

NO TITLE LIABILITY

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SOUTHWEST GUARANTY & TITLE C

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DECLARATION OF  
RESTRICTIVE AND PROTECTIVE COVENANTS  
FOR  
PINNACLE VIEW SUBDIVISION

447

KNOW ALL MEN BY THESE PRESENT:

That the undersigned corporation, hereinafter sometimes referred to as "GRANTOR", being the owner in fee simple estate of Bernalillo, State of New Mexico, described as:

Lots One (1) through Five (5), Block One (1), Lots One(1) through Fourteen(14), Block Two(2), Lots One(1) through Eleven(11), Block Three(3), Pinnacle View Subdivision, Albuquerque, New Mexico as the same is shown and designated on the Corrected Plat of Pinnacle View Subdivision, Albuquerque, New Mexico, filed for Record in the Office of the Clerk of Bernalillo County, New Mexico, in Volume C35, Folio 193, on February 25, 1988.

All of which property is hereinafter sometimes called "the subdivision", does hereby declare that it has established, and does hereby establish, a general plan for the development, improvement, ownership, use and sale of all the aforementioned property owned by it and does hereby establish the manner, provisions, conditions, restriction and covenants upon and subject to which the property comprising the subdivision shall be used, improved, occupied, owned, sold and conveyed subject to the provisions, conditions, restrictions, and covenants herein set forth to run with the land, all of which shall be binding upon and inure to the benefit of the present and future owners of lots, and of any interest or interests in any such lot or lots, in the subdivision and all thereof, all of which provisions, conditions, restrictions and covenants are, and each of them is, hereby impressed and imposed upon each and every parcel within the subdivision as a servitude in favor of each and every other parcel thereof, as the dominant tenements, as follows:

1. Land Use and Building Type. No lot, or portion thereof, within the subdivision shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot for use other than one single family dwelling, not to exceed two stories in height with maximum height not to exceed 30 feet; together with a private garage attached to the dwelling, for two (2) automobiles; and there shall also be permitted, but not required, one detached accessory building for storage of garden tools, garden and household furnishings, not to exceed 150 square feet, not to exceed 12 feet in height, and the accessory building must be located inside required property line set backs and yard walls.

2. Architectural Control Committee. An Architectural Control Committee, hereinafter sometimes called the "Committee", is hereby established and shall be comprised of three persons, each of which members shall serve indefinitely until his or her successor shall have been appointed and qualified as herein provided or their obligations otherwise terminate as provided for herein. From time

to time, if and when one or more vacancies may occur, the remaining members of the Committee may appoint successor member(s) to fill any such vacancy or vacancies on the Committee. A majority of the Committee may appoint a representative to act for and on behalf of the Committee with all of the powers of the Committee. The owners of fee simple title to at least seventy percent (70%) of the lots within the subdivision, in an appropriately executed and recorded instrument, may dismiss, discharge and replace any or all of the Committee members and may modify, alter or change the duties and powers of the Committee.

The following persons are hereby appointed and declared to comprise the Committee:

Paul Newman, Pinnacle View Partnership  
Tom Springer, Pinnacle View Partnership

All of Albuquerque, New Mexico

If Pinnacle View Partnership employees are appointed to the Architectural Control Committee, each individual member employed by or associated to serve on the Architectural Control Committee upon termination of such individual's relationship with Pinnacle View Partnership, and shall thereafter have no further rights to obligations thereto; and each such person shall conclusively be deemed to have resigned from the Committee thirty (30) days after construction has been completed on the last remaining lot unless such employee has sooner resigned.

The Pinnacle View Partnership shall endeavor to give notice of such resignations by recording in the county record in which these restrictions are filed, a notice of such resignation; and shall cause the same to be published as a legal notice in a newspaper of general circulation in the county in which the subdivision is located. Such notice shall be given as soon as practicable after the conveyance of the last parcel, as specified above; however, failure to give such notice shall not extend the term of any member of the Committee, nor shall the Pinnacle View Partnership be liable therefore.

In the event no members remain on the Architectural Control Committee, new members to the Committee can be chosen in the following manner: upon the written request of ten percent (10%) of the owners of lots within the subdivision, a meeting shall be held for the purpose of selecting one or more members to the Committee. Reasonable diligence shall be used to notify the persons owning lots within said subdivision of the time and place of the meeting, and the purpose thereof.

At such meeting, up to three persons may be selected as members of the Committee. Each lot owner shall have one vote, and the three persons receiving the most votes shall be selected as members of the Committee.

BEFORE ANYONE SHALL COMMENCE ON ANY LOT WITHIN THE SUBDIVISION THE INSTALLATION OF, CONSTRUCTION OF, REMODELING OF, ADDITION TO, OR ALTERATION OF ANY BUILDING, SWIMMING POOL, WALL, FENCE, SIDE-WALK, DRIVEWAY OR OTHER STRUCTURE OF WHATSOEVER NATURE: THERE SHALL BE SUBMITTED TO THE ARCHITECTURAL CONTROL COMMITTEE PLANS AND SPECIFICATIONS AS FOLLOWS:

a) Plans and specifications which shall clearly show the nature of the work or installation proposed and the location thereof, on the lot, which shall include sufficient description of materials, textures, etc., as shall enable the alteration, installation, etc., will harmonize with the architectural style of the subdivision and the external design of existing structures within the subdivision and

No improvement of any kind, installation, painting, or texturing, shall ever be, or permitted to be, erected, constructed, installed, placed or maintained on a lot within the subdivision, unless and until the final plans, specifications and elevations therefore shall have written approval of the Committee. All plans shall further include elevations and textures for roofs indicating the materials for same.

