

OFFICE OF THE
COUNTY CLERK

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McKINLEY COUNTY

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DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR

McKINLEY COUNTY, NEW MEXICO

THIS DECLARATION, made this 21st day of March, 1984,
By the Box S Ranch Joint Venture, hereinafter referred to as
"Declarant":

W I T N E S S E T H :

It is desirable to impose a general plan for the improvement and development of Box S Ranch Subdivision and such additional real property as may be annexed thereto and the adoption and establishment of covenants, conditions and restrictions upon said real property and every lot and portion thereof and upon the use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of said tract; and

WHEREAS, Declarant has deemed it desirable for the efficient preservation of the value, desirability, and attractiveness of said tract and such additional property as may be annexed thereto, pursuant to the provisions of this Declaration, to create an association at such a time when fifty percent (50%) of the lots in Unit 1, Box S Ranch Subdivision have been purchased and/or leased that will be responsible for and assigned the powers of maintaining and administering the solid waste land fill, the accessibility to all lots, the maintenance of the common area, the enforcement and administration of these covenants, and the collection and disbursement of funds pursuant to the assessment and charges herein-after created and referred to.

NOW, THEREFORE, Declarant hereby covenants, agrees, and declares that:

Box S Ranch Subdivision, Unit 1 each of the lots therein and such additional real property as may be annexed thereto shall be held, sold and conveyed subject to the following covenants, conditions, restrictions, easements, liens and charges which are hereby declared to be for the benefit of the whole subdivision and such additional real property as may be annexed thereto, the owners thereof and their successors and assigns. Said covenants, conditions, restrictions, easements, liens and charges

shall run with the said real property and shall be binding on all parties having or acquiring any right, title or interest in said real property or any part thereof and shall inure to the benefit of each owner thereof and are imposed upon said real property and every part thereof and are imposed upon said real property and every part thereof as a servitude in favor of each and every parcel thereof as the dominant tenement or tenements. As such, all property owners will be required to be a member of this association; the type of membership and assessment of charges to be determined by the Association dependent upon resident and non-resident status of owner.

ARTICLE I

DEFINITIONS

Whenever used in this Declaration, the following terms will have the following meanings:

Section 1. "Association" shall mean and refer to the Box S Ranch Subdivision Homeowners' Association, a nonprofit association associated under the laws of the State of New Mexico responsible for the administration and enforcement of these covenants, conditions and restrictions.

Section 2. "Declarant" shall mean and refer to the Subdivider until such time as the formation of the Association, according to Article I, Section 1, hereof.

Section 3. "Property" and "lots" shall mean and refer to all of the real property known as, described, and included in Box S Ranch Subdivision, Unit 1, and such additional real property as may be annexed thereto.

Section 4. "Common area" and "Common facilities" shall mean all real and personal property owned, leased, controlled or occupied by the Association for the common use and enjoyment of the members of the Association.

Section 5. "Lot" shall mean and refer to a recorded lot within Box S Ranch Subdivision or such additional real property as may be annexed thereto, but shall not mean or include any common area.

Section 6. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 7. "Owner" shall mean and refer to the 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 8. "Deed of Trust" shall mean a document by which the conveyance of any lot or other portion of the property is made to secure the performance of an obligation.

Section 9. "Living Unit" shall mean and refer to any building or portion of a building situated on the property designed and intended for use as a single residential unit and mobile homes situated on the property.

Section 10. "Renter" shall mean and refer to one or more persons or entities who are the Lessee of all or a portion of any lot or living unit within Box S Ranch Subdivision or such additional real property as may be annexed thereto.

ARTICLE II

USE RESTRICTIONS

Section 1. Uses Other Than Residential Prohibited. All of the lots in Box S Ranch Subdivision and tracts within such real property as may be annexed thereto shall be used exclusively for private, single-family residential purposes, condominiums, low-rise apartments not exceeding 4 units, and no part of any such lot shall be used directly or indirectly, for any business or profession or for any commercial, manufacturing, mercantile, mail-order, storing, vending, civic, educational, religious, musical, medical, hospital, cemetery, crematory, institutional, or other non-residential purpose, for the drilling thereon for oil, gas or any other mineral substance; for the manufacture or sale of malt, vinous or spirituous liquors or for the carrying on of any noxious activity or pursuit of any act or thing which may be or become an annoyance or nuisance to the neighborhood.

