

**DECLARATION OF
RESTRICTIVE AND PROTECTIVE COVENANTS
FOR
WENONAH VILLAGE SUBDIVISION**

The undersigned is the owner in fee simple of the following described real estate:

Lots numbered One (1) through Sixteen (16) and parcel of land encumbered by "Access Easements" of WENONAH VILLAGE, Bernalillo County, New Mexico as the same is shown and designated on the plat thereof, filed in the office of the County Clerk of Bernalillo County, New Mexico on December 3, 1982 in Map Book C20, Folio 114.

All of such real estate is referred to as the "Subdivision", and shall include all property subsequently made subject to this Declaration.

The undersigned hereby establish a general plan for the development, improvement, ownership, use and sale of the Lots (as hereinafter defined) in the Subdivision and does hereby establish the manner, provisions, conditions, restrictions and covenants upon and subject to which the Lots shall be used, improved, occupied, owned, sold and conveyed. The provisions, conditions, restrictions and covenants in this Declaration shall run with the land, all of which shall be binding upon and inure to the benefit of the present and future Owners (as hereinafter defined) of the Lots, and of any interest or interests in the Lots, all of which provisions, conditions, restrictions and covenants are, and each of them is, hereby impressed and imposed upon each and every Lot as a servitude in favor of each and every other Lot.

1. Definitions. The following words when used in this Declaration shall have the following meanings:

- (a) "Association" shall mean Wenonah Village Owners' Association, Inc., a New Mexico non-profit corporation.
- (b) "Board" shall mean the Board of Directors of the Association.
- (c) "Building" shall mean each of the sixteen (16) four plexes located within the Subdivision.
- (d) "Common Areas" shall mean the Private Roads, Perimeter Fence, Security Gate, if any, and related Improvements.
- (e) "Declarant" shall mean Wenonah, L.L.C., a New Mexico limited liability company.

(f) "Declaration" shall mean this Declaration of covenants, conditions, reservations, restrictions and easements, and any amendment or modification thereto.

(g) "Dwelling Unit" shall mean each of the dwellings intended for use by occupancy as a single family residence within each Building.

(h) "Improvements" shall include, without limitation, buildings, out-buildings (including sheds and storage buildings), roads, driveways, parking areas, fences, gates, retaining walls, stairs, decks, windbreaks, poles, antennas, signs, utility or communication installations (whether above or underground), and any structure and excavation of any type or kind.

(i) "Lot(s)" shall mean any one of the lots numbered One (1) through Sixteen (16) and parcel of land encumbered by "Access Easements" of WENONAH VILLAGE, Bernalillo County, New Mexico as the same is shown and designated on the plat thereof, filed in the office of the County Clerk of Bernalillo County, New Mexico on December 3, 1982 in Map Book C20, Folio 114.

(j) "Member" shall mean each Owner of a Lot who is in good standing with the Association.

(k) "Owner" shall mean the persons or entities, including Declarant, holding legal title or beneficial ownership of the fee, including the purchaser of a Lot under an installment sales contract for a Lot, or a lessee of an entire Lot pursuant to a leasehold agreement of a term of twenty (20) years or greater. Owner shall not include a seller of a Lot under an installment sales contract for a Lot or the lessor of an entire Lot pursuant to a leasehold agreement with a term of twenty (20) years or less or the lessee of any portion of a Lot.

(l) "Perimeter Fence" shall mean the fence on the perimeter of the Subdivision.

(m) "Plat" shall mean the Subdivision Plat of Wenonah Village Subdivision, filed in the Office of the County Clerk of Bernalillo County, New Mexico, on the 3rd day of December, 1982, in Map Book C20, Folio 114, and all amendments and revisions thereto.

(n) "Private Roads" shall mean the portion of the Subdivision encumbered by the access easements.

(o) "Security Gate" shall mean the gates on the intersection of the Private Roads and Wenonah Avenue, if any.

