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LA CUEVA TIERRA
MASTER RESTRICTIONS

A Declaration of Covenants,
Conditions and Restrictions

THIS DECLARATION is made this 6th day of June, 1995, by Helmick-Spradlin Partnership, a New Mexico General Partnership, as to that real property described in Exhibit A which is attached to this Declaration and incorporated by reference.

It is hereby declared that all of the described real property is subject to the La Cueva Tierra Master Restrictions, meaning the limitations, easements, restrictions, covenants, terms and conditions set forth in this Declaration, all of which are established and agreed upon for the purpose of enhancing and perfecting the value, desirability and attractiveness of the described real property. The La Cueva Tierra Master Restrictions shall run with the described real property and shall be binding upon and inure to the benefit of Grantor, each Owner of the described real property or any part thereof, and each successor in interest of Grantor and any such Owner, each as defined in this Declaration.

ARTICLE 1
DEFINITIONS

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

Section 1.01. Architectural Control Committee. The term "Architectural Control Committee" shall mean the committee created pursuant to Article 4 herein.

Section 1.02. Grantor. The term "Grantor" shall mean Helmick-Spradlin Partnership, a New Mexico General Partnership, and its successors and assigns. Only Helmick-Spradlin Partnership and its successors or assigns shall have the rights of Grantor pursuant to this Declaration; however, Helmick-Spradlin Partnership may assign its rights hereunder to a successor or assign or may reserve the rights of Grantor.

Section 1.03. Improvements. The term "Improvements" shall include, but not be limited to, buildings, sheds, utility buildings, roads, driveways, air conditioners, parking areas, fences, garden walls, retaining walls, stairs, decks, hedges, windbreaks, poles, antennas, signs, utility or communication installations (whether above or underground), retaining structures, waterways, and any structures and excavations of any type located on any property subject to these restrictions.

Section 1.04. La Cueva Tierra Development. The term "La Cueva Tierra Development" shall mean all the property subject to the La Cueva Tierra Master Restrictions and described in Exhibit A at the time of recording these Master Restrictions. The La Cueva Tierra Development may from time to time be referred to herein simply as the "development" or "La Cueva Tierra."

Section 1.05. La Cueva Tierra Master Restrictions. The terms "La Cueva Tierra Master Restrictions", "Protective Covenants" or "these restrictions" shall mean, with respect to all property within La Cueva Tierra Development, the limitations, restrictions, covenants and conditions set forth in this Declaration, as such Declaration may from time to time be amended.

Section 1.06. Lot. The term "Lot" shall mean any numbered or lettered Lot shown on the Subdivision Plat that has been recorded for La Cueva Tierra, as described in Exhibit A hereto. Upon the consolidation of any Lots, "Lot" shall mean the parcel or unit consisting of the Lots so consolidated as the case may be.

Section 1.07. Owner. The term "Owner" shall mean the person, persons, or entity, including Grantor, holding the beneficial ownership of the fee, including a purchaser under a contract of sale of real property, within the development, and shall not include persons holding only a security interest; provided, however, that for the purposes of the Article entitled "Property Classification and Use", unless the context otherwise requires, "Owner" shall include the family, invitees, licensees, tenant, subtenant and lessees of any Owner.

Section 1.08. Public Street. The term "Public Street" shall mean any area dedicated and accepted by the County or other governmental entity over which there is granted the right of vehicular access for Owners and the public.

Section 1.09. Record; Recorded. The term "Record" or "Recorded" shall mean, with respect to any document, that the document shall have been Recorded in the Office of the County Clerk of the county in which the real property to which the document relates is located.

Section 1.10. Setback Lines. The term "Setback Lines" means the shortest distance between a residence or other structure referred to and the given front, side or rear property lines of the particular Lot, unit or site. The Setback Lines established in the Subdivision Plat or deeds executed by Grantor, or by project plats or plans approved by the government agency having jurisdiction, or by resolution of the Architectural Control Committee, for any residence or other structure from any front, rear or side Lot lines shall be deemed and construed to be the minimum distance between said residence or other structures and said front, rear or side Lot line closest thereto.

