

STATE OF NEW MEXICO, COUNTY OF LINCOLN:

Recorded this 9<sup>th</sup> day of April, 2002, at 11:35 A. M. in the  
Lincoln County Records, Book 273, Page(s) 042-051Martha McKnight Proctor  
Lincoln County ClerkBy: [Signature] Deputy Clerk  
Rec.# 200203675 Fee \$ 25.00**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
WINDMILL RANCHES  
(Lincoln County, New Mexico)**THIS DECLARATION is made this 5<sup>th</sup> day of April, 2002, by Southwest Properties of New Mexico, Inc., a  
New Mexico corporation, hereinafter called "Declarant"**RECITALS**

A. The purpose of this Declaration is to establish a general plan for the development, sale, lease and use of the Project in order to protect and enhance the value and desirability of the Property. Also, to preserve the natural beauty, view and unspoiled state of the Property. The Declarant declares that all of the property within the Project shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any of the property subject to this Declaration, each person or entity, for him/herself or itself, his/her heirs, personal representatives, successors, transferees and assigns, binds him/herself, his/her heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the development, sale, lease and use of the Property and hereby evidences his/her interest that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, leasees and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the Association and all Owners. Declarant, its successors, assigns and grantees, covenants and agrees that the Parcels and the membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and each membership shall be deemed to be conveyed or encumbered with its respective Parcel even though the description in the instrument of conveyance or encumbrance may refer only to the Parcel.

B. The Declarant is the owner of certain real property located in Lincoln County, New Mexico, which is more fully described in Schedule A attached hereto and also known as Windmill Ranches as per plats filed or to be filed with the County Clerk of Lincoln County, New Mexico. The Declarant desires and intends to subject the Property to the protective covenants, conditions, charges, liens, restrictions, easements and reservations hereafter set forth.

**ARTICLE I  
DEFINITIONS**

Terms used in this Declaration having initial capital letters but not otherwise defined in this Declaration shall have the meanings specified below:

- A. "Association" means the Windmill Ranches Homeowner's Association, Inc., a New Mexico nonprofit corporation, its successors and assigns.
- B. "Common area" shall mean that property within the Project as shown on the Recorded Survey Plat granted to the Association for recreational use by its members and for use by the Lessee for purposes of grazing livestock and related ranching activity.
- C. "Declarant" means Southwest Properties of New Mexico, Inc., and the successors and assigns of its rights and powers hereunder.
- D. "Declaration" means this entire document as amended from time to time.
- E. "Lessee" is any person or entity currently leasing the grazing rights to the Property along with the use of any waters located within the Common Area and any pre-existing stock ponds or tanks located on privately owned Parcels, from the Association for purposes of grazing and watering livestock and other related ranching activity (also known as the "Rancher").
- F. "Member" or "Members" means a member or members of the Association, including the Declarant so long as Declarant is the Owner of one or more Parcels.
- G. "Mortgage" means any deed of trust or realty mortgage, or agreement for sale made in good faith and for value and properly executed and recorded so as to create a lien on any Parcel or Parcels that is prior to the lien of any other deed of trust or realty mortgage.
- H. "Owner" means a record holder of beneficial or equitable title and legal title if legal title has merged with the beneficial or equitable title, whether one or more persons or entities, to the fee simple interest in any Parcel, including Declarant. Owner shall not include: (i) a Person having an interest in a Parcel merely as security for the performance of an obligation; or (ii) a tenant of a Parcel.

Declaration of Covenants, Conditions and Restrictions for Windmill Ranches  
Southwest Properties of New Mexico, Inc.  
PO Box 448, 113 Abeyta Ave., Ste A, Socorro, NM 87801  
505-835-1008



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I. "Parcel" or "Parcels" means a portion of the Project intended for independent ownership and use and designated as a Parcel on the Recorded Survey Plat showing said Parcel(s), either individually or collectively as the case may be as such divisions may be allowed by law.

J. "Person" means a natural person or a corporation, Limited Liability Company, partnership, joint venture, trust or any other legal entity.

K. "Property" or "Project" means the real property described on Exhibit "A", attached to this Declaration, together with all improvements located thereon. The Property is comprised of the Windmill Ranches development and adjoining Common Area.

L. "Recorded Survey Plat" means the maps of the Windmill Ranches development recorded in the office of the Lincoln County Clerk and Recorder in Lincoln County, New Mexico and all amendments, supplements and corrections thereto and any subdivision map recorded against any supplements and corrections thereto.

M. "Restrictions" means the covenants, conditions, charges, liens, restrictions, easements and reservations contained or referred to in the Declaration, as it shall be amended from time to time.

N. "Transition Date" means that date specified on which the Declarant transfers control of the Association to Owners which at such time at least seventy-five (75%) percent of the Parcels have been sold or later, at Declarant's option.

#### ARTICLE 2 ASSOCIATION.

A. The Declarant has established the Association as a New Mexico nonprofit corporation named "Windmill Ranches Homeowner's Association, Inc."

