

AMENDED AND RESTATED
DECLARATION OF
PROTECTIVE COVENANTS, CONDITIONS
AND RESTRICTIONS OF
THE FAIRWAY VILLAGE SUBDIVISION

WHEREAS, Bright View Land Company (as “Declarant”) caused a Declaration of Protective Covenants, Conditions and Restrictions (the “Covenants”) to be recorded in Book 348 at pages 353-369 of the records Dona Ana County, New Mexico;

WHEREAS, Covenants were amended by the Amendments to Protective Covenants, Conditions and Restrictions of the Fairway Village Subdivision (the “First Amendment”) which were filed of record on March 23, 2009, as Instrument #0907599 in the Records of Dona Ana County, New Mexico;

WHEREAS, certain amendments to the Covenants (the “Second Amendment”) were adopted by a two-thirds majority vote of the members present at a meeting of the Fairway Village Neighborhood Council on October 18, 2009, at which a quorum was present; and

WHEREAS, the Board of Directors of Fairway Village Neighborhood Council, Inc. (the “Council”) desires to set forth herein the entire Covenants, including the First Amendment and the Second Amendment

NOW, THEREFORE, the Board of Directors of the Fairway Village Neighborhood Council, Inc. hereby restates the Covenants as amended by the First Amendment and the Second Amendment:

ARTICLE I

PURPOSE OF COVENANTS

1. General Requirements. It is the intent, duly expressed in this instrument, that the lands within the Fairway Village Subdivision be developed and maintained as a highly desirable residential area. It is the purpose of these covenants that both the natural and the man-made beauty of the Fairway Village Subdivision shall always be protected and preserved insofar as is possible in connection with the uses and structures permitted by this instrument. It is of primary intent that the privacy and views of each home site in the Subdivision shall be protected insofar as is possible.

ARTICLE II

DEFINITIONS

1. Lot or Lots shall mean and refer to one or more of the 67 individually numbered lots shown on the plat of the Fairway Village Subdivision.

2. Subdivision shall mean and refer to the Fairway Village Subdivision.

3. Common Areas shall mean and refer to all of the land within the Subdivision with the exception of the Lots; Common Areas include the private drive, the entry gates, the activity path, the park, the lift station, the drainage ponds, and the drainage channels, all of which exist for the mutual benefit of the Owners of Lots in the Subdivision.

4. Right-of-Way shall mean and refer to both the paved and unpaved portions of the private drive located in the front of each Lot.

5. Committees shall mean and refer to the Design Control and Nominating Committees of the Council.

ARTICLE III

THE FAIRWAY VILLAGE NEIGHBORHOOD COUNCIL, INC.

1. Membership in the Fairway Village Neighborhood Council. All persons or other parties who own or acquire any of the Lots in the Fairway Village Subdivision, by whatever means acquired, shall be considered to be Owners and shall automatically become Members of the Fairway Village Neighborhood Council, Inc. in accordance with the Articles of Incorporation and the Bylaws of the Council, and as the same may be duly amended from time to time and filed or recorded in the Doña Ana County records.

2. Duties. The responsibility for maintaining, repairing or replacing the Common Areas resides with the Fairway Village Neighborhood Council, including the levying of any assessments necessary for their maintenance and repair.

3. Covenant for Maintenance Assessments. Each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Fairway Village Neighborhood Council annual assessments or charges established by the Council in accordance with Paragraph 4 of this Article. The assessments levied by the Council upon the Lots shall be used exclusively for the purpose of maintaining and repairing the Common Areas referred to in Paragraph 1 of this Article shall include but not be limited to the cost of labor, equipment, materials, and supervision necessary for the task. The Board of Directors may allocate a portion of the annual assessment to a reserve for maintenance, repair or replacement of the Common Areas or for unforeseen expenses.

4. Annual Assessments. The Board of Directors of the Fairway Village Neighborhood Council shall fix the annual assessment within said range as it deems necessary at its discretion. From and after January 1, 2006, the minimum or maximum annual assessment

may be decreased or increased by up to ten percent annually by the assent of two-thirds of the voting Members who are voting in person or by proxy at a Council Meeting. The 2008 Annual Assessment of \$321.00 is the baseline for future assessments.

5. Special Assessments. The Fairway Village Neighborhood Council may adapt a Special Assessment for specific projects. The proposal for a Special Assessment shall state the scope of the project, itemize the costs of the project and set a timeline for completion of the project. Approval of a Special Assessment shall require an affirmative vote of two-thirds (2/3rds) of the Members of the Fairway Village Neighborhood Council.