**ARTICLE 2
PROPERTY SUBJECT TO RESTRICTIONS**

All of that certain real property located in Bernalillo County, New Mexico, described in Exhibit A attached hereto and incorporated herein shall constitute the La Cueva Tierra Development.

**ARTICLE 3
PROPERTY CLASSIFICATION AND USE**

Section 3.01. Purposes of Land Classification and Use. The purposes of these limitations and restrictions and the other controls in this Article are to enhance, protect, establish and maintain the character, value, desirability and attractiveness of the real estate within La Cueva Tierra and to insure its proper development.

Section 3.02. Uses and Restrictions Applicable to All Lots and Improvements Thereon. Each Lot and improvements thereon shall be for the exclusive use and benefit of its Owner, subject, however, to all of the following rights, standards, limitations and restrictions:

(a) Improvement and work where regulated and controlled by this Article shall be done in strict compliance with the provisions of this Article.

(b) Improvements and development within La Cueva Tierra shall be limited to residences, and no Lot shall be used for any purpose other than single family residence.

(c) Each Lot and any and all Improvements located thereon, including landscaping, shall be maintained by the Owner thereof in good condition and repair, all at such Owner's sole cost and expense.

(d) No noxious or offensive trade or activity shall be conducted upon any Lot. No light shall be emitted from any Lot which is unreasonably bright or causes unreasonable glare; no sound shall be emitted on any Lot which is unreasonably loud or annoying; no odor shall be emitted on any Lot which is generally considered to be noxious or offensive to others; nor shall anything be done or placed thereon which may be or become a nuisance, or disturbance, or annoyance to other Owners in the enjoyment of their property.

(e) No accessory structures, buildings, motor homes, trailers, or mobile homes shall be constructed, placed or maintained upon any Lot prior, during or after construction of the main structure. However, this Section shall not prohibit temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any work or Improvement permitted by this Article and if approved by the Architectural Control Committee in advance of placement on the property.

(f) No trailer, tent, shack, garage or other out-building shall be used as a residence, temporarily or permanently.

(g) There shall be no open storage of boats, motor homes, trailers, mobile homes, campers, commercial vehicles over one (1) ton or inoperative vehicles. There shall be no overhauling or rebuilding of any vehicle or machine in any driveway or street, or visible from another Lot or from the street, but such activities are not prohibited inside buildings even if visible through doorways and other openings. The Architectural Control Committee can by rule provide for placement and screening of the above.

(h) No unused automobiles or vehicles of any kind except as hereinabove provided shall be stored or parked on any Lot except in a closed garage, or screened area. An "unused vehicle" shall be defined as any vehicle which has not been driven under its own power for a period of thirty (30) consecutive days or longer.

(i) All Lots are to be kept free of litter and debris and are not to be used for the storage of materials except for those being used for authorized current construction on the areas where stored.

(j) No animals, livestock, horses, insects or poultry of any kind shall be kept, raised or bred, except as specifically set forth hereafter. Domesticated dogs, cats and other household pets may be kept in reasonable numbers providing they are not kept, raised or bred for commercial purposes. Such household pets must be restrained on a leash or otherwise under the control of an individual when in a public area and restrained or kept where their noise will not disturb others.

(k) Except for temporary lines used during construction, all utility lines, including, but not limited to, electrical, gas, telephone, cable television and other communications shall be underground, if economically and technically feasible, except for access ports and above ground transformers, and in areas designated by Grantor.

(l) All Improvements shall be constructed either in accordance with applicable building Setback Lines shown on the Subdivision Plat or deeds or covenants executed by Grantor, and approved by the government agency having jurisdiction; provided, however, that if permissible by law, the Architectural Control Committee may permit a variance from such lines upon a determination that such a variance is necessary to facilitate the use of the Lot involved and that it does not unreasonably impair the use, value or aesthetic appeal of any other Lot.