B. The purpose of the Association is: (1) To maintain and improve; (a) the roadways, gates, fences and roadway drainage facilities within the Property; (b) any wells and their appurtenances designated by Declarant as common area, and (c) any other common areas or undeveloped portions of the Property, benefiting the Property and designated by Declarant for maintenance by the Association; (2) To enforce the Restrictions; (3) To engage in any lawful activities which are determined by the Association to be in the best interest of the Association, the Members, or the Property and to promote the health, safety and welfare of the Members. The Association shall take necessary and appropriate action for the maintenance, repair, replacement, and management of the facilities referred to above and shall have the right to enter upon a Parcel, if reasonably necessary, in order to take such action. The Association may take such action, as the Association deems appropriate to maintain or repair the facilities referred above.

C. Each and every Owner, in accepting a deed or contract for any Parcel, whether or not it shall be so expressed in such deed or contract, automatically becomes a member of the Association, and agrees to be bound by such reasonable rules and regulations as may, from time to time, be established by the Association. Membership shall be appurtenant and may not be separated from ownership of the Parcel. The rights and obligations of an Owner and membership in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way, except upon transfer of ownership of such Parcel, whether by intestate succession, testamentary disposition, foreclosure of a deed of trust or a Mortgage, or such other legal processes as are now in effect or as may be hereafter established pursuant to the laws of the State of New Mexico. The Association shall be operated and conducted on a strictly cooperative and non-profit basis. Each Owner as a member shall have such voting rights that are set forth in this Declaration.

D. The Association shall have the power to borrow and encumber its assets and, in all respects, shall have the powers set forth herein, including the power to enter into contracts with third parties to perform all or part of its functions, and to hire its own employees to do so. The Association shall have the power to obtain appropriate insurance, to create reserves, and to issue rules and regulations.

E. The Association shall, on an annual basis, make a determination of the estimated costs of liability insurance, operating costs and the repair and maintenance of the roadways and designated Common Areas as shown on the Recorded Survey Plat or otherwise so designated, including any reserves necessary for future capital expenditures and maintenance. The Association shall furthermore allocate such estimated costs for roadway and Common Areas servicing the Property. Regular annual assessments shall include the cost of roadway and Common Area maintenance and repair within the Project. Assessments shall be charged to each applicable Owner on a flat-fee per year basis. The assessments may be collected on a monthly, quarterly, or annual basis, or any combination of same as determined by the Association. The Association shall prepare an annual budget and also an annual accounting of monies received and disbursed.

F. Each Owner shall pay: 1) Regular assessments for normal maintenance and repair and reserves, along with liability insurance and operating costs 2) Special assessments for capital improvements with such assessments to be established by the Association. For each Parcel, the applicable regular and any special assessments, late payment penalties and charges, if any, together with interest, (all as set by the Association) costs and reasonable attorney's fees, shall be a lien on the Parcel. Each Owner shall be personally responsible for his or her share of assessments imposed by the Association. This personal obligation or delinquent assessments shall not pass to the Owner's successor; PROVIDED, HOWEVER, the obligation to pay the same shall be a continuing lien on the applicable Parcel.

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G. Each Owner, other than Declarant, shall be responsible to pay the regular assessment, which will be assessed as of the date of recordation of the deed or purchase contract wherein the Owner acquired legal, beneficial or equitable title to the Parcel. The Owner acquiring his or her interest from Declarant during the calendar year shall be obligated for a pro rata portion thereof. The Declarant shall not be responsible for comparable assessments on each Parcel owned by it. However, Declarant may be responsible for providing labor, material and/or monies in sufficient amounts, not to exceed the amount of the normal Parcel assessment for each Parcel owned by it, if necessary in Declarant's opinion, to properly fulfill the Association's maintenance responsibilities until the Transition Date or earlier, at Declarant's option.

H. The amount of regular assessments shall be set by the Association on an annual calendar year basis, for at least the amount sufficient to cover the estimated costs established for the upcoming year (minus any revenues received by Lessee). The Association shall fix the amount of the regular assessments at least thirty (30) days prior to the end of the calendar year. Written notice of the assessments shall be sent to every Owner and shall state the payment due date as established by the Association. Said payment is to be paid within 30 days of the assessment due date. The amount of the initial regular assessments (minus fees paid to the Association by Lessee for grazing livestock) shall be forty-eight dollars (\$48.00) per Parcel, per year (regardless of Parcel size). However, if at such time there is no current Lessee of the grazing rights, the amount of the initial assessments shall be ninety-five dollars (\$95.00) per Parcel, per year.

**DECLARANT SHALL MAINTAIN THE COMMON ROADWAYS UNTIL THE TRANSITION DATE OF THE ASSOCIATION.**

I. In addition to the regular assessments as set forth above, the Association may set special assessments if the Association determines that such is necessary to meet the primary purposes of the Association. Special assessments shall be established by sixty-six (66%) percent of the number of votes cast by members representing a fifty-one percent (51%) quorum. Any special assessments shall be allocated and charged on the same basis per Parcel as regular assessments.

J. All sums assessed by the Association chargeable to a Parcel, but unpaid, shall constitute a lien on such Parcel prior to all other liens excepting only ad valorem liens in favor of a governmental assessing unit or special assessment district. The Association may foreclose the Association lien in a like manner as a foreclosure of a real property deed of trust or realty mortgage. The Association shall have the power to bid on the delinquent Parcel at a foreclosure sale, and acquire, hold, lease, encumber and convey the same. A suit to recover a money judgment for unpaid assessments and charges shall be maintainable by the Association without foreclosing or waiving the lien securing the same.

