

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR WINDMILL RANCHES HOME OWNERS ASSOCIATION, INC.  
(Lincoln County, New Mexico)**

Revised August 7, 2013 by membership vote. Majority of revisions were to eliminate the reference to "declarant".

**RECITALS - CC&RA-1-2013 passed**

The original Home Owners Association of Windmill Ranches established by New Mexico Land & Ranches was transitioned to the membership of the association (owners of the parcels) on March 05, 2005. Thereafter, a new Board of Directors was elected from the membership and they began to conduct the affairs of the association in accordance with the Articles and By-Laws. (original paragraphs A and B replaced by membership vote 08/07/13)

**ARTICLE 1  
DEFINITIONS**

Terms used in this Declaration having initial capital letters but not otherwise defined in this Declaration shall have the meanings specified below:

- A. "Association" means the Windmill Ranches Homeowner's Association, Inc., a New Mexico nonprofit corporation, its successors and assigns.
- B. "Common area" shall mean that property within the Project as shown on the Recorded Survey Plat granted to the Association for recreational use by its members and for use by the Lessee for purposes of grazing livestock and related ranching activity.
- C. "Declarant" means Southwest Properties of New Mexico, Inc., and the successors and assigns of its rights and powers hereunder.
- D. "Declaration" means this entire document as amended from time to time.
- E. "Lessee" is any person or entity currently leasing the grazing rights to the Property along with the use of any waters located within the Common Area and any *pre-existing* stock ponds or tanks located on privately owned Parcels, from the Association for purposes of grazing and watering livestock and other related ranching activity (also known as the "Rancher").
- F. "Member" or "Members" means a member or members of the Association, including the Declarant so long as Declarant is the Owner of one or more Parcels.
- G. "Mortgage" means any deed of trust or realty mortgage, or agreement for sale made in good faith and for value and properly executed and recorded so as to create a lien on any Parcel or Parcels that is prior to the lien of any other deed of trust or realty mortgage.
- H. "Owner" means a record holder of beneficial or equitable title and legal title if legal title has merged with the beneficial or equitable title, whether one or more persons or entities, to the fee simple interest in any Parcel, including Declarant. Owner shall not include: (i) a Person having an interest in a Parcel merely as security for the performance of an obligation; or (ii) a tenant of a Parcel.
- I. "Parcel" or "Parcels" means a portion of the Project intended for independent ownership and use and designated as a Parcel on the Recorded Survey Plat showing said Parcel(s), either individually or collectively as the case may be as such divisions may be allowed by law.
- J. "Person" means a natural person or a corporation, Limited Liability Company, partnership, joint venture, trust or any other legal entity.
- K. "Property" or "Project" means the real property described on Exhibit "A", attached to this Declaration, together with all improvements located thereon. The Property is comprised of the Windmill Ranches development and adjoining Common Area.
- L. "Recorded Survey Plat" means the maps of the Windmill Ranches development recorded in the office of the Lincoln County Clerk and Recorder in Lincoln County, New Mexico and all amendments, supplements and corrections thereto and any subdivision map recorded against any supplements and corrections thereto.

M. "Restrictions" means the covenants, conditions, charges, liens, restrictions, easements and reservations contained or referred to in the Declaration, as it shall be amended from time to time.

N. "Transition Date" means that date specified on which the Declarant transfers control of the Association to Owners which at such time at least seventy-five (75%) percent of the Parcels have been sold or later, at Declarant's option.

## ARTICLE 2 ASSOCIATION.

A. The Declarant has established the Association as a New Mexico nonprofit corporation named "Windmill Ranches Homeowner's Association, Inc."

B. The purpose of the Association is: (1) To maintain and improve; (a) the roadways, gates, fences and roadway drainage facilities within the Property; (b) any wells and their appurtenances designated by Declarant as common area, and (c) any other common areas or undeveloped portions of the Property, benefiting the Property and designated by Declarant for maintenance by the Association; (2) To enforce the Restrictions; (3) To engage in any lawful activities which are determined by the Association to be in the best interest of the Association, the Members, or the Property and to promote the health, safety and welfare of the Members. The Association shall take necessary and appropriate action for the maintenance, repair, replacement, and management of the facilities referred to above and shall have the right to enter upon a Parcel, if reasonably necessary, in order to take such action. The Association may take such action, as the Association deems appropriate to maintain or repair the facilities referred above.

C. Each and every Owner, in accepting a deed or contract for any Parcel, whether or not it shall be so expressed in such deed or contract, automatically becomes a member of the Association, and agrees to be bound by such reasonable rules and regulations as may, from time to time, be established by the Association. Membership shall be appurtenant and may not be separated from ownership of the Parcel. The rights and obligations of an Owner and membership in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way, except upon transfer of ownership of such Parcel, whether by in testate succession, testamentary disposition, foreclosure of a deed of trust or a Mortgage, or such other legal processes as are now in effect or as may be hereafter established pursuant to the laws of the State of New Mexico. The Association shall be operated and conducted on a strictly cooperative and non-profit basis. Each Owner as a member shall have such voting rights that are set forth in this Declaration.

D. The Association shall have the power to borrow and encumber its assets and, in all respects, shall have the powers set forth herein, including the power to enter into contracts with third parties to perform all or part of its functions, and to hire its own employees to do so. The Association shall have the power to obtain appropriate insurance, to create reserves, and to issue rules and regulations.

