has, with the actual knowledge possessed by him, acted in good faith.

Section 6.5: Duties and Obligations of the Association.

- A. The Association shall have the obligation and duty, subject to the Subdivision Restrictions, to do and perform each and everything set out in this section, for the benefit of the Owners and for the maintenance and improvement of the Subdivision.
- B. The Association shall accept all Owners as members of the Association.
- C. The Association shall accept the repair and maintenance responsibilities of the Conduits and all other Easement Areas; provided, however, that neither the Association's obligation to maintain the Conduits nor anything else in this Declaration shall be construed to require the Association to maintain the Conduits nor anything else in the Declaration shall be construed to require the Association to maintain the surface of the Easement Areas within which the Conduits are located.

- D. The Association may employ the services of the corporate or individual manager to manage the affairs of the Association and, upon such conditions as are otherwise advisable by the Association may delegate to the manager any of its powers under the Subdivision Restrictions. No management agreement entered into between the Association and any professional management company (whether or not such professional management company is owned or controlled by the Grantor) shall provide for a term in excess of two (2) years and all such agreements shall permit the Association to terminate for cause upon not more than thirty (30) days' prior written notice and all such agreements shall provide for termination by either party without cause and without payment of a termination fee on not more than ninety (90) days' written notice.
- E. The Association shall obtain and maintain in force such policies of insurance as the board determines appropriate.
- F. The Board may, from time to time, make, establish, promulgate, amend, and repeal the Subdivision Rules.
- G. The Association shall prepare an annual operating statement reflecting the money received by the Association and the expenditures of the Association for each fiscal year and distribute such statement to each member and each Mortgagee upon request.
- H. The Association shall take such action, whether or not expressly authorized by the Subdivision Restrictions, as may reasonably be necessary to enforce or carry out the purpose of the Subdivision Restrictions and the Subdivision Rules.

ARTICLE 7

Funds, Assessments and Delinquency

Section 7.1: Creation of Lien and Personal Obligation for Assessments. Each Owner of any lot agrees to pay to the Association:

- A. Maintenance Assessments;
- B. Assessments for capital improvements or indebtedness; and
- C. All other fees or other moneys due to the Association from such owner.

The Maintenance Assessment, and assessment for capital improvements, plus interest, late charges, cost and attorney's fees, shall be a charge against the Lot and shall be a continuing lien upon the Lot against which each such assessment is made, and shall also be the personal obligation of the Owner or Owners of such property on the assessment date. The personal obligation to pay assessments shall not pass to

successors in title unless expressly assumed by them.

Section 7.2: Operating Fund. There shall be an operating fund, into which the Association shall deposit all monies paid to it as:

- A. Maintenance Assessments;
- B. Assessments for capital improvements;
- C. Miscellaneous income; and
- D. Income and profits attributable to the operating fund;

And from which the Association shall make disbursements in performing the functions for which the foregoing assessments are levied.

Section 7.3: Maintenance Assessment. Within thirty (30) days prior to the commencement of each fiscal year the Association shall estimate the costs and expenses to be incurred by the Association during such year, including a reasonable provision for contingencies, and reserves for major repair and replacement, including specifically for the maintenance of the Conduits and Easement Areas, and shall subtract from such estimate an amount equal to the anticipated balance, exclusive of any reserves for contingencies and reserves for major repair and replacement, in the operating fund at the start of such year. The sum or net estimate so determined shall be assessed to all Owners in shares: One (1) share for each vote, for example, if an Owner has 1.1843 votes they shall have 1.183 shares for purposes of the Maintenance Assessments.

- A. If, at any time and from time to time, during any fiscal year, the Maintenance Assessment proves or appears likely to prove inadequate for any reason, including non-payment of any Owner's share thereof, the Association may levy a further Maintenance Assessment in the amount of such actual or estimated inadequacy, which shall be assessed to all Owners apportioned as provided in subsection A.
- B. Maintenance Assessments shall be due and payable to the Association when levied or in such installments during the year, and on such dates as the Board shall designate.
- C. The Board shall not levy assessments to defray the costs of any action or undertaking on behalf of the Association which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year and which are not part of such budgeted gross expenses, without the vote or written consent of a majority of either the voting power or the members.

Section 7.4: Assessments for Capital Improvements and Indebtedness. The Association may also levy in any year an assessment for paying or returning, in whole or in part, the cost or proposed cost of acquisition and construction of a described capital improvement (whether the improvements constitute real or personal property), in an amount greater than can be included in the Maintenance Assessment, provided it has been approved by a majority of the voting powers of each class of members, which assessment shall be assessed to Owners as provided for in Section 5.3.

Section 7.5: Reserves as Trust Funds. Reserves for major repairs and replacements and for capital improvements to be built or acquired shall be kept segregated from the other monies held by the Association as trust funds in an account or accounts labeled "Reserve Trust Fund" and shall be withdrawn and used only for the purposes of major repairs and replacements or for capital improvements respectively, unless a different or other use is authorized by the vote of the members.