K. The total number of votes in the Association shall be on the basis of one (1) vote per Owner per Parcel. The Declarant shall have nine (9) votes for each such Parcel it owns. Unless otherwise specifically provided herein or in the Bylaws, all Association matters shall be determined by a majority vote (i.e., a majority of the votes cast) so long as quorum requirements are met. If more than one party is the Owner of a Parcel, they are still entitled to only one (1) vote so all parties must be in agreement. Any action requiring a vote of the members that the Association may take at any annual, regular or special meeting may take place one of three ways: 1) In person at a meeting. 2) By written proxy at a meeting. 3) By written ballot received prior to or in lieu of a meeting according to the terms stated in the Bylaws.

L. The members of the Association shall elect the board of directors who shall have the power to adopt Bylaws and appoint officers, as well as promulgate reasonable rules and regulation relating to the matters within its purpose. Unless otherwise stated herein, the directors shall conduct the affairs and exercise the powers of the Association.

M. Where the holder of a Mortgage, including Declarant, obtains title to the Parcel as a result of foreclosure sale, trustee's sale, or deed in lieu of foreclosure, of said Mortgage, such acquirer of title, its successors and assigns, shall not be liable for the share of the assessments by the Association chargeable to such Parcel which became due prior to the acquisition of title to such Parcel by such acquirer. Such acquirer shall be responsible, as any Owner, for assessments charged subsequent to the acquisition.

N. In the event the Association determines that any Owner has not complied with the provisions of this Declaration, the Association may, at its option, give written notice to the Owner of the conditions complained of. The Owner shall correct same or, if not readily correctable within fifteen (15) days after notice from the Association, the Owner shall submit corrective plans proposing its remedy to the condition complained of with fifteen (15) days after notice from the Association. The Association shall approve or disapprove any plans submitted by the Owner and set forth a reasonable time for correction of the condition complained of. In the event such condition is not corrected according to the approved plans, within the allotted time, the Association shall have the right to undertake to remedy such condition or violation complained of. The cost thereof shall be deemed to be an assessment to such Owner and enforceable by the Association in the same manner any other unpaid assessment. The Association is hereby granted the right of entry on the affected Parcel to so correct the condition or violation complained of.

O. The Declarant will maintain control of the Association and may act as its board of directors until it's Transition Date. The Transition Date to be at such time as seventy-five percent (75%) percent of the Parcels have been sold or later, at Declarant's option.

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P. The Declarant shall notify the Association members in writing of the Transition Date on or about thirty (30) days prior to said Transition Date. The Declarant, as the Association's initial board of directors shall call a meeting of Owners (aka; members of the Association) for the purpose of taking over the operation of the Association. Prior to said meeting, the Association members shall elect, by a majority of the votes cast by members meeting the 51% quorum requirement, a minimum of three (3) and a maximum of five (5) persons to the board of directors with the election results to be announced at the meeting. So long as Declarant owns any Parcels at the time of the Transition Date, it may exercise its voting rights by casting the number of votes it still retains at the time. The transition meeting may also constitute an annual meeting as defined in the Bylaws. The newly elected directors may hold their first director's meeting immediately following the transition meeting for the purposes of electing officers and conducting any other business of the directors. Thereafter, all affairs of the Association shall be conducted by the board of directors and such officers that the board may elect or appoint in accordance with the Articles and Bylaws, as they may be amended from time to time.

Q. The Association may employ or contract for maintenance of roadways and assess members for the cost thereof.

### **ARTICLE 3 RESTRICTIONS**

A. **Single Family Residential and Recreational Use Only:** All Parcels shall be used for residential and recreational purposes only provided, however, livestock may be kept pursuant to conditions set forth herein. Notwithstanding anything contained in this Paragraph this restriction shall not prohibit home offices in a residential property where business is conducted through telephone, computer, or other electronic means and where the business is not apparent from the exterior of the residence; does not create noise or congestion from traffic or parking; and preserves the residential nature of the Property. All uses shall be in compliance with New Mexico State Building Codes and if applicable, Lincoln County zoning regulations and permitted uses.

B. **Dwelling Type:** There shall be only one single-family dwelling allowed per Parcel. Said dwelling shall have a minimum square footage of four-hundred (400) square feet of living space (not including camps or accessory structures). One guest cottage is permitted so long as it does not exceed twelve-hundred (1200) sq ft. of living space. All dwellings within or on a Parcel must share the same septic system, water and power systems. The finished exterior shall be in harmony with its' natural surroundings. Septic permits must be obtained and the septic system installed and completed prior to placement of home. Building permits will be required by the State of New Mexico. Construction must be completed within twelve (12) months from beginning. No building or structure will be more than thirty (35') feet in height at its highest point from grade. Two-family and/or multi-family dwellings are prohibited. Singlewide Mobile Homes are prohibited. Doublewide Mobile Homes or Modular Homes are allowed so long as they do not exceed two (2) years in age from the date of manufacture to the date of installation. All dwellings that are to be used as residences must be on permanent foundations. The outside finish of all buildings must be completed within twelve (12) months after construction has started. No building paper, insulation board, sheathing or similar non-exterior materials shall be used for the exterior finish of any building. The exterior finish of all buildings shall be composed of earth tone colors harmonious with the existing environment.