All buildings in the subdivision shall have a pitched roof with a slope of not less than 6/12; furthermore, all buildings shall have a concrete mission tile roof manufactured by "Duratile," style "S" tile, color "#496, salado with terra cotta and gray and creme flash".

All buildings in the subdivision shall be constructed of frame/stucco. The stucco is to be of a smooth trowel finish. The color is to be "Powerwall Champagne".

The Committee shall have the right and power to disapprove any plans, specifications or details submitted to it, if the Committee shall find that the plans and specifications are not in accordance with all provisions of this declaration, or if the design, materials or color scheme submitted are not in harmony and in accordance with the subdivision, or with other improvements constructed within the subdivision or if the plans and specifications are incomplete.

Neither the members of the Committee, either in their individual or in their collective capacities, nor the Grantor, shall be responsible, or have any liability, whatsoever for any defect in any plans, specifications or other data submitted to, approved by or revised by the Committee, or in any work done or improvements

made pursuant to such plans and specifications.

In addition, the Grantor assumes no liability for the adequacy of construction of any structure built in the Subdivision.

The Committee shall approve or disapprove within fifteen (15) days after receipt thereof plans and specifications which have been submitted to it.

In the event that the Committee shall fail to approve or disapprove the plans, specifications and other information within fifteen (15) days after receipt thereof by the Committee, then such approval shall not be required, provided that no structure, building or other improvement shall be installed, erected, painted, textured, altered or modified which violates any of the covenants and conditions herein set forth.

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3. Further Subdivision of Lot. No lot within the subdivision may be divided into two or more parcels, nor may one dwelling occupy more than one lot.

4. Grading. No lot may be landscaped or regraded in such manner as to cause the drainage characteristics of the lot to differ significantly from the approved grading plan for the Subdivision, approved by, and on file with the City of Albuquerque Engineering Department (the "Drainage Report"), which provides for positive drainage from the lot to the street or in any case cause the drainage from one lot to drain on to any other lot.

Private drainage rundowns shall be built by the builder in conformance with the construction plans and specifications. These rundowns shall become the property of the owner upon purchase of a lot or dwelling having such rundowns. They shall be cleaned and maintained to provide conveyance of storm runoff. The owner agrees to accept maintenance of said rundown and agrees to accept liability for damages caused by the failure to do so. Prior to the sale of a lot or dwelling it shall be the responsibility of the builder to clean and maintain said rundowns to provide conveyance of storm runoff.

It further is the responsibility of the owner to obtain from the Grantor the latest copies of the Drainage Report and as-built plans for the use for design by the owner's architect or designer.

5. Compliance with the Grading Plan and Development Plan. All construction of improvements on any lot within the subdivision shall comply with the City of Albuquerque approved GRADING PLAN and DEVELOPMENT PLAN for said subdivision. All plans and specifications submitted to the Committee must contain sufficient information to enable the Committee to determine compliance with the GRADING PLAN and DEVELOPMENT PLAN, and if necessary the Committee may request that a Grading and Drainage Plan and report be performed by a New Mexico licensed Civil Engineer with his seal affixed thereto. However, the Committee shall not be liable to the owner or any other person for approval of plans which are contrary to the Grading and Drainage Plans.

It further is the responsibility of the owner that all structures built on any lot in the subdivision are in compliance with the soils report, a copy of which is on file with the City of Albuquerque and is also available at the Offices of the Grantor.

If the structure is to be built on any portion of the lot in addition to the prepared pad, said structure must be built on controlled fill dirt.

6. Minimum Area of Dwelling. The total enclosed living area of any one story dwelling, exclusive of open porches, garage, and other appurtenant structures shall not be less than One Thousand Six Hundred Square Feet (1600 sq. ft.). The total living area of any two story dwelling, exclusive of open porches, garage, and other appurtenant structures shall not be less than One Thousand Six Hundred Square Feet (1600 sq. ft.) with a minimum of Twelve Hundred Square Feet (1200 sq. ft.) on the main or street level.

7. Setbacks. No dwelling shall be located on any lot within the subdivision, in contradiction of the following setback requirements:

(a) There shall be a front yard setback of not less than Twenty (20) feet from the front property line.

(b) There shall be a garage setback of not less than Twenty (20) feet from the front property line.

(c) There shall be a rear yard setback of not less than Fifteen (15) feet.

(d) There shall be no required side-yard setback, except there shall be a side yard of Ten (10) feet on the street side of corner lots, and there shall be a distance of not less than Ten (10) feet between residential buildings.