(m) Any entry or courtyard walls must be color coated or built with material matching the main structure, unless otherwise approved by the Architectural Control Committee prior to construction.

(n) Any approved detached shed or building must be color coated or built with material matching the main structure, unless otherwise approved by the Architectural Control Committee prior to construction, and may be no more than one (1) story in height. The right to construct any such structure and the design or other requirements for such structures shall be set by Architectural Control Committee resolution.

(o) Any heating or air conditioning equipment visible from the street or front of the house on another Lot shall be screened with a material similar to the main structure. Solar heating equipment shall not be installed without prior approval by the Architectural Control Committee, based on the merit of its design and the manner in which it is constructed so as not to detract from other homes in the development.

(p) The Architectural Control Committee **WILL NOT APPROVE THE FOLLOWING:**

1. **ANY METAL, REFLECTIVE, OR SHAKE SHINGLE ROOFING MATERIAL**
2. **TRANSLUCENT OR TRANSPARENT GARAGE DOORS**
3. **OUTSIDE CLOTHES LINES**

(q) In the event that any structure is destroyed, wholly or partially by fire or any casualty, such structure shall be rebuilt or repaired to conform to this Declaration or shall be removed from the Lot within one (1) year from loss.

(r) Subject to review and change by resolution of the Architectural Control Committee, no signs that are visible from neighboring Lots or streets shall be erected or maintained upon any Lot except:

- (1) Such signs as may be required or reasonably necessary by legal proceedings.
- (2) During the time of construction of any structure or other Improvement, one (1) job identification sign having a maximum face area of nine (9) square feet per sign for each single family dwelling unless otherwise approved by the Planning Committee; and
- (3) Not more than one "for sale" or "for rent" sign having a maximum face area of four (4) square feet.

(s) Grantor shall not be subject to the sign restrictions in (r) as long as Grantor remains the Owner of any property within the La Cueva Tierra Development, which exemption is not subject to review and change by the Architectural Control Committee.

(t) The exterior of all buildings on all Lots shall be finished within twelve (12) months of start of construction according to plans approved by the Architectural Control Committee.

(u) All antenna receiver discs, equipment, garbage cans, service yards, dog runs, woodpiles or storage piles shall be reasonably screened from view of neighborhood residential units and streets. All such Improvements must have specific approval by the Architectural Control Committee prior to construction or installation.

(v) No shaded or unshaded flood lights shall be maintained which cause light to shine directly into the home of any other resident in the development. All floodlights shall be shaded.

(w) No Lot shall be used for any purpose other than residential use and shall not be used in whole or part for any commercial, manufacturing, mercantile or other non-residential purposes and no residence shall be used as a boarding house or apartment, except this Section shall not be construed to prevent the rental or lease of entire residences, nor the maintenance of a home office, as long as the home office does not create traffic or other external manifestations.

(x) No more than one (1) residence shall be constructed on any Lot. However, the Owner of any Lot may, with the written approval of the Architectural Control Committee, and subject to all zoning and subdivision setback requirements, build attached living quarters for domestic help or family members

(y) No residence shall be constructed without at least a two (2) car garage and at least 1,900 square feet of heated living area shall be required on any Lot.

(z) Public agencies, Grantor or its designee shall have the right to enter upon all drainage easements for construction and maintenance of drainage facilities.

(aa) All walls shall be constructed of a minimum of seven course 6" x 8" x 16" concrete block including solid top cap. Exposed tops of pilasters shall be finished with mortar or with 4" cap blocks. Any side lot or side lot line wall return that faces a street, must be finished in a texture and color that is compatible with the residence on that Lot.