C. **Temporary Structures:** No structure of temporary character, recreational vehicle, camper unit, trailer, travel trailer, mobile home, basement, tent shack, garage, accessory building or other out-building shall be used on any Parcel as a residence. A travel trailer, recreational vehicle, tent or camper unit may be used for recreational purpose, but such structures shall not be allowed to remain on any parcel for more than nine (9) months during a calendar year, unless the occupant has been issued a building permit by Lincoln County and is diligently proceeding to construct a permanent residence on a Parcel, so long as permitted by Lincoln County regulations, for a period not to exceed twelve (12) months.

D. **Sanitary Facilities:** All dwelling's and/or living quarters shall be self-contained, connected to a septic system, waterless toilet, or other alternative waste disposal system which has been designed by and approved by an engineer licensed in the state of New Mexico. Permits must be obtained from the appropriate governmental agency. All liquid waste disposal systems must be designed and approved by an engineer licensed in the state of New Mexico. Liquid waste disposal systems shall be located as not to potentially contaminate or pollute any drinking water supply, water course or body of water; are to be located so as not to potentially degrade recreational resources; located as not to create a nuisance; the distance between a well and an absorption field or a tank used as a part of an individual liquid waste disposal system must be no less than one hundred feet (100'); and the distance between an absorption field or tank used as a part of an individual liquid waste disposal system and the nearest boundary of a floodway must be no less than one hundred feet (100').

E. **Additional Subdivision of Parcels:** No Further subdivision of Parcels (regardless of size) is allowed.

F. **Clubs:** With the exception of the Association, no other buildings used primarily as clubhouses or meeting facilities shall be allowed to be constructed or placed on a Parcel or within the Project.

G. **Vehicles:** Any motor vehicle under repair or inoperable may not be parked on any roadway, driveway, or other easement. When said vehicles are parked on a Parcel, such motor vehicles must be hidden by walls, fences, screens, or foliage, so as the vehicle is not to be visible from roadways or other Parcels. All vehicles, engines, or motors must be operated with a muffler and/or spark arrestor.

**H. Trash:** No Parcel may be used for temporary or permanent storage of rubbish or trash (collectively, garbage). No garbage may be kept on any Parcel except in covered containers and screened from view from adjacent Parcels. Burying or dumping of garbage, junk, trash, oil, petroleum or other liquid or solid waste or littering of any kind on any Parcel is strictly prohibited.

**I. Junkyards, Auto Repair, Second-Hand Business, And Material Storage:** No junkyards, auto repair, second-hand businesses or other commercial uses shall be conducted on any Parcel. No storage of trucks, cars, buses, machinery, equipment or building materials shall be stored on any Parcel unless enclosed in a proper structure (which consists of a roof and enclosed walls) to not be visible from an adjoining Parcel or passing on the roadway.

**J. Livestock:** No swine shall be raised, bred, or kept on any Parcel. A Parcel may be used for ranching, including the use of keeping a reasonable number of horses and cattle thereon, provided the Parcel has been fenced in accordance with the fencing guidelines and setbacks set forth in this Article under R. "Fencing Setbacks." Under no circumstances shall a stockyard, dairy, riding stable, kennel, poultry farms or any other commercial activity (other than ranching) involving animals be permitted.

**K. Nuisance Activities:** The unusual, unnecessary, prolonged, or indiscriminate creation of noise, dust, fumes, odors or any other offensive activity is prohibited, including but not limited to excessive gunfire, road racing and loud music.

**L. Signs:** No signs will be permitted (including but not limited to For Sale or For Rent signs) on Parcels until after December 31, 2005: EXCEPT for address signs that identify the address and/or the Owner of the Parcel, which signs will not exceed four (4) square feet. All signs are to be in strict conformance with the laws and ordinances set forth by Lincoln County. Permits may be required. Declarant reserves the right to remove any and all signs that are in violation of the provisions in this Declaration. None of the sign restrictions in this Declaration apply to the Declarant or its assigns or successors, for the purpose of selling Parcels, locational, directional or street signs. Nothing in this provision shall prohibit an Owner from attempting to sell their Parcel in accordance with the provisions stated herein.

**M. Structure Setbacks:** All structures shall be built at least hundred (100') feet from the front, and hundred (100') feet from the sides and rear, of any Parcel boundary. If local governmental regulations provide for more restrictive setbacks, those regulations shall govern. In any event, any construction on a Parcel shall comply with the State of New Mexico building codes and regulations. Any fences constructed on a Parcel shall not be closer than thirty (30) feet to any Parcel line for the purpose of grazing animals and/or utility easements as stated on the Recorded Survey Plat creating the parcel.