The Committee shall determine if plans submitted to it comply with this provision of this declaration.

8. Landscaping. The owner shall install, or cause to be installed, the front yard landscaping within Nine (9) months of commencement of construction of a residence upon the property. The front yard landscaping shall be maintained in good condition at all times. Front yard landscaping must include a minimum of One (1) two inch (2") caliper deciduous tree. No irrigation systems, turf, or irrigated planting shall be placed within Three (3) feet of the constructed dwelling. Only drought resistant plants which require minimal hand watering should be planted within this Three (3) foot zone around the constructed dwelling.

9. Tolerance. A four-inch (4") tolerance for mechanical variances in construction is hereby automatically allowed for building and improvement setback requirements imposed by these covenants.

10. Completion of Work. Once installation, building or erection of new improvements, etc., shall commence, all such installation, building and erection shall be finished and completed in all respects in accordance with Committee approved plans and specifications, including front yard landscaping, Nine (9) months after that commencement. All such construction and/or installation activities shall be accomplished in such a manner as shall not create unreasonably, unsightly, noisy or objectionable conditions.

11. "Nuisances". No noxious or offensive activity shall be carried on, or permitted upon any lot within the subdivision. Nothing shall be done, placed or stored on any such lot which may be or become any annoyance or nuisance to neighbors or the neighborhood, or which will occasion any noise or odor which will or might disturb the peace, comfort or serenity of the occupants of neighboring properties. Owners of vacant lots shall be responsible for keeping, and shall keep, their lots clear of all weeds, trash, and all other detracting impediments. No trash or garbage shall be burned on any lot. Garbage and other waste materials shall be placed in covered containers, those containers to be concealed from construction, a dumpster or wire receptacle shall be provided in the construction area and all debris easily displaced by wind shall be placed therein. The trash receptacle shall be emptied either weekly or when full, whichever shall occur first. All lots

shall be maintained in a neat, orderly condition at all times.

12. Temporary Buildings. No structure of a temporary character, such as a shack, barn, basement, trailer, tent, garage or other outbuilding, mobile home, or motor home, shall be used on any lot at any time as a residence, either temporarily or permanently. No residence placed or erected on a lot shall be occupied in any manner at any time prior to its being fully completed; provided, however, that this provision shall not prevent the occupancy and use of improvement on a lot for residential purposes being modified or altered or while additions thereto are being made pursuant to plans and specifications duly approved hereunder by the Committee.

Any lot or portion thereof may be used as a sales office, model home complex, or storage and construction yard during the construction and sales period. All temporary uses as defined herein must have the prior approval of the Architectural Control Committee, which shall establish the requirements therefore.

13. Antennas. No satellite dish, radio, television or other antennas shall be erected upon a lot and/or structure, unless said antennas can be concealed behind a structure parapet or inside the roof structure or attic, or unless approved by the Committee.

13A. No air conditioners, evaporative coolers, or other similar equipment shall be placed on the roof of any dwelling in the subdivision.

14. Parking and Storage of Vehicles, Etc., Within the Subdivision. No camper, recreational vehicle, trailer, mobile home, boat, commercial type vehicle, van, motorcycle, dune buggy, bus, inoperative vehicle, or tractor shall be stored or parked on any lot, street or road within the subdivision, continuously for a period of more than twenty-four (24) hours with the exception of where recreational vehicles (not to exceed six (6) feet in height) may be parked behind a fenced in area hidden from view of neighbors.

15. Flood Lights. No unshaded flood lights should be maintained, or permitted, which cast light directly into the homes of other residents within the subdivision.

16. No Wall, Etc., to Obstruct Vision of Vehicle Operator. No wall, fence, hedge, or other obstruction shall be erected, placed, altered, or permitted to remain upon any lot within the subdivision, which would obstruct or reduce the vision of an operator of any type of vehicle on any street within, or any entrance to the subdivision, and shall also comply with the City of Albuquerque's ordinances or guidelines for the clear sight triangle.

17. Party Walls. The rights and duties of the owners of buildings within this subdivision with respect to party walls and/or walls erected entirely on one lot, but close to the next lot line shall be governed as follows:

(a) Each wall (including fences and patio walls) which is constructed as part of the original construction of the structure and any part of which is placed on the dividing line or adjacent

thereto between separate units, (either on the property line or the three and one-half (3.5) foot side yard easement line), shall constitute a party wall. With respect to any such wall, each of the adjoining owners shall assume the burdens and be entitled to the benefits of these covenants and, to the extent not inconsistent herewith, the general rules of law regarding party walls shall be applied thereto.

(b) In the event any such party wall is damaged or destroyed through the act of one adjoining owner or any of his guests, tenants, licensees, agents, or members of his family (whether or not such act is negligent or the fault of any one person), so as to deprive the other adjoining owner of the full use and enjoyment of such wall, then such owner who caused or is responsible for such damage shall forthwith proceed to rebuild and repair the wall to as good as condition as formerly, without cost to the adjoining owner; or shall bear the whole cost of furnishing the adjoining property with protection from the elements such as had previously been provided by the damaged or destroyed wall.