(ab) All walls placed on the dividing line between separate Lots shall constitute party walls, and each of the adjoining Lot Owners shall assume the burdens and be entitled to the benefits of these Restrictions as they apply to party walls, and, to the extent not inconsistent herewith, the general rules of law regarding party walls. The cost of construction of party walls shall be shared equally by adjoining Lot Owners. In the event a party wall is constructed and paid for by one Lot Owner, such Lot Owner shall have a right of contribution for 50 percent of its cost, from the adjoining Lot Owner, as evidenced by invoice or receipts for materials and labor. In the event of a dispute between adjoining Lot Owners with respect to the sharing of costs of a party wall, the reasonable cost shall be the average of two certified estimates for the construction of such a party wall, one certified estimate to be obtained by each adjoining Lot Owner.

(ac) No wire fences shall be maintained in the development, except by Grantor on La Cueva Tierra boundaries or for dog runs approved by the Architectural Control Committee in advance. Except by specific approval by the Architectural Control Committee, fences, walls and patios must adhere to at least the normal minimum Setback requirements.

(ad) All front yard landscaping on a Lot shall be completed within three months after a certificate of occupancy is issued for any residence thereon. A minimum of sixty percent of the front yard, excluding driveway and public sidewalk, shall be ground cover or grass.

(ae) Swimming pools, of a permanent or temporary nature, may be permitted, subject to approval by the Architectural Control committee.

(af) No Owner shall store excessive firewood within sight of any public or community street within La Cueva Tierra. More than two (2) cords shall be presumed to be excessive.

ARTICLE 4

ARCHITECTURAL CONTROL COMMITTEE

Section 4.01. Architectural Control Committee: Organization: Power of Appointment and Removal of Members. There shall be an Architectural Control Committee called La Cueva Tierra Architectural Control Committee.

(a) The La Cueva Tierra Architectural Control Committee shall consist of five (5) Members. Each Member shall hold his office until such time as he has resigned or he has been removed or his successor has been appointed, as set forth herein. The initial Architectural Control Committee shall consist of Robert M. Helmick, Timothy M. Helmick, Ron Spradlin, Ben Lucero and Patrick McGavick.

(b) Except as provided in Subsection (c) below, the right from time to time to appoint and remove all Members of the Architectural Control Committee shall be, and hereby is, reserved to and vested solely in Grantor.

(c) The Architectural Control Committee shall be appointed by the Grantor to serve for a period of three (3) years from the date hereof and until their successors shall be appointed and qualify. Vacancies occurring at the end of the three (3) years term shall be appointed by a majority of the residential Lot owners in the Subdivision, who are present at a special meeting called for the purpose of filling such a vacancy.

(d) No member of the Architectural Control Committee shall be entitled to any compensation for services performed on said Committee.

(e) Any three (3) members shall be able to act on the behalf of the Architectural Control Committee, and in rendering any decision, a majority of the Architectural Control Committee shall rule.

Section 4.02. Architectural Control Committee Requirements and Responsibilities.

(a) Before the commencement of construction, remodeling, addition or alteration of any Lot grade, building, swimming pool, wall, tank, out building or any other structure whatsoever on any Lot the following shall be submitted to the Architectural Control Committee:

(1) A complete set of plans, including but not limited to, foundations plan, floor plan, elevation, details, specifications (including exterior finish schedule), a plot plan, landscaping plan and grading plan showing the location and finished grade of the structure on the Lot.

(2) Within three (3) calendar days after constructing the foundation, the Owner will submit to the Architectural Control Committee a letter containing the "as-built" set back dimensions of the structure.

(b) NO STRUCTURE OR IMPROVEMENTS OF ANY KIND shall be erected, altered, placed or maintained, including Lot grading alterations, upon any Lot unless and until the complete set of final plans therefore have received such written approval as herein provided.