**N. Easements:** a) Declarant hereby grants and dedicates a thirty foot (30') wide perpetual easement along and immediately adjacent to all Parcel lines shown on the Recorded Survey Plat(s) (entirely within the applicable Parcels) to the Windmill Ranches Homeowner's Association Inc. for purposes of ingress/egress, utility line construction, repairs and maintenance, recreational use by its members, and for use by Lessee for grazing livestock and other related ranching activity. b) All roadways shown on the Recorded Survey Plat(s) shall be sixty-foot (60') in width and are granted and dedicated to the Windmill Ranches Homeowner's Association Inc. for purposes of ingress/egress, installation, maintenance and repair of utility lines, maintenance and repair of said roadways, and access to Common Area and existing waters and related facilities for the benefit of its members and Lessee. c) All Common Area (as shown on the Recorded Survey Plat) is hereby dedicated and granted to the Windmill Ranches Homeowner's Association Inc. for recreational use by its members and for use by Lessee for grazing livestock and any related ranching activity. d) The rights to existing surface and underground water and water facilities including, pipelines, drinking tube, windmills, wells and stock tanks located within the Common Area are hereby granted to the Windmill Ranches Homeowner's Association Inc. for its use and for use by Lessee in watering livestock. e) Declarant hereby grants a "blanket easement" over the Property for the sole purpose of maintenance and repair of any pre-existing water lines, to the Windmill Ranches Homeowner's Association Inc. and to Lessee as an easement in gross. f) An easement to any pre-existing stock ponds/tanks located on individual Parcels is granted to the Windmill Ranches Homeowner's Association, Inc. to allow livestock to drink and to allow Lessee to maintain and move livestock. Said easement shall contain a sixty-foot (60') wide access corridor leading to the stock pond/tank from a designated roadway or Parcel boundary easement (at Owner's option) and shall surround the perimeter of the pond/tank with an area of one-hundred feet (100') on all sides. g) Parcels abutting Common Areas, which are adjacent to road easements, are hereby granted a sixty (60') foot wide easement(s) across said common area for the legal access to the Parcel. Said sixty (60') foot wide strip shall be perpendicular to the road easement at a location of the Owners choosing. h) Declarant hereby reserves the right to use all roadways, easements and Common Area for purposes of ingress/egress, marketing, maintenance, utility line construction and further expansion for their use as such. i) Declarant also reserves the right to grant use of said easements and roadways to additional persons or entities in the future, at its sole discretion.

No structure, including fencing, shall be constructed on any easements as shown on the Recorded Survey Plat or described herein. However, cattle guards may be used. Owners will provide access to subject easements whenever requested by utility companies. Owners shall also provide access over any unfenced portion of their Parcel to Lessee for the collection of Lessee's livestock and will not prohibit Lessee from accessing any existing water lines for maintenance and repair. There shall be no further granting of easements by Owners without the express written approval of the Association. Legal access and usage shall be restricted to a maximum of two (2) driveways.

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**O. Easement Revocation:** For fencing purposes, when one Owner purchases two or more contiguous Parcels, Owner may request that Declarant revoke those easements granted along the common boundary lines of the contiguous Parcels, PROVIDED said easements do not provide physical or necessary utility access to other Owners. Upon review and approval, Declarant shall revoke any said easements by executing and recording a unilateral "Declaration of Easement Revocation" which shall be effective only so long as one Owner owns all of the affected Parcels, HOWEVER if one or more of the subject Parcels are subsequently conveyed to separate, individual Owners, the "Revocation" shall terminate with regard to the affected Parcel(s) and the thirty foot (30') easement originally created along each side of the common boundary lines, shall be reinstated and thereafter run with the land. Nothing in this paragraph shall be construed as to allow for the construction of any structures, including fencing (other than perimeter fencing of the combined Parcels) within the original easement area of the common boundary lines.

**P. Declarant's Exemption:** Nothing herein shall be construed as prohibiting Declarant from maintaining a sales or development office on any Parcel or engaging in activities which Declarant deems appropriate to its development or sales program.

**Q. Mineral Rights:** In no event shall any Owner or lessee use or cause to be used any portion of the Property, including his or her own Parcel, for the purposes of drilling, exploring, mining, or otherwise developing any deposits of oil, minerals, or other natural resources lying above, on, or under said Property, with the exception of such drilling and exploration by the Declarant or the Owner as may be necessary to produce an adequate water supply for the development of the Parcel involved.

**R. Grazing Rights:** Grazing rights and rights to pre-existing stock ponds/tanks on the Property are granted to the Windmill Ranches Homeowner's Association Inc. for their use as such and for use by Lessee in grazing and watering livestock and any related ranching activity. Owner may fence out and exclude Lessee's livestock from grazing on Owner's Parcel in accordance with the fencing guidelines set forth in paragraph S. below, at which time the grazing rights over the fenced portion shall be deemed suspended from the Association and Lessee. Owner may not fence in such a way as to prohibit livestock or Lessee from accessing a pre-existing stock pond/tank as referred to in paragraph N. above. It is the Declarant's intent to create a mutually beneficial relationship between the Association and the Lessee. Fees paid to the Association by Lessee for grazing livestock enables the Association to reduce association fees paid by its members, therefore Owners are strongly encouraged to allow Lessee's livestock to graze by not fencing an area of more than five (5) acres on Parcels of less than one hundred forty (140) acres in size, nor an area of more than ten (10) acres on Parcels of one hundred forty (140) acres or more in size.