(c) In the event any such party wall which does not form a structural part of a dwelling or garage is damaged or destroyed by some cause (including ordinary wear and tear and deterioration from lapse of time), other than the act of one of the adjoining owner, his tenants, licensees, guests, or family then, in such event, both adjoining owners shall proceed forthwith to rebuild or repair the wall to as good a condition as formerly, at their joint and equal expense.

(d) In the event any such party wall which does form a structural part of a dwelling or garage is damaged or destroyed by some cause (including ordinary wear and tear and deterioration from lapse of time) other than the act of one of the adjoining owners, his agents, tenants, licensees, guests or family then, in such event, each owner of the dwelling or garage of which such party wall forms a structural part, shall proceed to rebuild or repair his part of the wall to as good a condition as formerly, or both owners shall jointly bear the whole cost of furnishing the adjoining property with protection from the elements, such as had been previously provided by the damaged or destroyed wall.

(e) The rights and responsibilities of any owner to or from any other owner under this article, shall be appurtenant to the land and shall pass to such owner's successors in title.

(f) In addition to meeting the other requirements of these Covenants and of any building code or similar regulations or ordinances, any owner proposing to modify, make additions to or rebuild his party wall in any manner which requires the extension or other alteration of any party wall, shall first obtain the written consent of the adjoining owner.

(g) In the event of a dispute between owners with respect to the repair or rebuilding of a party wall, or with respect to the



repair or rebuilding of a party wall, or with respect to the sharing of the costs thereof, the matter shall be submitted to the arbitrators, one chosen by each of the owners and the third by the two so chosen. A determination of the matter signed by any two of the three arbitrators shall be binding upon the owners, who shall share the cost of arbitration equally. In the event one party fails to choose an arbitrator within ten (10) days after receipt of request in writing for arbitration from the other party, then said other party shall have the right and power to choose both arbitrators.

(h) Any party wall constructed adjacent to a side lot line must be a wall without any openings. No window or window openings may ever be installed in such a wall.

(i) Any and all resurfacing or repainting of the party wall, or of the residence wall from which the party wall is extended, or of the projections from the residence shall be done in a color and texture as close to the original as possible, unless both owners of the party wall shall mutually agree in writing to a different color and/or texture.

#### 18. Privacy Walls.

(a) Walls for purposes of visual screening, privacy, etc., may be constructed between the rear and side yard set back lines, provided their style, color and materials are compatible with those of the residence and other structures and improvements on the lot, as determined by the Architectural Control Committee.

(b) A solid masonry wall may be located between the front property line of the residential unit not to exceed twenty-four (24) inches in height from the low side grade. If the lot is back loading, this wall may be seventy-two (72) inches in height. If a concrete masonry wall is used it must be stuccoed to match the residential unit and other appurtenant structures and improvements on the lot, as approved by the Architectural Control Committee. In no case may a wall be in violation of City codes.

(c) No barbed wire, welded wire, or welded pipe, cedar or wood slats shall be permitted on any lot.

19. Erection, Alteration, Etc., of Walls, Etc. No wall, fence, or hedge shall be erected, placed, altered, or permitted to remain upon any lot within the subdivision, without the prior written approval of the Architectural Control Committee as hereinbefore provided, except only those walls and fences to be constructed by the developer.

20. Fire, Casualty, Etc. In the event that on any lot within the subdivision any improvement is destroyed, wholly or in part, by fire or other casualty, the improvement so damaged or destroyed shall be promptly and properly rebuilt or repaired in conformity with the provisions of this declaration; or, in the alternative, all remaining improvements, including all foundations and all

debris, shall be removed from the lot in such manner that hereafter the condition of the lot shall not be offensive to the occupants of neighboring lots. If the owner of the lot elects to clear the lot, the razing and clearing work shall be completed within one hundred twenty (120) days after the casualty which caused the damage to the improvements.

21. Animals and Pets. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that domestic dogs and cats or other household pets may be kept, providing that they are not kept, bred or maintained for any commercial breeding purpose.

22. Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying, or mining operations or exploration of any kind shall be permitted upon any lot within the subdivision. No oil wells, tanks, tunnels, minerals excavation shafts or other such equipment or activities shall be permitted upon any lot.

23. Easements and Rights-of-Way  
 A. Utility Easements and Rights-of-Way. All areas of the numbered lots within Pinnacle View Subdivision, reserved for the installation, removal, repair, and maintenance of utilities (electric, telephone, gas, cable television, water, sewer, drainage, and other utility services), including overhead, underground, buried and all other types of lines, pipes, conduits, wires, cables, and all other means of providing utility services, are reserved and are designated as utility easements on the Plat of Pinnacle View Subdivision, Albuquerque, New Mexico, filed for Record in the Office of the Clerk of Bernalillo County, New Mexico, in Volume C35, Folio 193, on February 25, 1988.

B. All Easements and Rights-Of-Way Include Right of Ingress and Egress. All easements and rights-of-way of whatever type which are shown and designated on the Plat of Pinnacle View Subdivision, filed in the Office of the County Clerk of Bernalillo County, New Mexico, shall include the right of ingress to and egress from such easements and rights-of-way over, upon, or under any part of Pinnacle View Subdivision, for the purpose of installing, removing, repairing, and maintaining utilities, trimming or removing of interfering trees or shrubs, and any other purpose for which such easements and rights-of-way may be used.

