

DECLARATION OF COVENANTS, CONDITIONS, AND RESERVATIONS FOR OLD PECOS TRAIL SUBDIVISION

THIS DECLARATION, made this 19th day of April, 1985, by CALIMO, INC., a California corporation, hereinafter referred to as "Declarant", witnesseth:

WHEREAS, Declarant is the owner of certain real estate in Santa Fe County, New Mexico, more particularly described on Exhibit A attached hereto and incorporated herein by reference, and desires to impose the provisions of this declaration on and subject all of the above described real estate to the covenants, conditions and restrictions hereinafter stated, including easements, for the purpose of protecting the value and standards of said real estate, the terms of which shall run with the land and be binding upon and inure to the benefit of all parties having any right, title or interest in or to the above described real estate, or any part thereof, and their successors and assigns, it is, therefore, declared:

ARTICLE I - DEFINITIONS

Section 1. "Association" shall mean and refer to OLD PECOS TRAIL SUBDIVISION OWNERS ASSOCIATION, a New Mexico non-profit corporation, its successors and assigns.

Section 2. "Owner" shall mean and refer to any contract purchaser or record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to the above described real estate.

Section 4. "Common Area" shall mean all real property now or hereafter owned by the Association for the common use and enjoyment of the owners.

Section 5. "Lot" shall mean and refer to any plot of land shown upon the recorded subdivision map of the properties. Ownership of a lot shall include membership in the Association and rights appurtenant thereto.

Section 6. "Declarant" shall mean and refer to CALIMO, INC., a California corporation, its successors and assigns.

ARTICLE II - PROPERTY RIGHTS

Section 1. Owners Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the common area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to suspend the voting rights and right to use the common area by an owner for any period during which any assessment against his lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

(b) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for public purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument approved by members entitled to cast two-thirds (2/3) of the votes present in person or by proxy agreeing to such dedication or transfer has been recorded and unless approved by appropriate governmental authorities. Easements for maintenance of roadside and utilities, including easements for water distribution, as hereinafter provided, and emergency vehicle access may be granted by the Board of Directors.

(c) The right of the Association, in accordance with its articles and bylaws, to borrow money for the purpose of improving the common area and facilities, but the Association shall have no power to mortgage said common areas conveyed to the Association in aid thereof.

(d) The right of the Association to adopt and publish rules and regulations governing the use of the common areas and facilities and the personal conduct of the members and their guests.

ARTICLE III - MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot. Each lot shall be entitled to one vote. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any lot.

ARTICLE IV - ASSESSMENTS, LIENS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each lot owned within the properties, hereby covenants, and each owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as herein provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the properties and for the improvement and maintenance of the common areas and facilities, and for utilities to the common areas if contracted for by the Board of Directors, such as water, gas, electricity or other; for maintenance of private streets and utility lines, and for snow removal from private streets of the Association.

Section 3. Assessment. The initial assessment and all subsequent annual or special assessments for each lot shall be set by the Board of Directors of the Association within the limits of the approved budget, and subject to the provisions of Article IV, Section 5, and the Bylaws of the Association.

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(a) Thereafter and without a vote of the membership, the maximum annual assessment may be increased each year not more than the percentage increase for the previous year reflected by the Consumer Price Index as published by the United States Department of Labor or successor indices, as adjusted, or ten percent (10%), whichever is higher.

(b) The maximum annual assessment may be increased above the above limits by a vote or written assent of twenty-five percent (25%) of all votes entitled to be cast, in person or by proxy, at a meeting duly called for such purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum and may raise or lower said assessment within the maximum amount as they deem necessary in their discretion.

Section 4. Assessments on Sale and Resale of Lots. In addition to regular and special assessments, as set forth herein, there shall be an assessment levied, in an amount to be determined by the Board of Directors, at the time of the original sale, and any subsequent sale of each and every lot. Such assessments shall be placed in the bank account of the Association, to establish an initial operating fund for the Association, and to defray the cost of maintaining accurate records of voting membership of the Association.

Section 5. Special Assessments for Capital Improvements. In addition to the assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the common area, or upon any easement over any lot, including fixtures and personal property related thereto, provided that such assessment shall have the assent of fifty-one percent (51%) of all the votes entitled to be cast of all members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 6. Notice and Quorum for any Action Authorized Under Sections 3 and 4. Any action authorized under Section 3 or 4 shall be taken at a meeting called for that purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. If the proposed action is favored by a majority of the votes cast at such meeting, but such vote is less than the requisite percentage of votes required, members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by the appropriate officers of the Association not later than thirty (30) days from the date of such meeting.