2. Land Use; Building Type; Future Improvements. The Subdivision contains sixteen (16) four plexes each of which is constructed on an individual Lot, and the Lots share the Private Roads, refuse disposal, water, drainage and related Improvements which shall be maintained by the Association. No Lot, or portion of a Lot, shall be used except for residential purposes. The Buildings shall not be altered for use as other than up to four (4) Dwelling Units per Lot. All Buildings shall have exterior front facades of wood and stucco in uniform colors

approved by the Association. Unshielded high intensity exterior lighting is prohibited.

Any future alteration, painting, construction, reconstruction or texturing of the exteriors of Improvements or which create additional Improvements shall be approved in advance by the Association. The Association shall establish guidelines for plans and specifications which must be provided to the Association for purposes of considering any such alteration, painting, construction, reconstruction or texturing. The Association shall respond to any written request of an Owner within thirty (30) days of the receipt of said request.

3. No Further Subdivision of a Lot. No Lot may be further subdivided without the consent of the Association.

4. Height Restrictions and Setbacks. The height and setbacks of each Building within the Subdivision shall not be changed without the prior written consent of the Association.

5. Landscaping. Landscaping on each Lot shall be maintained by the Association and reimbursed as a common expense, except in the event of damage to landscaping which is caused by the negligent or intentional acts or omissions of an Owner, or said Owner's employees, agents or family members.

6. Nuisances. No noxious or offensive activity shall be carried on, or permitted upon any Lot. Nothing shall be done, placed or stored on any Lot or within any Dwelling Unit which may be or may become an annoyance or nuisance to the Owner(s) of other Lot(s), or which will occasion any noise or odor which will or might disturb the peace, comfort or serenity of the occupants of the other Dwellings Units. No trash or garbage shall be burned on any Lot. Garbage and other waste materials shall be placed in the dumpsters provided by the Association on Lots 3 and 15.

7. Equipment. Subject to federal, state and local law to the contrary, no satellite dish, radio, television or other antennas shall be erected upon a Building or any portion of a Lot unless the antenna(s) can be concealed from view behind a parapet or inside the roof structure or attic, or unless approved by the Association.

8. Parking and Storage of Vehicles, Etc., Within the Subdivision. The occupants of the Dwelling Units and their invitees shall only park within parking spaces on the Lot containing the applicable Dwelling Unit or within designated visitor parking spaces on a first come first serve basis. Designated visitor parking spaces shall only be used for twenty-four (24) hour parking and no vehicle may be parked in a visitor parking space for more than forty-eight (48) hours in any week. No camper, recreational vehicle, trailer, mobile home, boat, commercial type vehicle, dune buggy, bus, inoperable vehicle or tractor shall be stored or parked on any Lot continuously for a period of more than twenty-four (24) hours. If an Owner has designated specific parking spaces for specific Dwelling Units on said Owner's Lot, then occupants of the Dwelling Units may park any vehicle which completely fits within the striped space indefinitely. No vehicles may park on the Private Roads. The Association shall have the right to adopt rules and regulations regarding parking on individual Lots and on the Private Roads which amend the

requirements of the previous portions of this Paragraph, provided however that any such rules and regulations apply equally to all Owners and occupants of the Subdivision.

9. Casualty. If any Improvement on any Lot is destroyed, wholly or in part, by fire or other casualty, the Improvement so damaged or destroyed shall be promptly and properly rebuilt or repaired in conformity with the provisions of this Declaration; or, in the alternative, all remaining portions of the Improvement, including all foundations and all debris, shall be removed from the Lot. If the Owner of the Lot elects to clear the Lot, the razing and clearing work shall be completed within one hundred twenty (120) days after the casualty.

10. Animals and Pets. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that domestic dogs and cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial breeding purpose. Dogs shall only be allowed on the Common Area when they are leashed and otherwise under the supervision and restraint of their owners. No pets shall be left chained or otherwise tethered in the Common Area. Pet owners shall be responsible for the prompt removal and disposal of pet waste deposited by their pets within the Subdivision. The Association, its Board, employees and agents shall have no liability to any Owners, their family members, guests, invitees, tenants and contract purchasers for any damage or injury to persons or property caused by any pet. Any damage to any portion of the Subdivision by a pet shall be repaired within forty-eight (48) hours. If the damage is not repaired within said period, the Owner of the Lot on which the pet owner is housed shall be liable for all costs of the Association in repairing the damage.

11. Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying, or mining operations or exploration of any kind shall be permitted upon any Lot. No oil wells, tanks, tunnels, minerals excavation shafts or other such equipment or activities shall be permitted upon any Lot.

12. Insurance and Compliance with Law. Nothing shall be done or kept in any Lot or in the Subdivision that might increase the rate of, or cause the cancellation of, insurance for the Subdivision, or any portion of the Subdivision, without the prior written consent of the Board. No Owner shall permit anything to be done or kept within said Owner's Lot that violates any permit, law, ordinance, statute, rule or regulation of any local, county, state or federal body.

13. Easements and Rights-of-Way

A. Utility Easements and Rights-of-Way. All areas of the Lots reserved for the installation, removal, repair and maintenance of utilities are reserved and designated as utility easements on the Plat.

B. Easements and Rights-of-Ways Include Right of Ingress and Egress. All easements and rights-of-ways of whatever type which are shown and designated on the Plat shall include the right of ingress to and egress from such easements and rights-of-way over, upon, or under such easements, for the purpose of installing, removing, repairing and maintaining utilities,

trimming or removing of interfering trees or shrubs, and any other purpose for which such easements and rights-of-way may be used.

- C. No Construction or Obstacle on Any Type of Easement or Right-of-Way. No obstacle or other type of Improvement shall be erected, placed, altered, or permitted to remain upon any portion of a Lot which is the subject of any type of easement or right-of-way which would in any way interfere with the use of such easement or right-of-way; nor shall any trees, shrubs, hedges, or other landscaping be planted or permitted to remain in place, or to remain untrimmed, which would interfere with the use of any easement or right-of-way.
- D. Perimeter Fence. The Perimeter Fence shall be maintained by the Association. Each Lot containing a portion of the Perimeter Fence shall be subject to a perpetual non-exclusive easement for said Perimeter Fence which shall be five (5) feet in width ("Perimeter Fence Easements").

The Perimeter Fence Easements shall be perpetual and non-exclusive for the benefit of Declarant, its successors, and the Association for the construction, maintenance and repair of the Perimeter Fence. No Owner shall have the right to tie into or alter the Perimeter Fence on said Owner's Lot without the prior written consent of Declarant, its successors or the Association.

14. Billboards, Poster-Boards, and Advertising. The installation and/or maintenance of billboards, poster-boards, and advertising structures of any kind on any part of any Lot is prohibited, except that real estate agents and/or the Owner of a Lot may display one (1) temporary "For Sale/For Lease" sign or one (1) "Open House" sign on any Lot. The sum of the length and width of such signs shall not exceed 24" x 60". The Association may establish a location at the entrance to the Subdivision on Wenonah Avenue for signage advertising Lots for sale or Dwelling Units for lease which shall be a common expense shared by the Owners.

15. Common Areas. The Common Areas shall be maintained by the Association. The Board shall have the right to establish rules and regulations related to use of the Common Areas. Every Owner, its family members, invitees and tenants shall have a right and easement of enjoyment in and to the Common Areas and such easement shall be appurtenant to, and shall pass with the title to every Lot. The rights and easements of enjoyment created hereby shall be subject to the right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purpose and subject to such conditions as may be agreed to by the Members entitled to cast three-fourths (3/4) of the votes of each class of membership in the Association.

16. Maintenance of Lots. The Lots and Improvements located thereon shall be maintained as follows:

(a) By Association. The Association shall maintain the parking areas, landscaping and all other Improvements outside the footprint of the Building located on each Lot.

(b) By Owner. The Owner of each Lot, at said Owner's sole cost and expense, shall maintain and repair the Building, including the exterior thereof in good repair and appearance at all times. If any Owner fails to maintain the exterior of the Building on said Owner's Lot, the Association may, at its option, and on not less than ninety (90) days prior written notice to the Owner, undertake all necessary maintenance and repairs to put the exterior of the building in a state of good repair and appearance. The cost of any such maintenance and repairs by the Association shall be assessed and billed to the Owner of the Lot and collected as provided for in Section 19 below.