C. No Construction or Obstacle on Any Type of Easement or Right-of-Way. No residence, obstacle, or other type of construction shall be erected, placed, altered, or permitted to remain upon any numbered lot within Pinnacle View Subdivision which is the subject of any type of easement or right-of-way reserved herein and as shown and designated on the Plat of Pinnacle View Subdivision, filed in the office of the County Clerk of Bernalillo County, New Mexico, which would in any way interfere with the use of such easement or right-of-way; nor shall any trees, shrubs, hedges, or other landscaping be planted or permitted to remain in place, or to remain untrimmed,

which would interfere with the use of any easement or right-of-way shown and designated on the Plat of Pinnacle View Subdivision filed in the office of the County Clerk of Bernalillo County, New Mexico, on February 25, 1988.

D. Side-Yard Easements. The undersigned do hereby dedicate, declare, and impose those certain private, exclusive, surface side-yard easements, three and one-half (3.5) feet in width along the side three and one-half (3.5) feet of the following-numbered lots, running parallel and located adjacent to the property line of each of the following-numbered lots, for the purpose of enabling the dominant owner thereof (the owner of the adjoining lot) to use and enjoy the surface of the land within the side-yard easement, subject to the covenants contained herein, which numbered lots, across which the side-yard easements are dedicated, declared, and imposed hereby, are as follows:

Numbered lots across the easterly three and one-half (3.5) feet of which the side-yard easements are dedicated, declared and imposed hereby;

Lots numbered six (6), eleven (11), twelve (12), thirteen (13), and fourteen (14), in Block two (2); lots one (1), two (2), three (3), and four (4), in Block one (1); and lots one (1), two (2), three (3), four (4), five (5), and six (6), in Block three (3); all of

Pinnacle View Subdivision, Albuquerque, New Mexico, as the same is shown and designated on the Corrected Plat of Pinnacle View Subdivision, Albuquerque, New Mexico, filed for Record in the Office of the Clerk of Bernalillo County, New Mexico, in Volume C35, Folio 193, on February 25, 1988.

Numbered lots across the southeasterly three and one-half (3.5) feet of which the side-yard easements are dedicated, declared and imposed hereby;

Lot numbered five (5), in Block two (2); and lots seven (7), eight (8), nine (9), and ten (10), in Block three (3); all of

Pinnacle View Subdivision, Albuquerque, New Mexico, as the same is shown and designated on the Corrected Plat of Pinnacle View Subdivision, Albuquerque, New Mexico, filed for Record in the Office of the Clerk of Bernalillo County, New Mexico, in Volume C35, Folio 193, on February 25, 1988.

Numbered lots across the northerly three and one-half (3.5) feet of which the side-yard easements are dedicated, declared and imposed hereby;

Lots numbered one (1), and two (2), in Block two (2); all of

Pinnacle View Subdivision, Albuquerque, New Mexico, as the same is shown and designated on the Corrected Plat of Pinnacle View Subdivision, Albuquerque, New Mexico, filed for Record in the Office

of the Clerk of Bernalillo County, New Mexico, in Volume C35, Folio 193, on February 25, 1988.

Numbered lots across the southerly three and one-half (3.5) feet of which the side-yard easements are dedicated, declared and imposed hereby;

Lot numbered four (4), in Block two (2); all of

Pinnacle View Subdivision, Albuquerque, New Mexico, as the same is shown and designated on the Corrected Plat of Pinnacle View Subdivision, Albuquerque, New Mexico, filed for Record in the Office of the Clerk of Bernalillo County, New Mexico, in Volume C35, Folio 193, on February 25, 1988.

Numbered lots across the northeasterly three and one-half (3.5) feet of which the side-yard easements are dedicated, declared and imposed hereby;

Lot numbered seven (7), in Block two (2); all of

Pinnacle View Subdivision, Albuquerque, New Mexico, as the same is shown and designated on the Corrected Plat of Pinnacle View Subdivision, Albuquerque, New Mexico, filed for Record in the Office of the clerk of Bernalillo County, New Mexico, in Volume C35, Folio 193, on February 25, 1988.

There will be no side-yard easements on the following lots:

Lots numbered eleven (11), in Block three (3); lots three (3), eight (8), nine (9), and ten (10), in Block two (2); and lot five (5), in Block one (1); all of

Pinnacle View Subdivision, Albuquerque, New Mexico, as the same is shown and designated on the Corrected Plat of Pinnacle View Subdivision, Albuquerque, New Mexico, filed for Record in the Office of the Clerk of Bernalillo County, New Mexico, in Volume C35, Folio 193, on February 25, 1988.