**S. Fencing Setbacks:** Subject to the blanket easement to water lines and all other easements defined on the Recorded Survey Plat or described in this Declaration, Owner may fence off all or any part of Owner's Parcel in order to restrict horses and other livestock from crossing or grazing on Owner's Parcel. However, in an attempt to preserve the character and integrity of the "working ranch" concept and in the interest of maintaining a mutually beneficial relationship between the Association and Lessee, Owners are encouraged to allow Parcels to remain unfenced with the exception of a five (5) or ten (10) acre area as described in paragraph R. above. Construction of all fences must be adequate to help keep off livestock. All fencing must be set back at least thirty (30') feet from Parcel lines and may not encroach upon any easement referred to on the Recorded Survey Plat and/or in this Declaration. Owner, at his/her expense, shall have the right to move any existing fence, which goes through Owner's Parcel, provided said fence so moved is reconnected so that there is no gap in the overall fencing. Any fences moved and/or installed by Owner, shall be at Owner's sole expense. All fences shall be constructed using "wildlife friendly" techniques as follows: Wherever barbed wire fencing is constructed, it shall have smooth wire on the bottom strand, which shall be twelve (12") inches above the ground and fence height shall not exceed sixty (60") inches. Additionally, all fencing shall be constructed with the following minimal requirements: a) with posts not more than fifteen (15') feet apart; b) not less than three (3) stays between posts; c) with five (5) continuous strands of wire and; d) such fence is adequate, in accordance with normal ranch standards to contain horses and other livestock.

**T. Environmental Protection:** The beauty of the Property is in the mixture of trees and open space. Trees having a minimum trunk diameter of six inches and measuring two feet above ground level and may only be cut if the following conditions are met: a) are dead or dying and; b) removal is required to clear land for building sites, access roads, fire prevention, enable installation of utilities, view corridors, or recreational open space. In any event not more than twenty percent (20%) of any one Parcel may be cut or cleared. Commercial wood harvesting is prohibited.

**U. Utility Installation:** Any utility construction on a Parcel shall be the Owner's responsibility at Owner's sole expense.

**V. Historical Preservation:** In the event an item of potential archaeological and/or native American historical significance such as native American artifacts is found on a Parcel within the Property the find should be reported to a non-profit organization that is dedicated to archeological preservation, research and education. Items of significance should not be disturbed or removed from the site except by a qualified archeologist and only for necessary historical preservation and educational purposes.

**W. Hiking and Equestrian:** Declarant has granted and dedicated all Common Area to the Association for the benefit of its members and to sublease grazing rights to those areas to Lessee. Owners, as members of the Association are granted use of the Common Areas for purposes of equestrian, pedestrian hiking or non-motorized biking recreational purposes and the Association may establish designated trails for such purposes. The use of motorized vehicles i.e. ATV or motorcycles is prohibited within the Common Area. However, use of such vehicles shall be allowed on the designated roadways within the development and on Owner's private Parcel(s). No persons shall leave trash on roadways, easements, or Common Area or use them in any manner that is a nuisance, hazardous, offensive or violates the privacy of any other person.

**X. Water Well Requirements and Water Restrictions:** Any well drilled on a Parcel shall be the Owner's responsibility and at the Owner's sole expense. Well permits must be obtained from the New Mexico State Engineer Office. Wells must be a safe distance from any contaminant source; at least hundred feet (100') from a liquid waste disposal system of less than one thousand (1,000) gallons per day; at least two hundred (200') from a liquid waste disposal system of more than one thousand (1,000) gallons per day; at least seventy-five (75') from leak proof wastewater lines carrying less than one thousand (1,000) gallons per day; at least one hundred feet (100') from leak proof wastewater lines carrying more than one thousand (1,000) gallons per day; and at least twenty-five feet (25') from leak proof wastewater lines. Water conservation within the Property boundaries shall be encouraged. Water-saving fixtures shall be installed in all new residential structures. Water-saving fixtures shall include but not be limited to, low flush toilets, low flow shower heads, low flow faucets, any appliances that have water saving features such as washing machines and dish-washers and insulation of hot water pipes. For outdoor use, low water use landscaping techniques (xeriscaping) shall be promoted, using the techniques outlined in New Mexico State Engineer Office Technical Report no. 48. Irrigated turf areas shall not exceed three thousand square feet (3,000') in size on each Parcel. Swimming pools, water gardens, ponds or other outdoor water features holding more than one thousand (1,000) gallons may not be initially filled with ground water from the Property. Initial filling of pools, ponds, or other water features must be with water that has been brought in from a source outside of the development area (i.e. hauled water). Water harvesting features, including but not limited to cisterna, downspout collecting and grading, shall be encouraged. Water use is for domestic or livestock purposes only, industrial or commercial use as defined by the New Mexico State Engineer is prohibited.

**Y. Waiver:** The Declarant and its' successor or the Association shall have the right to allow variances where strict enforcement of these restrictions would cause undue hardship, in accordance with a procedure to be adopted by the Association.

#### ARTICLE 4 GENERAL PROVISIONS

**A. Enforcement:** The covenants, conditions, and restrictions contained in this Declaration shall run with the land and shall be binding upon all persons owning, leasing, subleasing or occupying any Parcel after the date on which this instrument shall have been recorded in the Office of the Clerk and Recorder of Lincoln County, New Mexico. This Declaration may be enforced by the Declarant, by any Owner, the Lessee or a lessee of any Parcel, by the holder of a Mortgage on any Parcel, by the Association, or by any one or more of said persons acting jointly; PROVIDED, HOWEVER, that any breach by reason thereof shall not defeat or adversely affect the lien of a Mortgage upon any Parcel, but each and all said covenants, conditions, and restrictions shall be binding upon and effective against any Owner, lessee or occupant of said Parcel whose title thereto is acquired by foreclosure, or otherwise, and FURTHER PROVIDED that the breach of any said covenants, conditions, and restrictions may be enjoined, abated or remedied by appropriate proceedings, notwithstanding the lien or existence of any such Mortgage. All instruments of conveyance or assignment of any interest in all or any part of the Property may refer to this Declaration and shall be subject thereto as fully as though this Declaration were therein set forth in full. These covenants, restrictions and easements shall inure to the benefit of the Owners herein, their heirs, legal representatives, successors and assigns.

