

SECOND AMENDED PROTECTIVE COVENANTS

SINGLE FAMILY

PASITOS del CIELO SUBDIVISION, VALENCIA COUNTY, NEW MEXICO

KNOW ALL MEN BY THESE PRESENTS:

That the Valley Improvement Association, Inc. ("VIA"), being the owner of Lots 50 through 55, 57 through 60, and 62, 63, and 66 Block 23; Lots 9 and 10, Block 24; and Lots 22 through 40, Block 25, and John McDonald d/b/a New Mexico Classic Homes, ("McDonald"), being the owner of Lots 56, 61, 64 and 65, Block 23; all within Pasitos del Cielo Subdivision within Unit 56, Rio del Oro subdivision, as is shown on the amended plat on file in the office of the County Clerk of Valencia County, New Mexico in Book 11, Page 317 of 1, filed on February 14, 1992 (hereinafter the "Plat") in order to provide for a general scheme for the development, use and sale of the property within said Pasitos del Cielo, does by these presents impose upon the lots described in Exhibit A as shown on the Plat (hereinafter the "Lots") the following covenants and restrictions, which shall run with the land and be binding upon and inure to benefit of all present and future owners of the Lots and all persons claiming under them. These covenants and restrictions are in addition and superior to those contained in those certain Protective Covenants dated October 27, 1971, and recorded November 30, 1971, in Vol. 31, pages 371-375 of the records of the County Clerk of Valencia County, New Mexico. These covenants and restrictions may be amended at any time by the vote of the owners of record of two-thirds of the Lots. Where more than one person owns a single lot, or any interest therein, the concurrence of all such owners shall be necessary to entitle the owners of such lot to vote for such amendment or modification.

1. All Lots shall be used only for single family residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one single family dwelling, except ancillary buildings such as a tool shed, private garage, carport, guest house or other related out buildings, all of which shall be designed with a roof profile, scale and exterior building color which blends with the dwelling. Such ancillary buildings shall not exceed a building footprint of 400 square feet. Each dwelling unit shall have at least two carports or a 2-car garage and no carports or garages shall be converted for use as living quarters.

2. The floor area of the main structure of any building, exclusive of porches, carports or garages, shall be not less than one thousand (1,000) square feet. No dwelling shall be erected which shall exceed twenty-six (26) feet above grade in height.

3. To establish and insure architectural continuity and to provide for a distinctive and attractive appearance, all structures shall be roofed, in a southwestern architectural style as approved by the Architectural Control Committee. Wall treatment shall be stucco, adobe, slump-block, brick or stone masonry or may be Architectural Control Committee-approved hardboard siding. All structures shall be permanently mounted on a foundation.

4. Except for main distribution lines as the same are designated by VIA, no facilities, including poles and wires for the transmission of electricity, telephone messages and the like, shall be placed or maintained above the surface of the ground and all utilities must be placed underground within the easements therefor as shown or described on the plat.

5. No structure of a temporary character, house trailer, shack, barn or other similar structure shall be permitted on any lot at any time, either temporarily or permanently. Travel trailers, boats, other recreational vehicles or equipment and all nonfunctioning vehicles may be stored on the rear of a lot, provided that said trailers, boats, recreational vehicles, equipment and non-functional vehicles are screened with a structure or vegetation from view from adjoining lots. No structure, on any lot, other than a fully completed

residence, shall be used as a residence.

6. No manufacturing, commercial or business operation other than arts, crafts or professions operated solely by the members of the family actually occupying the residence shall be conducted on any lot; no advertising other than a tastefully decorated sign not exceeding fifteen (15) inches by twenty-five (25) inches shall be exhibited on any lot, and no billboards, or other unsightly objects shall be placed upon any lot; nor shall such lots be used in any manner nor for any purpose which may endanger the health or unreasonably disturb the owner of any other lot. Provided however, that nothing herein shall be interpreted as prohibiting VIA or its licensees from erecting a sign upon any lot owned by VIA or its licensees advertising the sale, or rental of homes; provided however, that VIA or the Architectural Control Committee shall have the right to specify the size, design and quality of said sign and provided further, said sign shall be of a temporary nature only and shall be maintained only so long as there are houses or lots being offered for sale and shall be removed immediately upon request of VIA or the Architectural Control Committee.