Section 7. Uniform Rates; Exceptions. Both annual and special assessments shall be fixed at a uniform rate for all lots, except that developed lots owned by Declarant and which Declarant has listed for sale shall be assessed, for both annual and special assessments, at one-fourth ($\frac{1}{4}$) the rate set for lots sold to parties other than the Declarant.

Section 8. Date of Commencement of Annual Assessments; Due Dates. Subject to Section 1, Article IV, the assessments provided for herein shall commence as to all lots on the first day of the month following the conveyance of the first lot to a party other than Declarant. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. Such certificate shall be conclusive evidence of the facts stated therein.

Section 9. Effect of Nonpayment of Assessments; Remedies of the Association. If the assessments are not paid within sixty (60) days of the due date, then the entire annual assessment or special assessment shall become delinquent notwithstanding that monthly payments may have been established for the convenience of the members and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquent date, the assessment shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum, and the lot owner shall be liable for an additional service fee of fifty dollars (\$50.00), and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the Property, and there shall be added to the amount of such assessment the cost of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court together with the costs of the action.

No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area and facilities or abandonment of his Lot.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the property subject to assessment. Sale or transfer of any lot shall not affect the assessment lien. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V - ARCHITECTURAL CONTROL COMMITTEE

Section 1. Committee. An Architectural Control Committee, hereinafter referred to as "Committee," composed of three or more representatives, shall be appointed by the Board of Directors of The Association. At least two of said committee members shall be owners of lots in the subdivision. Until such time as the Architectural Control Committee is appointed, all duties of the Committee shall be performed by Declarant.

Section 2. Duties; Approval of Plans.

(a) The Committee shall exercise its best judgment to see that all improvements, construction, exterior modifications or additions to any structure on any lot, as well as landscaping and any alterations on lands within the properties conform to the covenants of this Declaration.

(b) The Committee shall approve or disapprove all plans and requests within thirty (30) days after submission to the Committee. ✓

(c) The Committee may, in its discretion, appoint an Approving Agent who shall be responsible for acting in place and stead of the Committee with respect to all duties and responsibilities of the committee under this Declaration.

Section 3. Majority Vote. A majority vote of the Committee is required for approval or disapproval of proposed improvements.

Section 4. Written Records. The Committee shall maintain written records of all applications submitted to it and of all action taken by the Committee.

Section 5. Waiver. Any provision governing architectural approval stated in this Declaration, or as otherwise established, may be waived by the Committee if such waiver is not inconsistent with the purpose and intent of this Declaration.

Section 6. Review of Committee Member Plans. No member of the Committee shall sit in consideration of plans for development of property owned by him. When any member of the Committee is not qualified to sit for any reason, the remaining members shall designate a member pro tem to sit in his or her place. If more than one member is disqualified, the Association shall designate sufficient members pro tem for the purpose.

Section 7. Committee's Right to Payment of Expenses. An owner shall pay reasonable expenses to the Committee for the examination and approval or disapproval of plans and specifications submitted for structures or improvements to be erected or changes or alterations in existing structures or improvements. The Committee may, at its option, waive its right to such expenses in any particular instance.

Section 8. Non-liability of Committee. The Committee shall not be responsible for any defects in said plans or specifications or in any building or structure erected according to such plans and specifications. The Committee shall not be liable in damages to anyone so submitting plans for approval, or to any owner or owners of land covered by this instrument by reason of mistake in judgment, negligence, or non-feasance of itself, its agents, or employees, arising out of or in connection with the approval or disapproval, or failure to approve any such plans. Any person or entity submitting plans to the Committee for approval shall for himself, and his successors and assigns, by the submitting of such plans, waive all claims for damages resulting from any such acts or omissions.

ARTICLE VI - STRUCTURES

Section 1. Single-Family Dwelling; Guest houses. No structure shall be erected, altered, placed or permitted to remain on any lot or building site subject to this Declaration other than one detached single-family dwelling, for private use, one principal garage, one studio, one guest house with garage attached, and one workshop, together with, recreational facilities, solar heating devices, evaporative cooler or coolers, and improvements incidental to residential use of the premises. No principal residence shall be of less than 1500 square feet interior heated space. No guest house shall be of less than 500 square feet nor more than 2000 square feet, interior heated space. No construction of any guest house shall commence until substantial exterior completion of the principal residence, provided that the Architectural Control Committee may waive the provisions of this requirement upon a showing of good faith simultaneous or contemporaneous construction of a principal residence and guest house.