(c) The Architectural Control Committee shall have the right to disapprove any plans, specifications or details submitted to it as aforesaid, in the event such plans and specifications are not in accord with all the provisions of these restrictions, or if a design or color scheme on the proposed structure is not in harmony with the general surroundings or in harmony with such Lot or adjacent structure, or if the plans and specifications submitted are incomplete, or if the Architectural Control Committee deems said plans and specifications to be

contrary to the spirit and intent of these restrictive covenants, or contrary to the interest and welfare and rights of the owners of all or any part of the subdivision. The decision of the Committee shall be final and no building, structure or improvement of any kind shall be constructed or placed upon any Lot in the Subdivision if disapproved by the Architectural Control Committee.

(d) In the event the Architectural Control Committee shall fail to approve or disapprove the plans, specifications and other such information as may be required within thirty (30) days after submission, then such approval shall not be required, provided that no building or structure shall be erected which violates any of the covenants contained herein.

(e) Neither the Architectural Control Committee, nor any of its members, shall be responsible for any manner whatsoever for any defect in any plans for specifications submitted or as revised by said Committee, or for work done pursuant to the plans and specifications of any requested changes of said plans and specifications.

(f) ALL WALLS MUST BE SUBJECT TO THE APPROVAL OF THE ARCHITECTURAL CONTROL COMMITTEE.

(g) All builders and/or Lot owners shall be responsible for the construction of retaining walls on common property lines including rear property lines in accordance with all applicable Federal, State, City and County codes and ordinances.

Section 4.03. Architectural Control Committee Fees. The Architectural Control Committee is authorized to charge initially not more than \$150 for review of plans for structures and modifications and Improvements, but this fee may be raised from time to time to reflect the actual cost of professional fees required for review, plus \$25. The Owner shall pay said fee in advance to the Architectural Control Committee at the time of submission of plans and specifications.

Section 4.04 Retention of Plans. Upon approval, one (1) complete set of plans and specifications will be retained by the Architectural Control Committee to remain on file.

ARTICLE 5 STREETS, EASEMENTS, RESERVATIONS AND RIGHTS OF WAY

Section 6.01. Nature of Reservations. Easements, reservations and rights of way may be reserved on and across private property for the erection, construction and maintenance of:

(a) Wires and conduits for the transmission of electricity, power lighting, telephone, television and other purposes, pipes and mains for water, gas and heating, and for other utilities and services as their necessary and proper attachments.

- (b) Public and private sewers, storm drains and land drains.
- (c) Driveways.
- (d) Any other method of conducting or performing any public or quasi-public utility function or use on or beneath the surface of the ground.
- (e) Ingress and egress to and from any Lot for development and/or construction purposes where specifically designated.

Section 5.02. How Reservations are Made. Such easements, reservations and rights of way are as designated on the Subdivision Plat, and additional easements, reservations and rights of way may be reserved or granted by the Grantor.

Section 5.03. Consent of Architectural Control Committee. Regardless of the approval by governmental agencies or utilities, no house, building or other structure of any kind shall be built, erected or maintained upon any such easement, reservation or right of way without the express consent of the Architectural Control Committee, and such easements, reservations and right of way shall, at all times, be open and accessible to public and quasi-public utilities, and to Grantor, all of whom shall have the right of ingress and egress thereto and therefrom and the right and privilege of doing whatever may be necessary in, under and upon said locations for the carrying out of any of the purposes for which said easements, reservations and rights of way are hereby reserved, or may hereafter be reserved.

ARTICLE 6 AMENDMENT, REPEAL AND DURATION

Section 6.01. Amendment and Repeal. These covenants may be amended from time to time by an affirmative vote by the then record holder of title to Lots representing a seventy-five (75%) majority of the total Lots in the Subdivision, or by Grantor, providing Grantor then holds title to at least thirty percent (30%) of the Lots in the subdivision.