7. No building shall be located on any lot nearer than twenty (20) feet to the front lot line, nor nearer than five (5) feet to any side lot line, nor nearer than fifteen (15) feet to any rear lot line, nor shall any building be constructed nearer than (10) feet to any drainage easement.

8. Vegetation and Terrain Management Restrictions:

A. All sites within Pasitos del Cielo are highly erosive, and all plantings installed by VIA, or at its direction, shall be maintained by subsequent owners.

B. Each owner shall maintain any and all storm retention areas existing upon his/her property, and shall do nothing to lessen their capacities and efficiency. No owner shall place an ancillary structure, earthen berm or landscaping on a lot which diverts surface water drainage onto adjacent property, nor shall such owner obstruct any drainageways shown on the Plat.

C. All plantings on the front and sides of dwellings shall be low water usage grasses, shrubs or trees from the Recommended Plant List furnished by the Association. A maximum 400 sq. ft. plot of bluegrass, or other "higher water usage grass" may be maintained on the lot. Watering by standard sprinkler systems shall be permitted in the above-mentioned 400 sq. ft. plot only; all other irrigation shall be by a standard drip irrigation system, or by hand. No poplars or cottonwoods (both genus Populus) shall be permitted.

D. All plant irrigation of whatever nature, shall be kept a distance of at least five (5) feet from any structural wall, or building foundation wall, to prevent subsidence of the wall due to saturated soils.

E. All retaining walls shall have weepholes placed not greater than twelve (12) feet on center.

9. No gas or oil drilling or mining, gravel or sand extraction, or quarrying operation of any kind shall be permitted on any lot. No firearms shall be discharged, no trash, rubbish or other waste be burned, nor shall any other offensive activity or condition be created or permitted to exist on any lot which may be or may become an annoyance or nuisance to the neighborhood. All trash and waste shall be kept in secure, animal-proof, sanitary containers.

10. No animals or fowl, other than ordinary household pets commonly housed in a residence shall be permitted upon any lot.

11. No system for the production and/or distribution of water nor any central system for the disposal of sewage shall be permitted in the

subdivision, except those installed by the Rio Grande Utility Corporation, its successors, agents and assigns.

12. In order to assure first class development in harmony with the surrounding areas and commonly known concepts of good land planning and design, no building shall be erected, placed or altered on any lot, until a full set of architectural and construction exhibits shall have been reviewed and approved in writing by VIA or the Architectural Control Committee. These exhibits shall include but not be limited to detailed construction plans and specifications which indicate the quality of workmanship and materials, exterior design and color scheme, as well as a plot or location plan showing the location of all structures on the lot, landscaping, existing topography and finished grade elevations. No fence or wall shall be altered on any lot unless specifically approved as to location, height and materials. VIA and the Architectural Control Committee may charge a reasonable fee for review and approval of plans and designs.

13. Miscellaneous Restrictions:

A. Walls, other than necessary retaining walls, shall be subject to the same front yard setback requirements as the primary structure. Walls must be built of materials which are the same as, or similar in appearance to, the wall surfaces of the principal structure. No wall shall exceed the height of the first story.

B. Fencing will be cedar. The posts should be 4" x 4" which are buried 20" deep in concrete. Height of the fence should be not less than 5' nor more than 6' high above ground level. The rails should be 2" x 4". Fences shall not be permitted in the front yard of any lot.

C. Satellite dish antennas may not be installed on a residential structure or ancillary building and shall not be permitted in the front or side yards of a residential lot. All such antennas, and any storage tank, including, but not limited to, those used for storage of butane, shall be screened by a fence, wall or compact hedge to block the view from adjacent properties. Any structure or antenna taller than the height of the dwelling unit must be approved by the Architectural Control Committee prior to its location on the lot.

D. Where solar panels are utilized, they should be mounted as an integral element of the roof and reinforce the basic lines and shape which establish the architectural character of the building.