Section 2. Prohibited Structures. No private swimming pools, modular homes, or prefabricated structures may be placed on or kept at any building site without the prior written approval of the Committee. No mobile home may be permitted on any lot, for any purpose. No temporary house, dwelling, garage, outbuilding, trailer or other structures shall be placed or erected upon any property subject to this Declaration.

Section 3. Height Limitations. No structure shall exceed fifteen (15) feet above the average natural ground level of the construction site. For the purposes of this section, height shall be measured from the highest natural, undisturbed ground level of the main residential building, exclusive of garages, portals, patios, garden walls, or other structural attachments.

ARTICLE VII - ARCHITECTURAL REVIEW PROCEEDINGS

Section 1. Plans and Specifications.

(a) Two complete sets of final building plans and specifications for any building, fence, coping, wall, or structure to be erected on any lots shall be submitted to the Committee for written approval before any construction may begin. Included in such plans shall be:

- (1) Plot plans showing location of structures on lot.
- (2) Exterior elevation drawings of all sides of all buildings.
- (3) Detailed floor plan.
- (4) Exterior color scheme.
- (5) Description of roof treatment.
- (6) Location and plans for guest house, garage, and driveway.
- (7) Copy of application to Environmental Improvement Division of the State of New Mexico, or its successor, for waste disposal system.

(b) Any changes, remodeling, reconstruction, alterations or additions to any building or other structure, including fencing and walls, on any lot shall be subject to the prior approval in writing by the Committee.

(c) The location of buildings or improvements shall be staked on the site prior to such approval.

(d) Approval of such plans and specifications shall be evidenced by the written endorsement of the Committee made on said plans and specifications, and a copy thereof shall be delivered by the Committee to the owner of the lot, or to his agent or representative, prior to the commencement of construction. One set of said plans and specifications shall be retained by the Committee or by the Declarant.

Section 2. Disapproval of Plans.

(a) The Committee shall have the right to disapprove any plans and specifications submitted to it for any one or more of the following reasons:

- (1) If the plans and specifications are not in sufficient detail or are incomplete.
- (2) If, in the opinion of the committee, the architectural design of the proposed building or structure as shown by the plans and specifications, plat plans, including exterior color scheme, or the location of any structure, is not in harmony with the general surroundings, or with the building or structures, or proposed building or structures, adjacent to the location at which said proposed building or structure is intended to be erected. The type of construction and architecture shall be based upon, but need not adhere strictly

to, Santa Fe style architecture, western ranch house or traditional Spanish Moorish style architecture. Moderate modifications of the foregoing styles in reasonable, innovative and creative ways are permitted and encouraged including, but not limited to, modifications which are made necessary or desirable for the use of solar collectors and other innovative energy collecting and conserving devices. The use of construction materials having the appearance of local, indigenous and traditional building materials is encouraged and favored. Other materials may be used where their use will be in accordance with sound architectural practice and will be visually inoffensive in the sole discretion of the Declarant or the Committee, as the case may be. The determination of whether modification of architectural styles is moderate and reasonable shall likewise be in the sole discretion of the Declarant or the Architectural Control Committee. The only requirement for the said declarant or the Architectural Control Committee shall be that it act in good faith for the benefit of all the owners of the lots in Old Pecos Trail Subdivision.

(3) If the location or arrangement of any sewer disposal system would endanger or interfere with any public or utility facilities or improvements. The decision of the Committee in such cases shall be final. Septic tanks and drainage fields or other sewage disposal systems must meet all government environmental requirements, including E.I.D. regulations.

(4) If the plans and specifications are not in compliance with the provisions of this Declaration.

Section 3. Timing of Approval and Construction.

(a) The Committee shall approve or disapprove such plans and specifications within thirty (30) days after receipt thereof.

(b) Dwelling house construction shall commence not later than ninety (90) days after approval of plans and specifications. In the event construction does not begin within this time period, plans and specifications shall be resubmitted to the Declarant or to the Architectural Control Committee for approval before construction is begun. Once begun, exterior construction of any structure or revegetation or landscaping of any excavated area shall be completed within two hundred forty (240) weather working days. Nothing herein shall prohibit staged construction; in any staged construction of a principal residence, once begun, construction of any stage of construction shall be completed within two hundred forty (240) weather working days; provided further that the initial stage shall not be of less than 1500 square feet, and provided further that upon completion of any stage, the structure which is so built shall have the exterior appearance of finished construction.