**B. Invalidity:** These covenants, restrictions and easements may be enforced by the Owners of any Parcel in said Property including Declarant against any person or persons violating or attempting to violate any provision hereof, either to restrain or to recover damages caused thereby. The failure to enforce any of these covenants, restrictions or easements shall in no event be deemed a waiver of the right to do so thereafter. Invalidation of any of the covenants, conditions, and restrictions, contained herein by a court of competent jurisdiction, shall in no way affect the validity of any other provision of this Declaration, all of which shall remain in full force and effect.

**C. Legal Fees and Costs:** The Declarant or the board of directors of the Association may cause a lawsuit to be commenced and maintained in the name of the Association against an Owner to enforce the payment of any delinquent assessment or to enforce any other pertinent provision of this Declaration. Any judgment rendered in any such action shall include the amount of the delinquency, interest at the rate of twelve percent (12%) per annum from the date of delinquency, the amount of damages proven, court fees, and reasonable attorney's fees which are incurred by the Association as fixed by the court. Any Owner who violates these covenants, restrictions and easements shall be liable for the reasonable attorneys' fees and legal expenses of any other Owner who is successful in a legal action to enforce such covenant, restriction or easement.

**D. Amendments:** After the Transition Date this Declaration may be amended from time to time in writing by sixty-six percent (66%) of the number of votes cast by Members at a meeting held for such purpose (so long as the fifty-one percent (51%) quorum requirement is met). A Certificate of Amendment, setting forth the amendments to this Declaration and a record of roll call of votes of all Members voting upon the issue of amendment, identifying the name of the Members voting, the Parcels owned by each Member and the vote cast shall be prepared by the Association. Such amendment shall be recorded in the Office of the Lincoln County Clerk and become effective immediately thereafter. So long as it owns any Parcel, Declarant may amend this Declaration without approval of the Owners, to correct any inconsistencies or to make revisions or to comply with any law or regulation. Article 3, paragraphs R. and S. may not be amended by the Association after the Transition Date in such a way as to change or negate the rights provided to the Lessee in this Declaration.

**E. Term:** This Declaration shall be effective upon its recordation in the office of the County Clerk of Lincoln County, New Mexico and as amended from time to time, shall continue in full force for thirty (30) years and effect until the commencement of the calendar year 2032. Upon commencement of the calendar year 2032, this Declaration shall be automatically renewed and extended for successive periods of ten (10) years each, unless terminated by not less than sixty-six percent (66%) of the votes cast by the members entitled to vote or amended pursuant to Paragraph D above. Such termination or amendment shall be recorded in the Office of the Lincoln County Clerk and Recorder.

**F. Liabilities:** Notwithstanding anything to the contrary herein, it is expressly agreed that neither the Declarant (including without limitation any successor or assign of the interest of the Declarant hereunder) nor any manager, member, employee, agent or affiliate of the Declarant shall have any personal liability to the Association, or to any Owner or other Person arising under in connection with or resulting from (including without limitation resulting from action or failure to act with respect to) this Declaration and in the event of a judgment against the Declarant or any of such other Persons just specified, no execution or other action shall be sought or brought thereon against any other assets, nor be a lien upon such other assets of the judgment debtor. Each of the provisions of this section shall apply to the performance of the Declarant in its responsibility to maintain the roads within the Property.

#### **ARTICLE 5 ANNEXXATION OF ADDITIONAL PROPERTY.**

**A.** Declarant, its successors and designees reserve all present and future rights to utilize all private roads and easements within the Project to comparably develop lands within or adjacent to the Project. Any such expansion to be included within this Declaration shall be subject to the terms and conditions of this Declaration, but may include reasonable variances.

**B.** At any time the Declarant shall have the right to annex and subject to this Declaration all or any portion of the additional property without the consent of any other Owner or person. An Owner's obligation to pay assessments shall commence as provided in this Declaration. If Declaration of Annexation annexing a portion of additional property divides the annexed portion into phases, the Declarant shall have the right to amend any such Declaration of Annexation to change the description of the phases within the annexed Project, except that the Declarant may not change any phase in which a Parcel has been conveyed to an Owner.

#### **ARTICLE 6 DE-ANNEXXATION**

Notwithstanding any other provision of this Declaration, Declarant shall have the right from time to time, at its sole option and without the consent of any Owner or any other person, to delete from the Property and remove from the effect of this Declaration one or more portions of the Property, so long as (a) the portion of the Property to be removed and deleted is owned by Declarant, or the Owner of such portion of the Property executes and records an instrument approving such deletion and removal; and (b) such deletion and removal would not deprive Owners of other parts of the Property of easements or rights-of way necessary to the continued use of their respective parts of the Property (unless Declarant at the same time provides for reasonably adequate replacement easements or rights-of way). Declarant may exercise its rights of de-annexation in each case by executing and causing to be recorded an instrument which identifies the portion of the Property to be so deleted and removed and which is executed by each Owner of such portion of the Property to be so deleted and removed (if other than Declarant), and the deletion and removal of such portion of the Property shall be effective upon the date such instrument is recorded; whereupon, the portion of the Property so deleted and removed shall thereafter for all purposes be deemed not a part of the Property. No such deletion and removal of a portion of the Property shall act to release such portion from the lien for assessments or other charges hereunder which have accrued prior to the effective date of such deletion and removal, but all such assessments or other charges shall be appropriately prorated to the effective date of such deletion and removal. Each portion of the Property deleted and removed pursuant hereto shall thereafter be deemed to be Property that may be annexed back into the Project at a later date unless otherwise expressly provided to the contrary in the instrument recorded to effect such deletion and removal.