ARTICLE IV

DESIGN CONTROL

1. Design Guidelines. Design controls for the Fairway Village Subdivision are appended to these Covenants as Appendix A and are a part hereof; and the Design Controls shall be followed by all Owners of Lots within the Subdivision. In order to achieve a harmony of design within the Subdivision so that the reasonable expectations of Owners regarding improvement and beautification of all property can be fulfilled for the benefit of all Owners, the design of all houses, walls, fences, and front-yard landscaping, as well as additions and alterations thereto, within the Subdivision, shall be performed by a builder, designer, or architect approved by the Design Control Committee, which approval shall not be unreasonably withheld, and such design shall be in accordance with the Design Controls for the Subdivision.

2. Appointment Duties. The Board of Directors of the Council shall appoint from two to five persons to serve as the Design Control Committee for the Subdivision. The Design Control Committee shall have the duty and the power by the exercise of its best judgment to see that any construction on any Lot conforms to and harmonizes with the design theme of the

Subdivision and abides by the Design Controls.

3. Approval of Plans by the Design Control Committee. No improvements of any kind, including but not limited to the houses, sheds, outbuildings, swimming pools, parking areas, fences, walls, garages, storage structures, patios, decks, carports, driveways, antennae, flagpoles, curbs and walks, solar energy systems, or additions thereto, shall be constructed or installed upon any lands within Fairway Village Subdivision, nor may landscaping be performed on any Lot, unless one complete set of plans for such construction or landscaping are submitted to the Design Control Committee and unless the plans are approved in writing by the Design Control Committee prior to the commencement of such work. In the event that the Design Control Committee fails to take any action within fifteen days after complete plans for such work have been submitted to it and a signed receipt issued, then all of such submitted plans shall be deemed to be approved. All submissions, approvals, and/or rejections shall be submitted in writing, shall be dated, and shall be signed for as proof of receipt. In the event that the Design Control Standing Committee rejects any plans, the Committee is required to state the reason(s) for rejection. Upon resubmittal of plans, the Committee must respond within ten days.

Application to Doña Ana County for a Building Permit shall not be made prior to approval of plans by the Design Control Committee. The Design Control Committee shall reject any plans submitted to it that are not sufficient for it to exercise the judgment required of it by these Covenants.

The Design Control Committee shall monitor all construction within the Subdivision to help see to it that trash and debris are disposed of properly and that no damage is done to the Common Areas or neighboring Lots during construction; and to this end the Committee shall, at the time of its approval of plans for construction on a Lot, collect a damage deposit of \$250.00 to

be used by the Committee at its sole discretion for clean up and/or repair made necessary by any construction. This deposit shall be held by the Committee and returned to the Owner of the Lot upon completion of construction, less any sums expended by the Committee for the clean up and/or repair referenced herein. In the event that the deposit is not sufficient to cover the cost of the clean up and/or repair, the Committee can require an additional damage deposit; or the Board of Directors of the Fairway Village Neighborhood Council may charge the balance of the cost of the clean up and/or repair to the Owner of the Lot as a special assessment against the Lot, to be collected in the manner of other assessments as provided in the Bylaws of the Fairway Village Neighborhood Council and by any rules and regulations passed by the Council. The Design Control Committee urges each Lot Owner to require contractors working for the Owner to control trash and debris during periods of construction. Specifically, the Covenants require that a trash dumpster and a portable toilet be located on each Lot –and not in the Common Areas or Right-of-Way – during the construction of a house on the Lot. Furthermore, these Covenants strictly forbid the following practices: unloading or storing construction materials, including plants or landscaping materials of any kind, within any part of the Common Areas, including the private drive, or on a neighboring Lot; rinsing of concrete trucks anywhere in the Subdivision except on the Lot to which the delivery has been made; and parking on any Lot without permission of the Owner of the Lot.

4. Design Control Committee Not Liable. The Design Control Committee shall not be liable for damages to any person(s) or party submitting any plans for approval, or to any Owner(s) of a Lot within the Fairway Village Subdivision, by reason of any action, failure to act, approval, rejection, or failure to approve or reject, with regard to such plans. Any person(s) or party acquiring title to any Lot in the Fairway Village Subdivision, or any person(s) or party

submitting plans to the Design Control Committee for approval, by so doing, does agree and covenant that he will not bring any action or suit to recover damages against the Design Control Committee, its members as individuals, or its advisors, employees, or agents.-

5. Written Record. The Design Control Committee shall keep and safeguard for at least four years complete permanent written records of all applications for approval (including one set of all plans so submitted) and of all actions of approval or rejection and all other actions taken under the provisions of this instrument.