E. With the exception of the privacy walls, return walls, and the ordinary projections from the residences in the original construction thereof, the side-yard easement areas shall be kept clean and unobstructed to provide open access for the servient owner of the side-yard easement (the owner of the numbered lot across whose numbered lot the side-yard easement is dedicated, declared, and imposed hereby). No building or improvement of any type shall be installed or constructed within the three and one-half foot easement area, nor shall anything be piled or leaned against the privacy wall or residence adjacent to the easement area, except return walls, patio floors or slabs, and landscaping.

F. The servient owner of the side-yard easement shall have the right to enter upon the easement area to the extent such entry is

reasonably necessary to carry out the resurfacing, repainting, or repair of the exterior surface of the privacy wall or residence, including the projections from the residence, or to perform any work necessary for the maintenance and rebuilding or restoration of his property. Such right of entry shall be exercised in such a manner as to interfere as little as is reasonably possible with the possession and enjoyment of the easement area by the dominant owner thereof and shall be preceded by reasonable notice whenever the circumstances permit. No notice shall be required in the case where an emergency requires immediate entry by the servient owner.

G. The dominant owner of the side-yard easement area shall be responsible to the servient owner thereof for all damage caused the servient owner resulting from the use of the easement area by the dominant owner, his agents, employees, invitees, licensees, guests, tenants, lessees, and members of his family, and servient owner of the easement area shall be responsible to the dominant owner thereof for all damage caused the dominant owner resulting from the use of all easement area by the servient owner, his agents, employees, invitees, licensees, guests, tenants, lessees, and members of his family.

H. The dominant owner of the side-yard easement area shall be protected, held harmless, and indemnified by the servient owner from any liability or damage arising from acts or omissions on the part of the servient owner, his agents, employees, invitees, licensees, guests, tenants, lessees, and members of his family in his or their use of the easement area.

I. The servient owner of the side-yard easement area shall be protected, held harmless, and indemnified by the dominant owner from any liability or damage arising from acts or omissions on the part of the dominant owner, his agents, employees, invitees, licensees, guests, tenants, lessees, and members of his family in his or their use of the easement area.

J. No part of the side-yard easement area shall be used for any purpose or in any manner which shall increase the rate at which insurance against loss or damage by fire and the perils covered by extended coverage insurance or bodily injury or property damage liability insurance, covering the adjacent property, may be obtained, or cause such premises to be uninsurable against such risks, or any policy or policies representing such insurance to be cancelled or suspended, or the company issuing the same to refuse the renewal thereof.

K. No noxious or offensive activity shall be undertaken or carried on upon any part of the side-yard easement area, nor shall anything be done thereon which is, may be, or may become an annoyance or a nuisance to the neighborhood or to the dominant owner.

L. The side-yard easements are intended to be a burden upon, as well as a benefit to, the numbered lots of the servient owners

across which they have been dedicated, declared, and imposed hereby. The side-yard easements are intended to be a benefit to the numbered lots of the dominant owners located adjacent to and adjoining the numbered lot of the servient owner.

M. The term of the exclusive, private, surface side-yard easements dedicated, declared, and imposed hereby shall be the identical term of this Declaration of Restrictive and Protective Covenants for Pinnacle View Subdivision, to run with the land. During the term hereof and during the extended term(s) hereof, if extended, the servient owner across whose numbered lot the side-yard easement is dedicated, declared, and imposed hereby, shall maintain at his expense the privacy wall, as provided in Article IV hereof; and the dominant owner of the easement area, for whose benefit this easement has been dedicated, declared, and imposed, shall maintain in good condition, keeping the same neat, clean, and in the same condition as when the residence was built upon the lot, the area of the easement, at his expense.

N. The side-yard easement dedicated, declared, and imposed hereby is intended to be an exclusive, private, surface easement for the benefit only of the owner of the lot adjacent to the lot across which the easement has been dedicated, declared, and imposed, all future owners of the adjacent lot, the owner of the numbered lot across which the side-yard easement has been dedicated, declared, and imposed hereby, all future owners of such numbered lot, and their, and each of their family members, guests, invitees, agents, employees, licensees, tenants, and lessees; but not for the benefit of the general public or for any political subdivision or governmental body. Neither the public generally nor any political subdivision or governmental body, including without limitation, the City of Albuquerque, the County of Bernalillo, or any agency thereof, shall acquire any right in the side-yard easement dedicated, declared, and imposed hereby, or in the real estate across which such easement has been dedicated, declared, and imposed hereby.

O. The exclusive, private, surface side-yard easement dedicated, declared, and imposed hereby is intended as a surface easement only and shall not prevent the owner of the numbered lot across which it has been dedicated, declared, and imposed, and his heirs, personal representatives, successors, and assigns in interest, or any future owner of the numbered lot across which such easement has been dedicated, declared, and imposed hereby, from utilizing the space beneath the surface of the easement or from utilizing the air space above the surface of the easement so long as the surface of the easement and the space above the surface to the height of the eaves of the residence of the servient owner is maintained for the benefit of the dominant owner. Nothing contained in this provision is intended to grant the servient owner the right to use the land beneath the easement or the space above the surface of the easement in contravention of the covenants contained herein.