Section 2. Livestock Prohibited. No horses, cows, cattle, goats, or sheep shall be kept or permitted to be kept on any property or lots except that the Declarant may grant permission to owners of large lots to keep horses and cows. No dogs, cats, birds, poultry, bees, horses, rabbits or other pets shall be raised or traded as business, either directly or indirectly, on any of said properties or lots. No pets shall be kept which, in the opinion of the Association, disturb the neighborhood by excessive noise, or, which, if other than dogs, cats, or birds, are allowed to leave the premises while not under owner's control. Four (4) horses and/or cows will be permitted where full time residents and daily care is provided.

Section 3. Construction Diligently Prosecuted. The work of construction of any building or structure shall be prosecuted diligently and continuously from the time of commencement until fully completed and all structures, once the foundations are erected, shall be completed in 18 months.

Section 4. Occupancy of Unfinished, Temporary or Mobile Structures Prohibited. No residence in any manner shall be occupied or lived in until the exterior is made to comply with all requirements set forth herein. No building or structure anywhere on any properties or lots subject to the

Jurisdiction of the Declarant, other than a completed residence, shall ever be lived in or used for dwelling purposes, including mobile homes, campers, tents, shacks, outbuildings or other structures. Nothing herein shall prohibit a contractor's tool house and his equipment being used during construction and then removed or the temporary use of a mobile home, or approved design, for such limited periods as the County of McKinley shall prescribe by ordinance and as may be approved by the Declarant.

A. Camping permitted under following conditions:

1. Owner must be present at all times.
2. Camping not to exceed 21 days in any one calendar month.

Section 5. Limitation on Use of Signs. No signs or billboards of any kind shall be erected, permitted or maintained on any properties or lots or on any county right of way adjoining such properties or lots except upon prior written approval by the Declarant, which approval in the discretion of the Declarant, may be revoked at any time.

However, the following signs may be displayed without such specific approval, under the responsibility of the landowner:

- (a) Provided plans have been duly approved by the Declarant, professionally lettered signs naming the architect, construction company or subcontractors may be displayed on the site during actual construction, but no such sign shall exceed the dimensions 24" x 36".
- (b) One "For Sale" or "For Lease" sign only may be maintained at any time on a lot, building site, or building, provided it does not exceed the dimensions of 18" x 24", is professionally lettered, and contains no price but only the name, address, and telephone number of the owner or his duly authorized broker. Smaller riders may be added to the main sign provided they do not contain words or text tending to depreciate values or impair the character of the neighborhood such as "sacrifice", "special price", "your terms", etc.
- (c) Up to four pennants and one "open" sign not exceeding 18" x 24" may be displayed on the premises while a sales representative is actually present.
- (d) After a sale a broker may continue his sign with a "sold" rider attached for 30 days, after which it must be removed. Signs not authorized in writing by the Association or not conforming to the above exceptions may be removed summarily and destroyed without notice by the Association. Signs that are allowed to deteriorate and become unsightly shall be considered unauthorized, even if originally approved or permissible.

Section 6. Privies. No privy shall be erected, maintained, or used upon any properties or lots except a temporary privy during the course of construction of a building. Any lavatory, toilet, or water closet shall be enclosed and located within a building permitted to be erected on said land as herein provided for.

Section 7. Solid Waste Land Fill. A solid waste land fill for the disposal of all solid waste will be established by the Declarant in Section 27 of Unit 1, Box S Ranch Subdivision. Declarant and subsequently the Association will be responsible for the maintenance and administration of such land fill in compliance with all county regulations in regards to its use, maintenance of health standards, and administration. The Declarant and subsequently the Association will be responsible for the assessment of necessary fees in order to maintain said land fill.

Section 8. Land to be Kept Cleared of Rubbish. Each landowner shall keep his property free and clear of all debris and rubbish (including rubbish dumped by others), shall prevent it from becoming unsightly by reason of deterioration of paint or other materials and in general, shall do all other things necessary or desirable to keep his property neat, clean, attractive, and in good order. If a garden or lawn has been installed, it shall be adequately cultivated, mowed and watered.