17. Damage to Common Areas and Areas of Each Lot Maintained by the Association. In the event that any damage to, or destruction of, any portion of the Common Areas, or any portion of the Lot which the Association is obligated to repair and maintain is caused by the willful misconduct or negligent act or omission of any Owner, any member of said Owner's family, or any of said Owner's tenants, guests, servants, employees, licensees or invitees, the Board shall cause the same to be repaired or replaced, and all costs and expenses incurred in connection therewith (to the extent not compensated by insurance proceeds) shall be assessed and charged solely to and against such Owner and may be collected as provided in Section 19 below.

18. Association. The Association shall be a New Mexico non-profit corporation which shall be controlled by the articles of incorporation and bylaws thereof.

- A. Every Lot shall be entitled to one (1) membership in the Association which shall be vested in the Owner or Owners thereof. If an Owner owns more than one (1) Lot, said Owner shall have only one (1) membership in the Association, however, said Owner shall have one (1) vote for each Lot owned. Membership shall be appurtenant to and may not be separated from the ownership of any Lot. Ownership of a Lot shall be the sole qualification for membership.
- B. The Association shall have two (2) classes of voting membership, as follows:
 - (i) Class A Members. Class A Members shall include all Members, except the Declarant. The Class A Members shall have one (1) vote for each Lot owned by said Members, provided however, if more than one (1) person or entity owns a Lot, said Lot shall only be entitled to one (1) vote. Notwithstanding the provisions of this subsection to the contrary, cumulative voting shall apply for elections involving directors of the Association.

(ii) Class B Member. The Class B Member shall be the Declarant. The Class B Member shall be entitled to four (4) votes for each Lot owned by Declarant, provided however, the Class B Member shall convert to a Class A Member upon the earlier of:

(a) when Declarant no longer owns any Lot, or

(b) January 1, 2010.

Any requirement within this Declaration for the approval of the Members or the Association, shall require the requisite percentage of the Members of the Class A Members and the Class B Member.

19. Assessments. The expenses of the Association shall be paid through assessments against each Lot. Such assessments shall be fixed, established and collected from time to time as hereinafter provided. The assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on each Lot and shall be a continuing lien upon each Lot against which each such assessment is made. These assessments and costs shall also be the personal obligation of each person or entity who was the Owner of the Lot when the assessment became due. Assessments will begin on the date set by the Board and will be prorated for partial assessment years.

- A. The assessments shall be used exclusively for (i) the Common Areas; (ii) the areas of each Lot maintained by the Association; (iii) promoting the recreation, health, safety and welfare of the Owners and residents of the Subdivision; and (iv) improving and maintaining the services and facilities of the Subdivision. Specifically, the assessments may be used for the following and other purposes as determined by the Board: payment of taxes and insurance, maintenance, repairs, replacement and additions, and for the cost of labor, equipment, materials, management and supervision. The Association may also establish reserves categories of expenses.
- B. The initial annual assessments for each of the Lots shall be Five Hundred Dollars (\$500.00), prorated from the date each Owner closes on the purchase of a Lot from Declarant. Annual assessments thereafter shall be due and payable on January 1 of each successive year and shall be delinquent each February 1 if not paid in full; provided however, the Association may decide to assess the Owners monthly or quarterly for the annual assessments. Declarant shall have the right to elect either to pay the annual assessments for all Lots owned by Declarant or to pay the shortfall in revenue of the Association in lieu thereof. If Declarant elects the latter, Declarant may at any time change to pay the annual assessments for the Lots Declarant owns and in any event Declarant shall be required to pay annual assessments at such time as Declarant has sold fifty percent (50%) of Declarant's Lots to third party purchasers. The annual assessments may be increased by the Board each year and in an amount

not to exceed twenty percent (20%) of the prior year's annual assessment without the vote of the Members of the Association. If the annual assessments are to be increased by more than twenty percent (20%) from the previous year's annual assessments, said increase must be approved by the affirmative vote of not less than three-fourths (3/4) of the Members of the Association at a meeting held for the purpose of determining said annual assessments, which meeting shall be called at least thirty (30) days in advance.