Section 7.6: Delinquency. Each assessment under this Article shall be the separate, distinct and personal debt and obligation of the Owner against whom it is assessed. Any assessment provided for in this Article, which is not paid when due, shall be delinquent. When respect to each assessment not paid within ten (10) days after its due date, the Association may, at its election, require the Owner to pay a sum (late charge) to be determined by the Association, to pay the costs of handling the delinquent sum, but not to exceed twenty-five Dollars (\$25.00) per each delinquent sum, per each delinquent assessment. Such a charge shall be considered an additional assessment and collectible with the assessment for which it was charged. If any such assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at a rate set from time to time by the Association, however not greater than twenty percent (20%), and the Association may, at its option, bring an action at law against the Owner or Owners personally obligated to pay the same, and upon compliance with the provisions of this Article to foreclose the lien against the Lot, and there shall be added to the amount of such assessment the late charge, the costs of preparing and filing the complaint in such action, and in the event a judgement is obtained, such judgment shall include interest at the rate provided herein and a reasonable attorney's fee, together with the costs of action. Each Owner vests in the Association, or its assigns, the right and power to bring all actions at law or lien foreclosure against such Owner or other Owners for the collection of such delinquent assessments.

Section 7.7: Notice of Lien. No action shall be brought to foreclose an assessment lien less than thirty (30) days after the date a notice of claim of lien is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of said Lot, and a copy thereof is recorded by the Association in the office of the County Recorder in which the Subdivision is located; said notice of claim must recite a good and sufficient legal description of any such lot, the record Owner thereof, the amount claimed (which shall include the interest charges, costs and attorney's fees recoverable by an action at law) and the name and address of the Association.

Section 7.8: Foreclosure Sale. Any such sale provided for above is to be conducted in accordance with the customary practice of the courts of the State of New Mexico, applicable to the foreclosure of mortgages, or in any other manner permitted or provided by law. The Association, through its duly authorized agents, shall have the power to bid on the Lot at a foreclosure sale, and to acquire and hold, lease, mortgage and convey the same.

Section 7.9: Curing Default. Upon the timely curing of any default for which a notice of claim of lien was filed by the Association, the officers of the Association are hereby authorized to file or record, as the case may be, an appropriate releases of such notice, upon payment by the defaulting Owner of a fee, to be determined by the Association, no to exceed twenty-five Dollars (\$25.00), to cover the costs of preparing and filing or recording such release, together with the payment of such other costs, interest or fees as shall have been incurred.

Section 7.10: Cumulative Remedies. The assessment lien and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover money judgement for unpaid assessments, as above provided.

Section 7.11: Certificate of Payment. The Association shall, upon demand, furnish to any Owner liable for assessments, a certificate in writing signed by a officer of the Association, setting forth whether the assessments on a specified Lot have been paid, and the amount of the delinquency, of any. Such certificate shall be conclusive evidence of payment of any assessment therein.

ARTICLE 8

Miscellaneous Provisions

Section 8.1: Amendment or Repeal

- A. This Declaration and any provision hereof which are in effect with respect to all or part of the Subdivision, may be amended or repealed in the following manner:
1. The approval by seventy-five percent (75%) vote or written consent of the voting power of the membership in the Association; and
 2. The recordation of a certificate of the Secretary or an Assistant Secretary of the Association setting forth, in full, the amendment or amendments so approved, including any portion or portions of the Declaration repealed, and certifying that such amendment or amendments have been approved by the required vote or consent of the Owners, and if necessary, by the required percentage of Owners of a particular class of property of Houses.

Notwithstanding the foregoing, this Declaration may not be amended to terminate access rights or irrigation rights to any Lot without that Lot Owner's consent.

Ernest E. Stogden Sr.
Ernest E. Stogden Sr.
President, Stogden S&D Development, Inc.

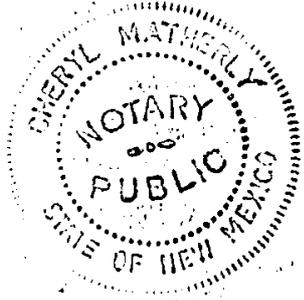
27 Oct. 98
Date

Subscribed and Sworn to before me

This 27TH day of OCTOBER, 1998

Cheryl Matherly
Notary Public

My Commission Expires: 11/24/99



STATE OF NEW MEXICO } S.S.
OTERO COUNTY

FILED FOR RECORD IN MY OFFICE

This 27 day of October, 1998

At 11:10 o'clock P M and duly recorded

in Book No. 904 Page 317-335

The records of Otero County, New Mexico

Mary D. Quintana
County Clerk, Otero County, New Mexico

By Jim Gray Deputy

11713