Section 9. Reservation of Declarant's Rights. The Declarant, in carrying out the improvements and development of the subdivision, shall have the right to remove or add to any soil on any land owned by the Declarant and shall have the right of ingress to and egress from all other properties or lots for the purpose of grading, constructing, and completing the street improvements, bridle trails, the installation of utilities, and the carrying out of any and all other things necessary to complete the general plans of improvement. Only Declarant, or Declarant's duly authorized agent or agents, may conduct tract business (development of the subdivision or sale of lots therein) or erect, place, and maintain signs, trailer officers, or buildings, construction equipment and material yards in connection with the conduct of each business.

Section 10. Tanks and Receptacles. Every tank for the storage of fuel installed outside any structure on the property or lots shall be either buried below the surface of the ground or screened to the satisfaction of the Declarant. Every outdoor receptacle for ashes, trash, rubbish, or garbage shall be installed underground, screened or so placed and kept so as not be visible from any street or from anywhere on the common area at any time except during refuse collections.

Section 11. Mining or Drilling. No drilling, refining, quarrying, or mining operations of any kind shall be permitted upon or in any lot or any portion of the common area.

Section 12. Radio Stations and Antennas. No radio station or short-wave operators of any kind shall operate from any lot or residence so as to disturb radio and TV reception of other lot owners. No exterior television or radio antenna of any kind shall be constructed or erected on any lot or residence after such time as a community antenna television system has been made available to residences at rates charged for installation in monthly service commensurate with rates charged for comparable systems.

Section 13. No structure of any kind shall be allowed to be constructed on bluffs.

Section 14. No discharge of firearms shall be allowed within Box S Ranch Subdivision.

ARTICLE III

BUILDING AND PLANTING RESTRICTIONS

Section 1. Single-Family Residences. On each lot or property in Box S Ranch Subdivision, or any other tracts annexed thereto, not more than one detached, single-family residence shall be erected, constructed or maintained, together with the customary accessory out-buildings appurtenants thereto. Garages may be attached to, or detached from, the residence. Not lots shall be divided. Buildings supported on posts shall have exterior wall material covered to grade or lattice having sixty percent (60%) solid-area surface.

Section 2. Moving of Buildings onto Property. No residence or other structure shall be moved onto any lot or properties of said tract or tracts except as a temporary measure as approved by the Declarant.

Section 3. Lots Not to be Used for Storage. No lot in Box S Ranch Subdivision or any tract annexed thereto shall at any time be used for open air storage of building materials, vehicles, implements, tools, junk, trash or any other things whatsoever; provided, however, that building and landscaping materials, tools, or equipment may be placed and maintained on any lot or building as provided for in Article II, Section 3, of this Declaration, and for use in such construction; provided, further that such construction shall commence within a reasonable time and shall be completed within 18 months from time of laying foundations. Should such construction not commence within such reasonable time, the materials, tools, or equipment, must be removed forthwith upon request of the Association.

Section 4. Minimum Size of Residence. No residence shall be erected on any lot or property which shall have a floor area of less than 600 square feet of enclosed livable area, excluding outside or sun porches, patios, garages, or carports.

Section 5. Front and Side Set-Back Lines. No residence garage, or any part thereof, including porches, chimneys, steps, balconies and/or other architectural features, and no other structure (except clothes line poles, pool heaters, fences, walls, and the like, provided their location has been duly approved by the Declarant) shall be erected, placed, permitted, and/or maintained on any lot or property site in said tract or tracts at a location leaving less than a total of 20 feet from each of the two side lines and less than 10 feet from the rear line, measured from eave line to lot line. Front set-backs shall be 100 feet unless approved by Declarant.

Section 6. Height of Fences, Walls, and Planting Limited. No fence, with hedge or planting (with exception of trees) exceeding 7 feet in height above the finished surface shall be permitted or maintained on lot or property in said tract or tracts.

No trees or shrubs shall be planted or placed on any lot or property in said tract or tracts which substantially obstruct or diminish the view from any other lot or property in said tract or tracts. Upon a finding made by the Association that a view is substantially obstructed or diminished by trees or shrubs on any portion of any such lot or property, the owner thereof, upon written notice sent by the Association, shall remove, cut down or cut back any such trees to the extent specified by the Association within 30 days of such notice.

Section 7. Roof Requirements. No white or shiny material, including shiny metal, shall be used as roofing material. Owners are encouraged to select a fire-resistant material.

ARTICLE IV
GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any owner or the successor in interest of an owner, shall have the right to enforce by proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration or any amendment thereto, including the right to prevent the violation of any such restrictions, conditions, covenants or reservations and right to recover damages or other dues for such violation; provided, however, that with respect to assessment liens, the Association shall have the exclusive right to the enforcement thereof.