- C. Written notice of the annual assessments shall be sent to every Member at the time of its determination by the Members. The Association shall, upon demand at any time, furnish to a Member a certificate in writing signed by an officer designated by the Board as the one responsible for keeping the records, or for this purpose, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.
- D. If any installment of an annual or special assessment is not paid within thirty (30) days after it is due, then such assessment shall become delinquent and shall, together with interest thereon, and the cost of collection thereof, as provided herein, become a continuing lien on the Lot which shall bind such Lot in the hands of the then Owner of that Lot, and any subsequent Owner. The personal obligation of the then Owner to pay such assessment, however, shall remain its personal obligation for the statutory period and shall not pass to its successors in title until expressly assumed by them. If the assessment is not paid within thirty (30) days after the delinquency date, a reasonable late charge may be assessed at the discretion of the Board (which initially shall be five percent (5%) of the delinquent amount if not received by the Association within ten (10) days of its due date), and the assessment shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum until paid. The Association may bring an action at law against the Owner personally obligated to pay the same or an action to foreclose the lien against the Lot, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided, reasonable attorney's fees to be fixed by the court, together with the costs of the action.
- E. The lien for the assessments shall be subordinate to the lien of any first mortgage placed upon the Lot in good faith and for value; however, such subordination applies only to the assessments due before the sale or transfer of the Lot pursuant to a decree of foreclosure, or any transfer in lieu of foreclosure. The sale or transfer of a Lot does not relieve the Lot from the liability for, or the lien of assessments thereafter becoming due.

20. Special Assessments for Capital Improvements and Extraordinary Expenses. The Board, by unanimous consent, may levy, in any year, a special assessment applicable to that year only, for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement within the Common Areas, including fixtures and any personal property related thereto, or for extraordinary expenses incurred by the Association. All Owners shall be notified of a special assessment not less than thirty (30) days prior to the special assessment due date.

21. Owner Improvements. Any Improvements on a Lot shall be undertaken as follows:

- A. Capital Improvements to Portion of Lot Maintained by Association. In the event the Association intends to make any capital improvements to the portion of a Lot maintained by the Association, other than the Perimeter Fence which is a Common Area located thereon, the Board shall submit a bid therefor to the Owner of the Lot and said Owner shall have thirty (30) days within which to obtain a lower responsive bid from a contractor reasonably acceptable to the Board for said work. The Association shall then contract for the work to be done by the lowest responsive bidder, as determined by the Board, and the costs thereof shall be assessed to the Owner and shall be due and payable within thirty (30) days of billing therefor. In the event of an emergency the Board may circumvent the above procedure and the Owner shall be assessed the reasonable costs of any such emergency work.
- B. Improvements to the Building and Portion of Lot Maintained by Owner. No exterior Improvement of any kind shall be commenced, erected or maintained within the Subdivision, nor shall any exterior addition to or change or alteration be made in or to any Lot until the plans and specifications showing the nature, color, kind, shape, height (including front, side and rear elevations), materials and location of the same shall have been submitted to and approved in writing by the Association as to the quality of workmanship and materials, harmony of external design and location in relation to surrounding structures, setback lines, topography and finish grade elevation.

22. Rights and Duties of Owner to Insure. Each Owner shall obtain insurance on said Owner's Lot and all Improvements and personal property thereon, including the portion of the Perimeter Fence on said Owner's Lot. Nothing herein shall preclude any Owner from carrying any public liability insurance as he may deem desirable to cover his individual liability for damage to person or property occurring on said Owner's Lot or elsewhere upon the Subdivision. If obtainable, such liability insurance coverage carried by an Owner shall contain a waiver of subrogation of claims against the Association, the Board, their agents and employees and all other Owners. Such other policies shall not adversely affect or diminish any liability under insurance obtained by the Association. If any loss intended to be covered by insurance carried by the Association shall occur and the proceeds payable thereunder shall be reduced by reason of

insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by him to the Association to the extent of such reduction, for the application by the Board to the same purposes as the reduced proceeds are to be applied.