(c) No residence placed or erected on any lot shall be occupied in any manner while in the course of construction, or at any time prior to the time when the exterior is fully finished as herein required, and is fully functional for residential purposes. Nor shall any residence be occupied until made to comply with the approved plans, and all other conditions and restrictions herein set forth.

(d) Upon completion of improvements for which plans and specifications have been approved, the owner shall notify the Architectural Control Committee in writing that the work is complete. The Architectural Committee, will, within thirty (30) days of receipt of the Completion Notice, inspect the completed work and take one of the following actions:

(1) Send the owner a notice of approval of work if the work is in conformity and compliance with the approved plans and specifications.

(2) Send the owner a notice of disapproval of work if the work is not in conformity and compliance with the approved plans and specifications, stating the particular grounds for such disapproval and the Owner shall be obligated to take such action as may be necessary to effect such compliance and conformity, without delay.

(3) At the completion of any necessary corrections, the Architectural Committee will then reinspect the work within thirty (30) days to approve or disapprove the correction.

ARTICLE VIII - COMMON SENSE RESTRICTIONS AND REQUIREMENTS

Section 1. Trees, Landscaping, and Gardens. The native growth of the property, including but not limited to cacti, pinon and juniper trees, shall not be destroyed or removed, except such native growth as it may be necessary to remove for the construction and maintenance of roads, driveways, dwellings and other approved structures unless written permission be first obtained from the Committee. When planting is anticipated, the use of drought resistant plantings should be considered. Lawns will be restricted to a maximum of eight hundred (800) square feet. A garden of not more than one thousand (1,000) square feet, for non-commercial purposes, may be maintained, provided that its location is shown on the original plans submitted for improvements, or its location is approved in the manner provided for the approval of plans for structures herein. Decorative or functional vegetation which does not require water in excess of natural precipitation shall not be calculated as part of any garden.

Section 2. Construction. During construction, contractual requirements shall be made of the builder requiring him or her to refrain from damaging or removing trees and other vegetation, except as may be reasonably necessary and unavoidable for clearance of a building site and construction of driveways, parking areas and turnarounds.

Section 3. Driveways.

(a) No private road or driveway shall be constructed until two sets of plans have been submitted to the Committee showing the location, course and width of said private road or driveway and the approval of the Committee to the construction of said private road or driveway has been obtained.

(b) All driveways and private roads shall be surfaced by lot owners with gravel to prevent dust, and maintained so as to reduce erosion and eliminate unsightly conditions.

(c) All driveways shall be graded and sloped for proper drainage.

(d) All driveways shall have culverts large enough for proper drainage. A minimum 18" diameter culvert shall be installed where the driveway crosses the roadside ditch adjacent to the private access road system for the subdivision.

(e) All driveways access to lots must be by way of the subdivision road system. No driveway access is permitted directly to Old Pecos Trail even though lots are adjacent thereto.

Section 4. Utilities.

(a) All electrical service, telephone, and water lines and all other utilities shall be placed underground to all structures, at all locations; connections to utility service in streets shall be installed in or adjacent to the driveway whenever possible. Electrical, telephone and water lines are stubbed out to the utility easement on each lot frontage. No road cuts will be allowed and lot owners must use the

sturbed-cut lines. Further, no cuts will be made in the bar (drainage) ditches along the roads. Any disturbance of natural ground cover and vegetation necessitated by installation of utilities shall be restored by replanting.

(b) Additional utility easements as shown and stated on the recorded plat of the subdivision are imposed on the lots and common area of the subdivision.

Section 5. Set-backs. Unless a variance is allowed by the Architectural Control Committee, no structure shall be erected nor shall any disturbance of natural ground cover and vegetation be permitted within 25 feet of any lot line except for a driveway which shall not be more than 25 feet in width or any place within 25 feet of any lot line. Provided that, with the approval of the Architectural Control Committee, the owners of two or more abutting lots may agree in writing to cluster the principal residents on said lots in such manner that there is less than the otherwise appropriate set-back from one lot line of each such lot, and provided that in no case shall there be any diminution of the set-back from any lot line abutting a lot in the subdivision, the owner of which does not agree in said writing to participate in said clustering.