Section 2. Severability. Invalidation of any one of these covenants, conditions or restrictions by judgement or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Term. The covenants, conditions, and restrictions of this Declaration shall run with and bind the lots and living units and shall inure to the benefit or an be enforceable by the Association or the owner or renter of any lot or living unit or any leasehold interest therein subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of forty (40) years from the date this Declaration is recorded, after which time said covenants, conditions, and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed by a majority of the then owners of the lots and living units has been recorded, agreeing to change said covenants, conditions and restrictions in whole or in part.

Section 4. Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plant for the development of a residential community or tract and common areas.

The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to as resolving questions or interpretation or construction.

Section 5. Amendments. This Declaration of Covenants, Conditions, and Restrictions may be amended only by the affirmative assent or vote of owners having not less than seventy-five percent (75%) of the voting power of the Association, and further, this Amendment provision shall not be amended to allow amendments by the assent or vote of owners having less than seventy-five percent (75%) of such voting power.

Section 6. Mortgage Protection Clause. No breach of the covenants, conditions, or restrictions herein contained nor the enforcement of any lien provisions herein, shall defeat or render invalid the lien of any deed of trust made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any owner whose title is derived through foreclosure of trustee's sale or otherwise.

Section 7. Right of Entry to Correct Violations. The violation or breach of any of the covenants, conditions or restrictions shall give the Association the right to enter upon the lot upon or as to which such violation or breach exists and summarily to abate and remove at the expense of the owner thereof, any structure, thing, or condition that may be or exist thereon contrary to the letter, intent, spirit or meaning of these restrictions including the right to remove and destroy without notice any unauthorized sign or billboard. For those purposes officers of the Association may enter upon and inspect within reasonable hours, any or all lots in Box S Ranch Subdivision or in any tract annexed thereto, either improved or unimproved, to the extent reasonably necessary to determine whether such violation or breach has occurred or is about to occur. The party or parties making such entry thereby shall not be deemed guilty of any manner of trespass or held liable for damages resulting from such entry, inspection, abatement, removal or destruction.

Section 8. Nuisance. The result of every act or omission whereby any provision, condition, restriction, covenants, easement or reservation contained in this Declaration is violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result and may be exercised by the Declarant, the Association or any other land owner in the tract. Such remedy shall be deemed cumulative and not exclusive.

Section 9. Assignment of Powers. Any or all of the rights or powers of Declarant herein contained as to any part of Box S Ranch Subdivision and any other tracts annexed thereto may be delegated, transferred, assigned or conveyed to any person, corporation, or association, and, wherever Declarant is herein referred to, such reference shall be deemed to include Declarant's successors as owners of unsold land.

215119

Section 10. Failure to Enforce not a Waiver. Each and all of the covenants, conditions, and restrictions contained in this Declaration shall be deemed and construed to be continuing at the extinguishment of any right for any breach shall not impair or affect any of said covenants or restrictions so far as any future or other breach is concerned. The failure by the Declarant, the Association or any owner of any lot in Box S Ranch Subdivision or any tracts within such real property as may be annexed thereto or their legal representatives, heirs, successors or assigns at any time or upon any occasion, to enforce any of said restrictions, covenants and conditions, in whole or in part, shall in no event be deemed a waiver of the right to do so thereafter, nor shall any waiver, change, or exception granted to any owner give rise to a claim by any other owner to be granted the same or a similar waiver, change or exception.

ARTICLE V

GENERAL PROVISIONS

Section 1. Singular Includes Plural. Wherever the context of this Declaration requires same, the singular shall include the plural and the masculine shall include the feminine.

215119

"This conveyance is made and accepted and said realty is hereby granted upon the covenants, conditions, restrictions and reserving the easements set forth in that certain Declaration of Restrictions recorded in Book Page of Official Records in the office of the McKinley County Recorder, all of which are incorporated herein by reference to said Declaration with the same effect as though fully set forth herein."

Box S Ranch, A Joint Venture

James J. Lane
Blanche Jones
Ronald W. Thomas

State of New Mexico
County of McKinley

The foregoing instrument was acknowledged before me this 11th day of May, 19 54 by

Ray M. Calver
Notary Public



My Commission Expires: 10/25/86

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May 11, 1954
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Boiler Chamber, Deep