ARTICLE V

GENERAL RESTRICTIONS

1. Zoning Regulations. No lands within the Fairway Village Subdivision shall be occupied or used for any purpose or in any manner that is contrary to the applicable zoning regulations, validly in force from time to time, except as the same may be allowed under said regulations as a non-conforming issue.

2. No Mining, Drilling, or Quarrying. No mining, quarrying, tunneling, excavating, or drilling for any substances within the earth, including oil, gas, minerals, gravel, sand, rock, and earth, shall ever be permitted within the limits of the Fairway Village Subdivision.

3... Signs. With the exception of Subdivision identification signs at the entry road and the entry gates, the Information Bulletin Board at the south entrance, Walking Path, and two “For Sale” signs (not to be larger than 48 x 48 inches) per Lot, no advertising signs or billboards shall be permitted to remain on any Lot in the Fairway Village Subdivision.

4. Unsightly objects. Unsightly objects or nuisances, as determined by the Design Control Committee, which are visible from the road and/or from side yards of neighbors, shall

not be erected or permitted to remain on any Lot in the Fairway Village Subdivision. Trash barrels are not to be left in places visible from the street and are allowed on the street only on the night before and day of trash collection.

5. No Resubdivision. No Lot described on the recorded plat of the Fairway Village Subdivision shall ever be resubdivided into smaller tracts or lots nor conveyed or encumbered in any less that the full original dimensions as shown on the recorded plat of the Fairway Village Subdivision, except that conveyances or dedications of utilities may be made for less than all of one Lot.

6. Trash. Each Owner of any Lot shall have the responsibility to remove all weeds and trash from his Lot in the Fairway Village Subdivision and shall not be allowed to burn weeds or trash thereon. In the event that weeds or trash accumulates on any Lot, the Design Control Standing Committee shall have the authority and responsibility to clean up the Lot and charge the Owner up to \$200 per clean-up. If said charge is not paid within thirty days, the Design Control Standing Committee has the authority to file a lien against any Lot that has failed to pay said charge. Trash barrels should not be left in places visible to the street but stored or kept in garages or behind gates, except for the evening before or the day on which the trash is collected.

7. Public Nuisance. No obnoxious or offensive activity shall be carried on within the Fairway Village Subdivision, nor shall anything be permitted that shall constitute a public nuisance thereon.

8. Hunting. There shall be no hunting of any animals within the boundaries of the Fairway Village Subdivision, nor shall there be any discharge of firearms.

9. Maintenance of Right-of-Way. Each Lot owner shall be responsible for maintaining the unpaved portion of the Right-of-Way contiguous with the Owner's Lot. This

area will be maintained as if it were a part of the Owner's Lot. Upon failure of the Owner to maintain this area, the Board of Directors of the Fairway Village Neighborhood Council may, at its discretion, after giving the Owner thirty days written notice, have the area maintained. The cost of this maintenance may be charged to the Lot Owner as a special assessment against the property by the Fairway Village Neighborhood Council.

10. Sidewalks. There will be no sidewalks running parallel with the private drive within the Fairway Village Subdivision.

11. On-Street Parking. The combined area of the garage(s) and driveway of each house in the Subdivision shall be sufficient to accommodate at least four motor vehicles. There shall be no overnight on-street parking of any motor vehicle, trailer, or the like, nor shall any motor vehicle, trailer or the like ever be parked within the Common Areas. Short-term (up to five hours) on-street guest parking shall be allowed, but not on a regular basis, and only if no other motor vehicle(s) is parked on the opposite side of the Right-of-Way within 200 feet. The purpose of this provision is to ensure safe and convenient passage of motor vehicle traffic, emergency vehicles and pedestrians on the Right-of-Way.

12. Animals. The keeping of ordinary household pets shall be permitted in the Subdivision. When off the Owner's Lot, such pets must be kept on a leash and shall not be permitted to run at large. In addition, dogs shall not be permitted to bark outside to the extent that an average person would find annoying. The Fairway Village Neighborhood Council may enforce this provision by whatever means may be legally available to it. All Owners exercising their pets must clean up after them and dispose of the waste in their own trash container.

13. Garage Sales. There shall be no outside sales of any kind commonly known as garage sales anywhere in the Subdivision, except for those directly involving the sale of Real Estate.