Section 6. Fences and Walls. All walls and fences are subject to approval by the Architectural Control Committee. Generally, only fences providing enclosures for pets or private gardens shall be permitted. Privacy barriers may be maintained within thirty-five (35) feet of any residence or guest house, if approved as to style by the committee.

Section 7. Trash.

(a) No lot shall be used for the storage or dumping of rubbish, debris, or waste of any kind, or for the storage of any property or thing that will cause such lot to appear in an unclean or untidy condition, or that will be visually offensive or obnoxious, and no substance, thing or material may be kept upon any lot that will emit foul or obnoxious odors, or that will cause any noise that will disturb the peace, quiet, comfort, or serenity of any occupants or owners of lots in the subdivision. All solid waste must be transported to an authorized county landfill site.

(b) Before, during and after construction, the storage of construction material, supplies and equipment shall be prohibited unless placed out of view of other lot owners in the subdivision. No storage yard for any materials other than those commonly and regularly in residential use or for purposes of construction of the infrastructure of the subdivision shall be permitted.

(c) All clothes lines, clothes drying facilities, mechanical and other equipment, wood piles, storage piles, campers, horse trailers, boat trailers, trailer homes, motor coaches, and similar vehicles, shall be walled-in or concealed at all times so that they may not be seen from any point beyond the building site on which they are located.

Section 8. Vehicle Storage.

(a) Extra automobiles, trailers, boats, recreational vehicles and similar mobile structures and vehicles shall be screened from view by means of a coyote fence, wall, or similar treatment. No unlicensed motor vehicle or trailer shall be stored on any lot.

Section 9. Storage Tanks. No elevated tanks other than those erected by Declarant or as approved by the Board of Directors in connection with the water distribution systems of Old Pecos Trail Subdivision shall be erected, placed or permitted on any lot. Any tanks for use in connection with any residence, including tanks for the storage of liquified petroleum gas and fuel oil, gasoline or oil, must be buried or concealed by walls or fences so as to conceal them from view from other lots, roads and streets.

Section 10. Towers.

(a) No derrick or other structure designed for use in boring for oil or natural gas, and no radio or television transmission towers shall be erected, placed or permitted; and the production or extraction of oil, natural gas, petroleum, asphaltum or hydrocarbon product or substances shall not be permitted. This paragraph shall not prohibit home-type television antennas.

(b) No wind-driven machinery for the generation of power or other use or purpose shall be placed on any lot without the prior written approval of the Committee.

Section 11. Animals. Except as provided herein, no animals of any kind may be kept on any lot, whether for personal or commercial purposes. Each lot may have a maximum of two dogs and two cats more than sixteen (16) weeks old. No animals may be kept or maintained on any lot in any manner or number which is a nuisance or offensive to the neighboring lots, whether by reason of noise, habits, odors, or otherwise, anything to the contrary herein notwithstanding. Carnivorous animals such as dogs and cats shall be trained or restrained from interfering with or killing wildlife native to or found in Old Pecos Trail Subdivision and no grazing shall be permitted within Old Pecos Trail Subdivision. No horses shall be allowed in the Old Pecos Trail Subdivision except on Lots 15 and 16. On these two lots, two horses each will be allowed, but only within a fenced area. The Association reserves the right to order the removal of any animals which may be objectionable to residents of other lots in the subdivision. Enclosures for animals shall be subject to approval by the Committee. Small household pets which remain inside the residence on a lot, such as caged birds, aquarium fish, or guinea pigs, shall be allowed at the lot owner's discretion so long as the "nuisance" portions of this provision are not violated.

Section 12. Home Occupations. No business or commercial activity of any nature shall be conducted upon or from any lot, except that so-called home occupations shall be permitted if such activity is inoffensive to owners of other lots in the subdivision.

Section 13. Billboards and Signs. No billboards or advertising signs will be permitted on any lot or on any building except for the name plate of the occupant or any residence upon which his professional title may also be added, but no sign or name plate shall exceed one square foot in size. All signs must be of a uniform shape as designated by the Committee. Provided, however, one signboard not more than six square feet in area may be erected on lot during the construction of a new single-family dwelling and after its completion pending the sale thereof. Thereafter, one sign shall be allowed for the subsequent resale of any house. No signs shall be allowed with respect to resale of any unimproved lot.

Section 14. Exterior Lights. All exterior lights must be located so as not to be directed toward surrounding lots, properties or roads. Bright, glaring lights on rooftops and patio walls or elsewhere are prohibited.