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**ARTICLE 7  
REPRESENTATIONS AND WARRANTIES**

**DECLARANT MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER THAT: (1) The Project will be completed in accordance with the plans for the Project as they exist on the date this Declaration is recorded; (2) Any Property subject to this Declaration will be committed to or developed for a particular use or for any use; or (3) The use of any Property subject to this Declaration will not be changed in the future.**

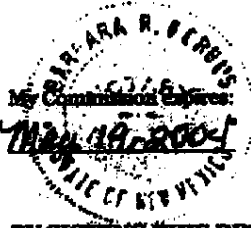
EXECUTED this 8th day of April, 2002

DECLARANT: Southwest Properties of New Mexico, Inc.  
a New Mexico Corporation

By: Daniel W. Dattola  
Daniel W. Dattola, President

State of New Mexico )  
County of Socorro )

This instrument was acknowledged before me this 8th day of April, 2002 by  
Daniel W. Dattola, as President of Southwest Properties of New Mexico, Inc.



Barbara R. Jordan  
Notary of Public

**BY SIGNING THIS RECEIPT YOU ACKNOWLEDGE THAT YOU HAVE RECEIVED A COPY OF THESE COVENANTS, CONDITIONS AND RESTRICTIONS for WINDMILL RANCHES.**

BUYER:  
Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Date: \_\_\_\_\_ Time: \_\_\_\_\_

BUYER:  
Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Date: \_\_\_\_\_ Time: \_\_\_\_\_

## CONTINUATION SHEET

## SCHEDULE A - LEGAL DESCRIPTION

File No. 24000060

TRACT ITOWNSHIP 3 SOUTH, RANGE 10 EAST, N.M.P.M.

Lots 3, 4 & SW/4 & W/2 SE/4 .....	Section 24;
Lots 1, 2, 3, 4 & W/2 E/2 & W/2 (ALL) .....	Section 25;
All .....	Section 26;
All .....	Section 34;
All .....	Section 35;

TOWNSHIP 3 SOUTH, RANGE 11 EAST, N.M.P.M.

Lots 3, 4 & E/2 SW/4 & SE/4 .....	Section 19;
S/2 .....	Section 20;
W/2, SE/4 .....	Section 28;
All .....	Section 29;
Lots 1, 2, 3, 4 & E/2 W/2 & E/2 (ALL) .....	Section 30;
Lots 1, 2, 3, 4 & E/2 W/2 & E/2 (ALL) .....	Section 31;
N/2, W/2 SW/4 .....	Section 33;

TOWNSHIP 4 SOUTH, RANGE 10 EAST, N.M.P.M.

Lots 1, 2, 3, 4 & S/2 N/2 & S/2 (ALL) .....	Section 1;
Lots 1, 2, 3, 4 & S/2 N/2 & S/2 (ALL) .....	Section 3;
All .....	Section 9;
All .....	Section 10;
All .....	Section 11;
All .....	Section 12;

TOWNSHIP 4 SOUTH, RANGE 11 EAST, N.M.P.M.

Lots 3, 4 & S/2 NW/4 & SW/4 & S/2 SE/4 .....	Section 4;
Lots 1, 2, 3, 4 & S/2 N/2 & S/2 (ALL) .....	Section 5;
Lots 1, 2, 3, 4, 5, 6, 7 & SE/4 NW/4 & S/2 NE/4 & E/2 SW/4 & SE/4 (ALL) .....	Section 6;
Lots 1, 2, 3, 4 & E/2 W/2 & E/2 (ALL) .....	Section 7;
All .....	Section 8;
All .....	Section 9;
All .....	Section 17;
Lots 1, 2, 3, 4 & E/2 W/2 & E/2 (ALL) .....	Section 18;
Lots 1, 2, 3, 4 & E/2 W/2 & E/2 (ALL) .....	Section 19;
N/2 .....	Section 20;
N/2 NW/4, SW/4 NW/4 .....	Section 21;

TRACT II

(a) The following lands described in State Purchase Contract No. 5330;

TOWNSHIP 3 SOUTH, RANGE 10 EAST, N.M.P.M.

Lots 1, 2, 3, 4 & W/2 E/2 & W/2 (ALL) .....	Section 36;
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TOWNSHIP 3 SOUTH, RANGE 11 EAST, N.M.P.M.

All .....	Section 32;
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TOWNSHIP 4 SOUTH, RANGE 10 EAST, N.M.P.M.

Lots 1, 2, 3, 4 & S/2 N/2 & S/2 (ALL) .....	Section 2;
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TOWNSHIP 4 SOUTH, RANGE 11 EAST, N.M.P.M.

All .....	Section 16;
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## SCHEDULE A - LEGAL DESCRIPTION

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