E. Lighting of residential structures is permissible only by a soft, low wattage floodlamp which is mounted on the ground. No neon striping or other decorative treatment will be permitted which is strikingly different from other residential structures or which would disrupt or conflict with the basic character of the residential streetscape. Ground-mounted lighting fixtures, not to exceed eight (8) feet in height, are permitted.

14. Where a lot is bounded by more than one public street no ingress or egress shall be permitted between such lot and the wider of such public streets.

15. VIA may at any time constitute and appoint an Architectural Control Committee of not less than three (3) current resident lot owners in said described property for the purpose of conducting the reviews for approval herein required. In such event, VIA shall establish such rules, regulations and by-laws for the Committee as will assure the existence and continuity of such Committee for the purpose described.

16. In the event VIA or the Architectural Control Committee fails

to approve or disapprove such exhibits within thirty (30) days after the same have been submitted to it, approval of such exhibits shall be deemed to have been given.

17. If the undersigned or any owner of any of the Lots shall violate any of the foregoing covenants or restrictions, then the undersigned or any person or persons owning any of the Lots may enjoin or abate such violation by appropriate action at law or in equity, may recover damages for such violation, if any; in which event the prevailing party shall recover costs incurred, together with reasonable attorneys' fees.

18. In the event that any one or more of the provisions, conditions, restrictions and covenants herein set forth shall be held by any court of competent jurisdiction to be null and void, all remaining provisions, conditions, restrictions and covenants set forth herein shall continue unimpaired and remain in full force and effect.

19. A. Each owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to VIA, in addition to any annual charges due under the terms of that certain indenture recorded in the office of the County Clerk, of Valencia County, New Mexico at Book 30, pages 933-942 on October 28, 1971: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on each lot and shall be a second and continuing lien upon each lot, subject only to the indenture, against which each such assessment is made which shall run with, bind and burden each lot. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

B. VIA shall apply all funds received by it pursuant to these Covenants for the benefit of Pasitos del Cielo in the following manner:

(i) The payment of all principal and interest, when due, on all loans borrowed by VIA;

(ii) The costs and expenses of VIA; and,

(iii) For the benefit of Pasitos del Cielo by devoting the same to the acquisition, construction, reconstruction, conduct, alteration, enlargement, laying, renewing, replacement, repair, and maintenance, operations and subsidizing of such of the following as the Board of Directors of VIA (hereinafter the "Board"), in its discretion, may from time to time establish or provide:

(a) Any and all projects, sources, facilities, studies, programs, systems and properties relating to parks, recreational facilities or services;

(b) Drainage systems;

(c) Streets, roads, highways, walkways, curbing, gutters, sidewalks, trees, flowers, and landscaping, fountains, benches, shelters, directional and information signs, walkways, and bridges, and street, road and highway lighting facilities;

(d) Facilities for the collection, treatment and disposal of garbage, sewage and refuse;

(e) Mass transit systems, stations and terminals, airfields, airports, air terminals and associated facilities;

(f) Facilities for the fighting and preventing of fires;

(g) Public utility systems, including plants, systems, facilities or properties used or useful in connection with the manufacture, production, distribution, delivery and storage of electric power and manufacture of natural gas or any other potential power source, and any integral part thereof, utility lines, poles, surface and underground ducts, relay stations, cables, pipes, pipelines, valves, meters and equipment and appurtenances, and all properties, rights easements and franchises, relating thereto;

(h) Communication systems and facilities, including all buildings, systems, facilities and properties used or useful in connection with the operation of communication networks and facilities, stations, towers, relay systems and facilities, cables, underground and surface ducts, lines, poles, receiving, transmitting and relay equipment, and appurtenances and all properties, rights, easements and franchises relating thereto;

(i) Auditoriums, galleries, halls, amphitheaters, theaters, arenas and stadiums, educational buildings and facilities, including equipment, supplies and accessories in connection therewith;

(j) Office buildings, buildings, storage and maintenance yards, garages and other buildings and facilities deemed necessary or desirable by the Board in connection with the administration, management, control and operation of VIA;

(k) Hospitals and clinics, including equipment, medicines, supplies and accessories in connection therewith;

(l) Libraries, including equipment, books, supplies and accessories in connection therewith;

(m) Traffic engineering programs and parking facilities;

(n) Facilities for animal rescue and shelter;

(o) Lakes, dams, parks, golf courses, tennis courts, zoos, playground, boat basins and marinas, equestrian centers and facilities;

(p) Skeet ranges, bowling alleys, and other related or unrelated recreational facilities; and

(q) Any and all other improvements, facilities and services that the Board shall find to be necessary, desirable or beneficial to the interest of Pasitos del Cielo.