Section 15. Water Conservation. All lot owners are urged to practice indoor and outdoor water conservation measures. All construction must comply with the published water conservation criteria of the County of Santa Fe.

Section 16. Drainage. Surface drainage courses within lots are to remain in their natural state, except for diversion approved by the Committee. Governmental authorities reserve the right to alter and maintain drainage systems so as to protect roadways.

Section 17. Conservation of Energy. As different types of energy conservation systems become effective, their use will be en-

the Board of Directors, and shall include charges for electricity, other utilities, and general and regular maintenance of all equipment in said system.

Section 8. Broad Authority for Board of Directors. The Board of Directors shall have broad and general authority relating to the water distribution and production system in order to assure continued service to all lot owners, including the right to make special assessments as provided in this declaration and the bylaws of the Association.

Section 9. Limit of Declarant's Obligations to Provide Water. The Declarant has drilled and placed in service the first four (4) water wells and water distribution system. The Association shall have all responsibility for maintaining, improving, and repairing the water production and distribution system.

ARTICLE X - WATER CONSERVATION

Section 1. Water Saving Restrictions. All lot owners and occupants shall refrain from excessive water use and waste. All lot owners and occupants shall in good faith employ such water-saving techniques as may be reasonable in the circumstances. In addition to the foregoing, the following restrictions shall apply:

(a) Total annual water withdrawal shall not exceed 0.25 acre foot per residential user.

(b) No evaporative coolers shall be used.

(c) All showers shall be equipped with shower heads designed to pass not more than 3 gallons of water per minute. Variable flow heads should not pass more than 3 gallons of water per minute at maximum setting.

(d) All faucets shall be washerless and equipped with aerators or other flow restricting devices designed to pass not more than 4 gallons of water per minute; however, faucets used for dishwashers, washing machines and bathtubs may be excluded from this requirement.

(e) All water closets shall be designed to consume no more than 3½ gallons of water per flush. This should be in accordance with the manufacturer's specifications.

(f) Water systems within houses shall be designed to deliver an average pressure of 50 pounds per square inch (psi) and a maximum pressure of 60 psi, as measured at the discharge site of the pressure reducing valve for each structure.

(g) Irrigated lawn areas shall be no more than eight hundred (800) square feet per lot except for native vegetation requiring only initial irrigation. Additional lawn space could be maintained only if irrigated with a cistern or wastewater recycling system.

(h) All hot water lines shall be insulated against heat loss.

ARTICLE XI - GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any provision of this Declaration by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Duration/Amendment.

(a) The covenants and restrictions of this Declaration shall run with and bind the land until January 1, 2005, after which time they shall be automatically extended for successive periods of ten (10) years; provided, that the owners of fifty-one percent (51%) of the lots subject to this Declaration may, by executing and acknowledging an appropriate instrument not more than one year and not less than ninety (90) days prior to the expiration of the initial said twenty (20) year period or prior to the expiration of any ten (10) year extension period thereafter, release the land subject hereto from any or all of the restrictive covenants contained in this Declaration, or change, amend, modify or revise any of said restrictive covenants, except as hereinafter prohibited.

(b) This Declaration may be amended during the period of initial development and construction by the Declarant or, by a vote of a majority of the entire Board of Directors, and the Declarant or the Board by majority vote, also have the authority to waive or modify setbacks, encroachments or other mechanical variances; otherwise this Declaration may be amended by an instrument approved by not less than fifty-one percent (51%) of the membership present in person or by proxy, at a meeting called for that purpose. Every amendment must be recorded. Provided, however that the power to amend this Declaration shall not authorize any amendment (1) permitting the sale, conveyance, lease, transfer, mortgage, pledge, granting of any deed of trust, or hypothecation of the common areas conveyed to the Association by the Developer, (2) authorizing the alteration of the requirement that eighty percent (80%) of the members assent in writing to the dissolution of the Association, or (3) altering the right of each lot owner to membership in the Association with rights appurtenant thereto.