Said side-yard easements shall be subject to and governed by the following conditions and covenants:

P. Special Exterior Wall. Those residences which contain one windowless exterior wall constructed parallel to and approximately three and one-half (3.5) feet from the lot line and facing the adjacent lot (Adjacent Lot) shall be deemed to have a "Special Exterior Wall" and be subject to the provisions of Paragraphs L. through U. of this Section. Those lots upon which a residence is constructed which does not have a "special exterior wall" shall not be subject to the provisions of Paragraphs L. through U of this Section.

Q. Roof Runoff. It shall be the responsibility of each owner to take appropriate measures to protect an adjacent owner's lot from water running off of such owner's roof onto an adjacent owner's lot, and no owner shall have liability to otherwise be responsible to any other owner for any loss, expense, or damage resulting from such roof runoff.

R. Patio and Repair Easements. Subject to the temporary easements hereinafter described, a perpetual exclusive easement covering the ground area between (1) a line running the length of the Special Exterior Wall and extending to the front and rear of each lot containing the wall, and (2) the property line of each adjacent lot, is hereby created for the benefit of the owner of each such adjacent lot. Such easement areas are herein referred to as "Patio Easements" and are to be approximately three and one-half (3.5) feet in width. All Patio Easements may be used by the owner of each adjacent lot for any purposes consistent with the covenants. In addition to the Patio Easements, each owner of a residence shall have an easement on the property surrounding an adjacent owner's residence, whether or not the same is located on such other owner's lot, for the purpose of temporarily utilizing ladders and such other equipment as may be required to repair any Special Exterior Wall or other exterior wall or the roof of a residence. Such easements shall be a temporary nature and shall exist only for such reasonable period of time as is required to make such repairs or perform such maintenance. Such temporary easements shall extend onto such other owner's lot for only such distance as is reasonably required to undertake and perform such repair and maintenance work.

S. Rights of Owner With Respect to Maintenance of Special Exterior Wall. The owner of the residence containing the Special Exterior Wall shall have the right at all reasonable times to enter the Patio Easement area and such other portion of the Adjacent Lot as is reasonably necessary for the purpose of repairing, maintaining, or restoring the Special Exterior wall; provided, however, that such access shall be permitted only at reasonable times during daylight hours and with the prior knowledge of the owner of the Adjacent Lot.

T. Restrictions on Owner of Adjacent Lot. The owner of the Adjacent Lot shall avoid any action which shall in any way restrict the use of the Special Exterior Wall by its owner

including, but not limited to, refraining from attaching any object to such wall, such as wires, trellises, and plantings; defacing the wall in any manner; placing graphics or other design work (whether painted or otherwise) on the Special Exterior Wall; or using the wall as a playing surface for any sport.

U. Restrictions on Owner With Residence Containing Special Exterior Wall. The owner of the residence containing the special exterior wall shall similarly be prohibited from attaching anything to such wall from altering it in any way other than painting the wall in such manner as shall be approved by the Architectural Control Committee. Additionally, the owner of such residence shall not make any openings for windows or otherwise on such wall and shall take no other action, except as specifically contemplated herein, in connection with such wall which shall interfere with the privacy of the owner of the Adjacent Lot.

V. No noxious or offensive activity shall be carried on in the Patio Easement Area, nor shall anything be done therein which may be or become an annoyance or nuisance to the owner of the easement area.

W. The dominant owner of a Patio Easement area shall be held harmless from any liability arising from the servient owner's use and enjoyment of the area, and from incidental damage to plantings and decorations arising from maintenance and repair of the dominant owner's dwelling.

X. No part of any Patio Easement area shall be used for any purpose or in any manner which shall increase the rate at which insurance against loss by fire or the perils of extended coverage or bodily injury or property damage liability insurance, covering the adjacent property, may be obtained, or cause such premises to be uninsurable against such risks, or any policy or policies representing such insurance to be cancelled or suspended or the company issuing the same to refuse renewal thereof.

Y. Any resurfacing or painting of the wall areas adjacent to the Patio Easement Areas shall be completed in a color and texture as close to the original as possible. Nothing herein contained shall prohibit an adjoining owner from resurfacing walls with the written permission and consent of the Architectural Control Committee and the wall owner.

Z. Private Drainage Easements. Private drainage easements are granted on the following lots:

Numbered lot across the westerly five (5) feet of which the private drainage easement is dedicated, declared and imposed hereby;

Lot numbered nine (9), Block two (2); all of



Pinnacle View Subdivision, Albuquerque, New Mexico, as the same is shown and designated on the Corrected Plat of Pinnacle View Subdivision, Albuquerque, New Mexico, filed for Record in the Office of the Clerk of Bernalillo County, New Mexico, in Volume C35, Folio 193, on February 25, 1988.

Numbered lot, said easement being five (5) feet by five (5) feet and located in the very southerly corner of which the private drainage easement is dedicated, declared and imposed hereby;

Lot numbered eight (8), Block two (2); all of

Pinnacle View Subdivision, Albuquerque, New Mexico, as the same is shown and designated on the Corrected Plat of Pinnacle View Subdivision, Albuquerque, New Mexico, filed for Record in the Office of the Clerk of Bernalillo County, New Mexico, in Volume C35, Folio 193, on February 25, 1988.