23. Security Gate. If the Declarant installs the Security Gate, maintenance thereof shall be a common expense paid through annual assessments.

24. No Business or Commercial Enterprise Permitted. No business, whether or not for profit, and no commercial enterprise of whatever kind, except from time to time as may be permitted by the City of Albuquerque Comprehensive Zoning Ordinance for the Subdivision, shall be undertaken or carried on, upon, or from any Lot, except only the original sales and subsequent sales of the Lots and the leasing of Dwelling Units.

Home offices shall be allowed in occupied Dwelling Units under the following guidelines:

- A. There shall be no signs and/or advertising of the home office;
- B. There shall be a maximum of one customer and the occupant of the Dwelling Unit conducting business at any one time from the home office.

25. Enforcement of Covenants. The violation or breach of any provision, condition, restriction or covenant in this Declaration, after notice of such violation or breach has been presented to an Owner, shall give each other Owner, Declarant and the Association the right to prosecute at law or in equity, the person or persons who have violated or are attempting to violate any provision, condition, restriction or covenant in this Declaration, to enjoin or prevent them from doing so, to cause the violations to be remedied or to recover damages for the violation. Any one of the above-listed persons or entities may so enforce this Declaration and the cooperation of any other person or entity is not required.

The result of every action or omission whereby any provision, condition, restriction or covenant in this Declaration is violated in whole or in part, is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or equity against an Owner, either public or private, shall be applicable against every such action or omission.

The failure of Declarant, the Association or any Owner to enforce any provision, condition, restriction or covenant in this Declaration shall not be deemed to be a waiver of the right to do so thereafter nor of the right to enforce any other provision, condition, restriction or covenant in this Declaration.

The prevailing party or parties in any judicial proceedings to enforce this Declaration shall be entitled to reasonable attorney's fees and court costs from the non-prevailing party.

All questions of interpretation or construction of the terms of this Declaration shall be resolved by the Association.

26. Severability. If any one or more of the provisions, conditions, covenants and restrictions in this Declaration are held by any court of competent jurisdiction to be null and void, all remaining provisions, conditions, covenants and restrictions shall continue unimpaired and in full force and effect.

27. Assignment of Declarant's Rights. The Declarant shall have the right to assign, transfer and convey all of Declarant's rights to a third party or parties acquiring the remaining undeveloped Lots owned by Declarant in the Subdivision. Said assignee(s) or successor(s) shall have the same rights as Declarant hereunder.

28. Duration of These Covenants. The provisions, conditions, covenants and restrictions in this Declaration shall run with the land and continue in full force and effect for a period of thirty (30) years from the date of the filing of this Declaration in the office of the County Clerk of Bernalillo County, New Mexico, at which time they shall be automatically extended for a period of ten (10) years and thereafter for successive ten (10) year periods, unless before the commencement of any extension period the then Owners of the fee simple estate of seventy-five percent (75%) or more of the Lots by written instrument, duly executed and recorded, shall declare a termination of this Declaration. Any such termination shall become effective upon the date upon which otherwise the automatic extension would take effect.

29. Amendment. At any time after the date of the filing this Declaration, the Owners of not less than seventy-five percent (75%) of the Lots may release one or more of the Lots from, or may modify, change or amend all or any portion of the provisions, conditions, covenants or restrictions contained in this Declaration by executing and acknowledging an appropriate agreement or agreements in writing for such purposes and filing the same for record in the office of the County Clerk of Bernalillo County, New Mexico.

Wenonah, L.L.C.,
a New Mexico limited liability company

By: _____

Its: _____

Dated: _____, 2006

ACKNOWLEDGMENT

STATE OF NEW MEXICO)
)
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on _____, 2006, by _____, _____ of Wenonah, L.L.C., a New Mexico limited liability company.

MY COMMISSION EXPIRES:

NOTARY PUBLIC