Section 4. Easements Generally. There is hereby created a blanket easement upon, across, over and under all of the common areas for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewers, gas, telephones, cable television and electricity. Any damage caused by or resulting from the use of such easement shall be repaired by the party causing such damage, so that the landscape is restored to its original condition. By virtue of this easement, it shall be expressly permissible for the company providing service to erect and maintain the necessary equipment on common area and to affix and maintain electrical and/or telephone wires, circuits and conduits, on and under the common area. An easement is further granted to all police, fire protection, ambulance and all similar persons to enter upon the streets and common areas in the performance of their duties. Further, an easement is hereby granted to the Association to enter into or across, or over the common area to perform the duties of maintenance and repair of the common area. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on said common area except as approved by the Declarant or a majority of the Board of Directors. Should any utility furnishing a service covered by the general easement herein provided request a specific easement, Declarant or the Association may grant the same by a separate recordable instrument. Declarant or the Association shall have the right to grant such easements on said common area without conflicting with the terms hereof or consent of the owners being required. The easements provided for in this paragraph shall in no way affect or restrict any other recorded easement on said common area.

couraged with respect to all structures. New solar systems, wind systems and other energy generating systems should be considered as they become feasible and efficient.

Section 18. No Resubdivision of Lots. No resubdivision or replatting of any lot in this subdivision shall be permitted during the period in which the covenants and restrictions stated in this Declaration are in effect, nor shall ownership of any lot be partitioned or the ownership of any part thereof be severed from any other part.

Section 19. Hunting and Firearms. No hunting shall be permitted within the subdivision, and no discharge of firearms shall be permitted except in self-defense.

Section 20. Mailboxes and Street Address Signs. The Association reserves the right to establish a common format for street address signs and rural route delivery mail boxes. In the absence of specific criteria from the Association, lot owners must submit mail box and street address signs to the Architectural Control Committee for approval.

Section 21. Water Wells Prohibited. No water wells whatsoever may be drilled within the subdivision except by the Association as hereinafter provided. Every purchaser of a lot within the subdivision specifically waives his right to drill a domestic water well.

Section 22. Private Roads. All roads in the Pecos Trail Subdivision are private. No mini-bikes, motorcycles, off-road vehicles or any unlicensed vehicles of any kind shall be driven or permitted on the subdivision roads or common areas except for ingress and egress to an owner's residence. No person who is not licensed to operate motor vehicles by the State of New Mexico, or other state, shall be permitted to operate any motor-driven vehicle on the roads of the subdivision. No motor-driven vehicle shall be driven or permitted in subdivision except on the road system or the driveways within the subdivision.

ARTICLE IX - WATER DISTRIBUTION SYSTEM

Section 1. Establishment of Water System. Declarant has established a water production and distribution system, including water wells, pipes, pumps, casings, storage tanks, and other facilities. Said water system is based on the concept of sharing wells among individual lot owners. Declarant has drilled, equipped, and established said water system. The association shall be responsible for operating the water system, and the affairs of the water system shall be governed by the board of directors, which shall have broad authority regarding the operation of said water system.

Section 2. Wells; Service to Lots. Generally, one well provides water to six lots, as follows.

- (a) The well on lot 1 services lots 1, 2, 3, 4, 5, and 6.
- (b) The well on lot 8 services lots 7, 8, 9, 10, 11, and 12.
- (c) The well on lot 15 services lots 13, 14, 15, 16, 17, and 18.
- (d) The well on lot 4 services lots 19, 20, 21, 22, 23, and 24.

The well locations, or any future well location, or lot assignments for well service shall be subject to change, at the discretion of the Board of Directors, based on water availability, and with due regard for any problems which may develop with respect to individual wells, and other problems in providing water to the lots in the subdivision.

Section 3. Easement for Wells, Storage Tanks and Distribution Systems. There shall be a blanket easement over all lots and common areas for location of water wells, storage tanks, and distribution equipment. Generally, the location of existing wells and any other locations which are subsequently determined to be necessary for drilling wells to provide water to the subdivision shall be allowed on any portion of any lot, as determined by a qualified hydrologist. In addition, there shall be easements for connection of pipes or other distribution equipment, as well as storage facilities, from wells to water distribution lines. The declarant shall provide water service as close to the lot line of each lot as is possible, and any additional charge to connect the water system to any structure on any lot shall be borne by the lot owner.

Section 4. Interconnection of Wells and Distribution Systems. The wells and the locations specified above shall generally serve the lots indicated above. However, the entire water system shall be interconnected so that in the event of failure or breakdown of any well, all owners of all lots shall have water available to them through the system.