14. Easements Reserved. Perpetual easements on the Common Areas for constructing, maintaining, operating, replacing, enlarging, and repairing electric, telephone, cable TV, water irrigation, sewer, gas, and similar lines, pipes, wires, poles, ditches and conduits have been reserved. The Council may convey or grant by license, lease, deed, lien, deed of trust, mortgage, or otherwise any right, title, or interest in or to any and all easements and reservations contained within documents of conveyance, these Covenants, or the plat of the Fairway Village Subdivision to public utilities and governmental entities as may be reasonably necessary to effect the developmental and residential intentions as set forth in the plat and these Covenants.

15. Shared Walls/Fences. Pursuant to Article V of the Design Controls, privacy walls or fences shall be built along the side property lines of each Lot. These side walls or fences shall be built half on one side of the property line and half on the other side (that is, half shall be built on the adjoining lot) and shall extend along both sides of every Lot from the rear property line to a point approximately parallel with the front elevation of each house, except that no wall or fence shall be built at the points occupied by a house on the north (or zero lot line) side of the Lot. If at the time of construction of a house on a Lot, one or both of the side walls or fences along the Lot have not been built, it shall be the responsibility of the Lot Owner whose house is under construction to build the side walls or fences that have not yet been built and that Lot Owner shall be reimbursed for one-half the cost of each side wall or fence so constructed. This reimbursements shall be calculated based on a cost of \$3.50 per cubic foot of rock wall, including footings, actually built (or, if the wall or fence is built of material other than rock, the

reimbursement shall be calculated based on the documented cost of the wall or fence), with the amount to be reimbursed being one-half of the result of said calculation. If the Declarant has sold the Lot or Lots that benefit from the construction of one or two side walls or fences, then the Lot Owners(s) who build the side walls or fences shall be reimbursed by the purchaser(s) of the Lot or Lots the benefit from the construction of one or both side walls or fences, and this reimbursement shall be made at the time of sale(s) of the Lot or Lots by the Declarant. In summary, this provision is meant to provide a framework through which side walls and fences will be built in a timely manner, with the cost thereof to be shared equitably by the benefiting parties.

Any alteration to an existing side wall or fence shall be paid for solely by the Lot Owner who wants the alteration, and any alteration must be approved by the Design Control Committee.

16. Temporary Walls/Fences. When a house is being built on a Lot prior to construction of a house on the Lot to the south, the owner or builder of the house under construction has the right to build a temporary wall/fence near the south property line in order to create and enclosed yard for the house under construction. Such a temporary wall/fence must be constructed of wood, iron, or other material approved by the Design Control Committee, must be of a style approved by the Committee, must be set back at least two feet from the south property line, must be removed promptly upon receipt of notice from the owner or builder of the Lot to the south that framing of the house on that Lot is scheduled to begin within one week, and its the sole responsibility of the owner on whose behalf the wall/fence was built.

17. Construction and Maintenance of House Exterior on the Zero Lot Line. Because of the zero-lot-line design of the Subdivision, a Lot Owner or his representative shall require reasonable access upon the adjacent Lot to the north for the purpose of constructing and

maintaining the zero-lot-line (that is, the north) wall of the house and these Covenants establish a six-foot wide access easement for those purposes. A Lot Owner has the sole responsibility to construct and maintain the north side of this house even though that side is on the zero lot line. For the purposes of construction or maintenance, a Lot Owner shall make mutually acceptable arrangements for access with the Lot Owner directly to the north. If such arrangements prove difficult to make, the Lot Owner requiring access for construction or maintenance shall contact the Declarant or the Fairway Village Neighborhood Council, either of whom shall have the authority under these Covenants to intervene and arrange for fair access from the neighboring Lot Owner so that construction or proper and necessary maintenance can be undertaken. In the event of damage to the neighboring Lot in the course of construction or maintenance of the north side of the house, the Lot Owner engaged in the construction or maintenance shall in a timely manner either repair or pay for the repair of any and all damage.

18. Rentals. Homeowners renting their property must inform the FVNCI Board of Directors and provide renters and sub lessees with the Renter's Guidelines, which is to be signed by the renter or sub lessee stating that they have read and will abide by these Amended and Restated Covenants, Conditions and Restrictions.

ARTICLE VI

RESTRICTIONS ON RESIDENTIAL LOTS

1. Number of Buildings. No buildings or structures shall be placed, erected, altered, or permitted to remain on any residential Lots other than one single family dwelling house with attached garage.