Section 6.02. Duration. All of the restrictions and covenants herein set forth as amended from time to time shall continue to be binding, for a period of twenty-five (25) years from the date this instrument is filed of record in the Office of the County Clerk of Bernalillo County, New Mexico, and shall automatically be extended for successive periods of fifteen (15) years each; provided, however, that at any time during the first five (5) years of the first (25) year period or during the first five (5) years of any fifteen (15) year period thereafter, the owners of 90% in number of the Lots then covered by this declaration may provide for the release of any and all of the Lots hereby restricted from any one or more of said restrictions and covenants at the end of such twenty-five (25) year period or such fifteen (15) year period, by

executing and acknowledging a proper agreement or agreements in writing for such purpose and filing same for record in the manner then required for the recording of land instruments.

**ARTICLE 7
MISCELLANEOUS PROVISIONS**

Section 7.01. Lot Consolidation.

(a) No two or more Lots shall be consolidated into one Lot or combined for the purpose of building one residence thereon unless the Architectural Control Committee and required governmental agencies shall have given their written approval.

(b) Nothing contained in Subsection (a) shall be construed to permit the splitting of any Lot.

Section 7.02. Enforcement: Non-Waiver.

(a) Except to the extent otherwise expressly provided herein, Grantor or any Owner shall have the right to enforce any and all of the limitations, restrictions, covenants, conditions, obligations, liens and charges now or hereafter imposed by these Restrictions upon other Owners, or upon any property within La Cueva Tierra.

(b) Every act or omission whereby any restriction, condition or covenant of these Restrictions is violated in whole or in part is hereby declared to be and to constitute a nuisance and may be enjoined or abated, by Grantor, or by an Owner or Owners, whether or not the relief sought is for negative or affirmative action, as provided for in subsections (a) above.

(c) Each remedy provided for in these Restrictions is cumulative and not exclusive.

(d) The failure to enforce the provisions of any limitation, restriction, covenant, condition, obligation, lien or charge of these Restrictions shall not constitute a waiver of any right to enforce any such provision or any other provision of these Restrictions.

Section 7.03. Construction: Compliance With Laws: Severability: Singular and Plural: Titles.

(a) All of the limitations, restrictions, covenants and conditions of these Restrictions shall be liberally construed, together, to promote and effectuate the beneficial operation of La Cueva Tierra and the Lots located therein.

(b) No provision of these Restrictions shall be construed to excuse any person from observing any law or regulation of any governmental body having jurisdiction over such person or La Cueva Tierra.

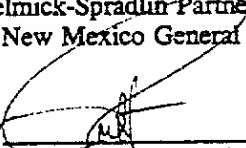
(c) Notwithstanding the provisions of Subsection (a) above, the limitations, restrictions, covenants and conditions of these Restrictions shall be deemed independent and severable, and the invalidity or partial invalidity of any provision, or portion thereof, of any such limitations, restrictions, covenants or conditions shall not affect the validity or enforceability of any other provision.


(d) The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine and neuter, as the context requires.

(e) All titles used in these Restrictions, including those of articles and sections, are intended solely for convenience of reference and the same shall not, nor shall any of them affect that which is set forth in such articles, sections nor any of the terms or provisions of these Restrictions.

IN WITNESS WHEREOF, the undersigned, being the Developer of La Cueva Tierra and the Grantor herein, has caused its name to be signed and its seal to be hereunto affixed this 6th day of June, 1995.

Helmick-Spradlin Partnership
A New Mexico General Partnership

By 
Robert M. Helmick
Title: General Partner

By 
Ron Spradlin
Title: General Partner

BY: 
TIMOTHY HELMICK
Title: General Partner

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

The foregoing instrument was acknowledged before me this 6th day of June, 1995, by Robert M. Helmick, a general partner of Helmick-Spradlin Partnership, owner of La Cueva Tierra.

Sue King
Notary Public

My Commission Expires:
10-17-98

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

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Notary Public

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STATE OF NEW MEXICO)
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10-17-98

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
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JUDY D. WOODWARD
CO. CLERK & REC'D
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