(iv) VIA shall not be obligated to spend in any calendar year any part of or all of the sums collected in such year by way of assessments or otherwise, and may carry forward as surplus, any balances remaining; nor shall VIA be obligated to apply any such surpluses to the reduction of the amount of assessments in the succeeding year, but may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security and benefit of Pasitos del Cielo.

C. Until January 1, of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment shall be Fifty Dollars (\$50.00) per lot. From and after January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment may be increased each year not more than five percent (5%) above the

maximum assessment for the previous year by a majority vote of the Board. The annual assessment shall be due and owing on May 1 of each year.

D. In addition to the annual assessments authorized above, VIA may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying in whole or in part, the costs of any construction, reconstruction, repair or replacement of a capital improvement to the community facilities, roads or drainageways of Pasitos del Cielo, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of lot owners who are voting in person or by proxy at a meeting duly called for this purpose.

E. Written notice of any meeting called for the purpose of taking any action authorized under subparagraph D shall be sent to all lot owners not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of lot owners or of proxies owning sixty percent (60%) of all of the Lots not owned by VIA shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days from the date set for the preceding meeting.

F. As soon as may be practical in each year, VIA shall send a written statement to each owner stating the amount of the assessment against each lot in terms of the total sums due and owing. Unless the owner shall pay the assessment by June 10 of each year, the same shall be deemed delinquent and shall bear interest from June 10 until paid at the rate of eight percent (8%) per annum.

G. If the owner of any lot shall fail to pay the assessment by August 1 of each year, VIA shall have the right to enforce the lien which is hereby imposed in its favor, together with all interest, costs and attorneys' fees to the same extent, including a foreclosure sale and deficiency decree, and subject to the same procedures as apply to mortgages under New Mexico law.

H. Upon written demand by an owner, VIA shall within a reasonable period of time furnish to such owner a written certificate stating that all assessments (including interest and costs, if any) have been paid with respect to any specified lot as of the date of such certificate, or, if all assessments have not been paid, setting forth the amount of such assessments (including interest and costs, if any) due and payable as of such date. VIA may make a reasonable charge for the issuance of such certificate, which must be paid at the time that the request for such certificate is made. Any certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between VIA and any bona fide purchaser of, or lender on, the lot in question.

I. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage, mechanic's lien, deed of trust, or vendor's lien now or hereafter placed upon any lot subject to such assessments, if such mortgage, mechanic's lien, deed of trust or vendor's lien is imposed as a bona fide security for purchase money or as bona fide security for a construction or improvement loan on the lot in question. Such subordination shall apply only to the assessments which have become due and payable prior to the sale or transfer of such lot pursuant to a decree of foreclosure, or proceedings in lieu of foreclosure, and such sale or transfer shall not release such lot from liability for any assessments thereafter becoming due, nor from the lien imposed by this paragraph 19.

J. The covenants and restrictions of this paragraph 19 shall run with and bind the Lots, for a term of thirty (30) years from the date these

STATE OF NEW MEXICO)
) ss.
COUNTY OF VALENCIA)

The foregoing instrument was acknowledged before me this 2nd day of June, 1992, by John McDonald d/b/a New Mexico Classic Homes.

Germa A. Roselli
Notary Public

My Commission expires:
12-1-92

EXHIBIT A

PLATTED SINGLE FAMILY LOTS
PASITOS DEL CIELO SUBDIVISION
VALENCIA COUNTY, NEW MEXICO

BLOCK 23, LOTS 50 THROUGH 66
BLOCK 24, LOTS 9 AND 10
BLOCK 25, LOTS 22 THROUGH 40

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