2. Parking and Storage of Vehicles. No campers, recreational vehicles, boats, trailers, commercial-type vehicles, or trucks shall be stored or parked on any Lot except in a closed garage, nor parked anywhere in the Common Areas, except for a period of up to twelve hours for loading and unloading. No vehicle or trailer measuring longer than 25 feet may be parked in a driveway or on the street except for a period of up to 12 hours for loading and unloading. For the purposes of this restriction, a truck having a three-quarter-ton manufacturer's rated capacity, commonly known as a pick-up truck, shall not be deemed to be a commercial vehicle or a truck. In addition, personal-type vehicles, such as All Terrain Vehicles (ATVs), motorcycles and golf carts shall not be parked or stored on a regular basis on any Lot (except in a closed garage) or in the Common Areas. 'Project vehicles' or long-term immobile vehicles undergoing restoration/repair must not be parked in the driveway or on the street.

3. Deadline for Commencement of Building. Construction must commence on the building of a house on each Lot within 18 months of the purchase of the Lot from the Declarant.

In the event that the Owner of any Lot in the Subdivision fails to commence construction of a house as specified above, that Owner shall be required, upon expiration of the deadline specified above that pertains to the Lot, to list the Lot for sale with a licensed New Mexico real estate broker at the current fair market price, as determined by an independent appraiser. The purchaser of any such Lot sold under these circumstances shall be required, without exception, to commence construction of a house on the Lot within twelve months of the new Owner's purchase of the Lot.

In the event that the Owner of any Lot in the Subdivision fails to commence construction of a house as specified above, that Owner shall be required, upon expiration of the deadline specified above that pertains to the Lot, to list the Lot for sale with a licensed New Mexico real

estate broker at a listing price no more than twenty percent greater than the price at which the Owner originally purchased the Lot. The purchaser of any such Lot sold under these circumstances shall be required, without exception, to commence construction of a house on the Lot within three months of the new Owner's purchase of the Lot.

In the event that the Owner of any Lot in the Subdivision fails to commence construction of a house as specified above and has not sold the Lot within six months of listing the Lot for sale as specified above, the Declarant or its successors or assigns shall have the right, but not the obligation, to repurchase the Lot at the original purchase price at which the Owner acquired the Lot.

ARTICLE VII

ENFORCEMENT

1. Enforcement Actions. The Design Control Standing Committee shall have the right to prosecute any action to enforce the provisions of these Covenants by injunctive relief, on behalf of itself and all or part of the Owners of Lots within the Fairway Village Subdivision. In addition, each Owner of a Lot within the Fairway Village Subdivision, as well as the Fairway Village Neighborhood Council shall have the right to prosecute any action for injunctive relief and for damages by reason of any violation of these Covenants. Any Owner of a Lot determined to be in violation of these Covenants by a court of appropriate jurisdiction agrees to pay the reasonable attorneys' fees incurred by the person(s) or entity bringing such successful action.

ARTICLE VIII

GENERAL PROVISIONS

1. Covenants to Run. All of the Covenants contained in this instrument shall be a burden on the title to all of the lands in the Fairway Village Subdivision, and the benefits thereof shall inure to all Lot Owners in the Fairway Village Subdivision, and the benefits and burdens of all said Covenants shall run with the title to all of the lands in the Fairway Village Subdivision.

2. Termination of Covenants. The Covenants contained in this instrument shall remain in full force and effect for thirty years after the date of the execution of this instrument and shall thereafter automatically be renewed for successive ten-year periods without limitation. Except for the provisions dealing with the Design Controls, the annual assessments, and the maintenance and repair of the Common Areas, all of which provisions shall not be altered, these Covenants may be amended by a vote of two-thirds of the votes cast by the members of the Fairway Village Neighborhood Council at annual or special meetings thereof, said vote to be cast at any meeting of the members duly held in accordance with the Articles of Incorporation and the Bylaws of the Neighborhood Council, provided a properly acknowledged copy of the resolution of amendment be placed on record in Doña Ana County upon adoption.

3. Severability. Should any part or parts of these Covenants or the Design Controls attached hereto be declared invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining Covenants.

4. Paragraph Headings. The paragraph headings in this instrument are for convenience only and shall not be construed to be part of the Covenants contained herein.

These Second Amended and Restated Declaration of Protective Covenants, Conditions and Restrictions of the Fairway Village Subdivision were approved by a majority vote of the Members of the Fairway Village Neighborhood Council, Inc., at a meeting held on October 15, 2009, at which a quorum was present.

FAIRWAY VILLAGE NEIGHBORHOOD COUNCIL, INC.

By: _____
Kathy Rodger, Its President

County of Dona Ana }
 } ss:
State of New Mexico }

This instrument was acknowledged before me this ___ day of October, 2009, by Kathy Rodger, President of the Fairway Village Neighborhood Council, Inc., a New Mexico nonprofit corporation, on behalf of said corporation.

My commission expires:

Notary Public