Numbered lot, said easement being five (5) feet by five (5) feet and located in the very easterly corner of which the private drainage easement is dedicated, declared and imposed hereby;

Lot numbered seven (7), Block two (2); all of

Pinnacle View Subdivision, Albuquerque, New Mexico, as the same is shown and designated on the Corrected Plat of Pinnacle View Subdivision, Albuquerque, New Mexico, filed for Record in the Office of the Clerk of Bernalillo County, New Mexico, in Volume C35, Folio 193, on February 25, 1988.

24. Bill-Boards, Poster-Board and Advertising. The construction and/or maintenance of bill-boards, poster-board and advertising structures of any kind on any part of any lot is prohibited, except that real estate agents and/or the owner of a lot may display one (1) temporary "For Sale" sign or one (1) "Open House" sign on any lot. The sum of the length and width of such signs shall not exceed sixty inches (60").

25. No Business of Commercial Enterprise Permitted. No business, whether or not for profit, and no commercial enterprise of whatever kind, except from time to time as permitted by the City of Albuquerque Comprehensive Zoning Ordinance, shall be under taken or carried on, upon, or from any numbered lot within Pinnacle View Subdivision, except only the original sales and subsequent re-sales of the numbered lots and the dwelling constructed and to be constructed thereon within or in the proximity of Pinnacle View Subdivision, and no stores, shops, businesses, commercial, or industrial buildings, or other such structures of whatever type shall be erected, placed, altered, or permitted to remain upon any numbered lot within Pinnacle View Subdivision, except only in connection with the original development and sales of the lots and construction and sales of the improvements thereon within or in the proximity of Pinnacle View Subdivision, such as a model home or a show home, or a construction or sales office.

26. Remedies. All provisions, conditions, restrictions and covenants herein set forth shall be binding on all lots and parcels of real estate within the subdivision and on the respective thereof, regardless of the source of title of such owners, and breach of those provisions, conditions, restrictions and covenant if continued for a period of thirty (30) days from and after date upon which the owner(s) of other property within the subdivision shall have notified, in writing, the offending party shall be cause for the owner(s) so complaining, acting jointly severally, to sue for and obtain an injunction to prevent the breach and/or to enforce the observance of the restrictions and covenants herein set forth and to recover damages. Failure of and/or all persons having rights hereunder to enforce his or their rights and those restrictions and covenants at the time of a breach of the latter shall never be deemed a waiver of such person(s) rights to do so anytime thereafter, against the owner(s) of any one or more lots, the use and characteristics of which offend those restrictions and covenants.

No right of action shall accrue to, and no action shall be brought or maintained by, anyone whomsoever against owner for or account of the failure or neglect of owner to exercise any right, power or remedy herein provided for in the event of any breach, the provisions, conditions, restrictions and covenants herein set forth.

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

28. Duration of These Covenants. The aforementioned provisions, conditions, covenants and restrictions, and each and all thereof, shall run with the land and continue in full force and effect at all time for a period of thirty (30) years, at which time they shall be automatically extended for a period of ten (10) years and thereafter for successive ten year periods, unless before the commencement of one of such extension periods the then owners of the fee simple estate of seventy percent (70%) or more of the lots within the subdivision by written instrument, duly executed and recorded, shall declare a termination thereof. Any such termination shall become effective upon the date upon which otherwise the automatic extension would take effect.

29. Application of These Provisions, Conditions, Covenants, Restrictions to Builders and/or Developer. Notwithstanding, superceding any and all of the foregoing provisions hereof, nothing herein shall be construed to prevent, and nothing shall prevent, builder or developer from maintaining upon such property at such location thereon as he sees fit for a reasonable length of time consistent with his purpose: An office for the sale; lease or rental of lots within the subdivision; model homes; construction

and material yard; and bill boards and signs advertising lots and/or homes for sale.

30. Amendment. At any time after the date of filing, the covenants may be amended by the majority approval of seventy-five (75%) percent of the simple owners of lots in Pinnacle View Subdivision.

THE FOREGOING DECLARATION has been executed this day of 25th September 1988, by the partner of Pinnacle View Partnership, a New Mexico General Partnership.

By [Signature]  
Raymond Paul Newman  
Title Partner  
General Partner  
By [Signature]  
Tom J. Springer  
Title Partner  
General Partner

PINNACLE VIEW PARTNERSHIP  
A New Mexico General Partnership

Homeowners  
[Signature]  
James J. Dymond  
[Signature]  
Maria G. Dymond

ACKNOWLEDGEMENTS

STATE OF NEW MEXICO )  
COUNTY OF BERNALILLO )

The foregoing instrument was acknowledged before me this 25th day of September, 1988, by [Signature] Raymond Paul Newman, and [Signature] Tom J. Springer, as of Pinnacle View Partnership, a New Mexico General Partnership behalf of said General Partnership.

[Signature]  
Notary Public  
My Commission Expires  
3/21/89

STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
FILED FOR RECORD

88 OCT -4 AM 10:18  
MS 620A PG 447-465  
GLADYS M. DAVIS  
CO. CLERK & RECORDER