Section 5. Named Owners of Wells. For purposes of any governmental agency regulating the use of water or water wells, the owners of any lot on which a well is located, or may be located in the future, may be required to place said well in the name of the lot owner. All owners of lots on which wells are located shall cooperate with the Association, when necessary, by registering said well in the name of the lot owner, or in any other way said registration is required. Any such lot owner shall have only those rights to use of water from said well as other lot owners in the subdivision. Any liability accruing to such a lot owner as a result of a well being registered in the name of the lot owner shall be a liability of the Association, and the Association shall indemnify any such lot owner for any such liability.

Section 6. Metering.

(a) The declarant will provide totalizing meters at all wells to measure the production of water by each well, for purposes of reports which may be required to be made to the State Engineer, and for any other lawful purpose.

(b) Lot owners shall provide totalizing meters, at their expense, which shall be subject to reading and inspection by the Association and governmental agencies at reasonable intervals, and which shall be used to determine the usage of each lot owner for purposes of charges for expenses of water usage, as specified below; lot owners shall also bear any expense for pressure tanks, and connection of their structures to the water system.

Section 7. Charges for Water Use.

(a) There shall be a general annual water assessment as part of the annual Association assessment levied against lot owners by the Board of Directors. Said assessment shall be determined by the Board of Directors, and shall be subject to all provisions in this Declaration, the Bylaws or other documents relating to this subdivision, relating to liens and other methods of collection of said assessments.

(b) In addition to the general, annual water assessment indicated above, each lot owner shall be charged for the normal operational expenses associated with usage of the water well systems. Said charges shall be made quarterly, or as otherwise determined by

Section 5. Report by Lot Owners of Lienholders. Each lot owner shall report the name and address of each holder of a first mortgage on such lot, if any, to the secretary of the Association immediately upon the imposition of any such first mortgage lien.

Section 6. Lienholders; Notices; Other Rights. Any holder of a first mortgage or other equivalent lien on any lot whose name and address has been filed with the Association shall be entitled to:

- (a) Inspect the books and records of the Association during normal business hours;
- (b) Receive, upon written request, a copy of any annual published financial statements, audited and unaudited, within a reasonable time (not to exceed 90 days) after such statement is prepared and accepted;
- (c) Receive, upon written request, a notice of all meetings of the Association and to designate a representative to attend such meetings;
- (d) Receive notice from the Association of the intention to abandon or terminate the Association;
- (e) Receive notice of meetings to be held for the purpose of making any material amendment in the Declaration, Bylaws, or the Articles of Incorporation of the Association;
- (f) Receive notice of any decision by the Association to terminate any professional management contract and assume self-management;
- (g) Receive, upon request, copies of policies of insurance maintained by the Association upon the common properties for fire, extended coverage, liability and fidelity bonds upon officers or employees. The amount of such coverage shall be deemed adequate by the lender by the closing of the loan, and such coverages shall not be reduced in amount during the life of such loan without prior written consent of the lender.

IN witness whereof, the foregoing Declaration has been executed this 19th day of April, 1985, by John L. Lion, Executive Vice President of Calimo, Inc., a California corporation, on behalf of said corporation.

CALIMO, INC.
A California corporation

By /s/ John L. Lion
JOHN L. LION
Executive Vice President

EXHIBIT A

That portion of Section 20, Township 16 North, Range 10 East, and the Sebastian De Vargas Grant, more fully described as follows: Beginning at U.S.G.L.O.S. brass cap marking angle point 18 of the Sebastian De Vargas Grant and identical to a common corner between Sections 20 and 21, T. 16 N., R. 10 E., thence N. 43° 30' 00" W., 354.69 feet; thence N. 11° 28' 33" W., 24.18 feet; thence S. 64° 32' 36" W., 2,932.27 feet; thence N. 25° 28' 27" W., 796.40 feet; thence N. 25° 20' 22" W., 802.04 feet; thence N. 64° 34' 02" E., 3,331.71 feet; thence N. 10° 55' 33" W., 263.58 feet; thence due EAST 620.80 feet to U.S.G.L.O.S. brass cap marking the quarter corner between said Sections 20 and 21 T. 16 N., R. 10 E., and thence S. 00° 04' 15" E., 2,154.07 feet to the point and place of beginning. All as shown on plat of survey by Professional Land Surveying, numbered D-56, dated July 1980, and certified by Robert L. Benavides, N.M.L.S. No. 5824.

NOTE: The original of this document was recorded in the County Clerk's Office, County of Santa Fe, State of New Mexico, on May 3, 1985 as Document No. 566-566 in Book 520, Pages 56 through 79.