E. The Association shall, on an annual basis, make a determination of the estimated costs of liability insurance, operating costs and the repair and maintenance of the roadways and designated Common Areas as shown on the Recorded Survey Plat or otherwise so designated, including any reserves necessary for future capital expenditures and maintenance. The Association shall furthermore allocate such estimated costs for roadway and Common Areas servicing the Property. Regular annual assessments shall include the cost of roadway and Common Area maintenance and repair within the Project. Assessments shall be charged to each applicable Owner on a flat-fee per year basis. The assessments may be collected on a monthly, quarterly, or annual basis, or any combination of same as determined by the Association. The Association shall prepare an annual budget and also an annual accounting of monies received and disbursed.

F. Each Owner shall pay: (1) Regular assessments for normal maintenance and repair and reserves, along with liability insurance and operating costs (2) Special assessments for capital improvements with such assessments to be established by the Association. For each Parcel, the applicable regular and any special assessments, late payment penalties and charges, if any, together with interest, (all as set by the Association) costs and reasonable attorney's fees, shall be a lien on the Parcel. Each Owner shall be personally responsible for his or her share of assessments imposed by the Association. This personal obligation or delinquent assessments shall not pass to the Owner's successor; PROVIDED, HOWEVER, the obligation to pay the same shall be a continuing lien on the applicable Parcel.

G. CC&RA-2-2013 passed -- Article 2 G shall remain blank and reserved for an adoption of a new CC&R in the future. Some of the content of the original 2 G has been moved to Article 2 M to prevent redundancy. (Approved by membership vote 08/07/13)

H. CC&RA-3-2013 not passed -- The amount of regular assessments shall be set by the Association on an annual calendar year basis, for at least the amount sufficient to cover the estimated costs established for the upcoming year (minus any revenues received by Lessee). The Association shall fix the amount of the regular assessments at least thirty (30) days prior to the end of the calendar year. Written notice of the assessments shall be sent to every Owner and shall state the payment due date as established by the Association. Said payment is to

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be paid within 30 days of the assessment due date. The amount of the initial regular assessments (minus fees paid to the Association by Lessee for grazing livestock) shall be forty-eight dollars (\$48.00) per Parcel, per year (regardless of Parcel size). However, if at such time there is no current Lessee of the grazing rights, the amount of the initial assessments shall be ninety-five dollars (\$95.00) per Parcel, per year.

**DECLARANT SHALL MAINTAIN THE COMMON ROADWAYS UNTIL THE TRANSITION DATE OF THE ASSOCIATION.**

**I.** In addition to the regular assessments as set forth above, the Association may set special assessments if the Association determines that such is necessary to meet the primary purposes of the Association. Special assessments shall be established by sixty-six (66%) percent of the number of votes cast by members representing a fifty-one percent (51%) quorum. Any special assessments shall be allocated and charged on the same basis per Parcel as regular assessments.

**J.** All sums assessed by the Association chargeable to a Parcel, but unpaid, shall constitute a lien on such Parcel prior to all other liens excepting only ad valorem liens in favor of a governmental assessing unit or special assessment district. The Association may foreclose the Association lien in a like manner as a foreclosure of a real property deed of trust or realty mortgage. The Association shall have the power to bid on the delinquent Parcel at a foreclosure sale, and acquire, hold, lease, encumber and convey the same. A suit to recover a money judgment for unpaid assessments and charges shall be maintainable by the Association without foreclosing or waiving the lien securing the same.

**K. CC&RA-4-2013 passed** The total number of votes in the Association shall be on the basis of one (1) vote per Owner per Parcel. Unless otherwise specifically provided herein or in the Bylaws, all Association matters shall be determined by a majority vote (i.e., a majority of the votes cast) so long as quorum requirements are met. If more than one party is the Owner of a Parcel, they are still entitled to only one (1) vote so all parties must be in agreement. Any action requiring a vote of the members that the Association may take at any annual, regular or special meeting may take place one of three ways: (1) In person at a meeting. (2) By written proxy at a meeting. (3) By written ballot received prior to or in lieu of a meeting according to the terms stated in the Bylaws. (second sentence concerning declarant was eliminated - approved by membership 08/07/13)

**L.** The members of the Association shall elect the board of directors who shall have the power to adopt Bylaws and appoint officers, as well as promulgate reasonable rules and regulation relating to the matters within its purpose. Unless otherwise stated herein, the directors shall conduct the affairs and exercise the powers of the Association

**M. CC&RA-5-2013 passed** (1) Each owner shall be responsible to pay the regular assessment, which will be assessed and prorated as of the date of recordation of the deed or purchase contract wherein the owner acquired legal, beneficial, or equitable title to the parcel. (2) Should a lot owner sell, transfer, or bequeath his or her property to another person, persons, or entity, the receivers of the title of the parcel shall be responsible for all levied assessments including assessments in arrears. (3) Should a parcel owners property be acquired by any entity such as a holding company, realtor, or bank, that entity shall be responsible for all levied assessments including assessments in arrears. (4) Any person or entity having received title to lot, shall be responsible for the correction and expenses incurred for the correction of any violation of the CC&R's. (Original paragraph replaced by membership approval 08/07/13)

**N.** In the event the Association determines that any Owner has not complied with the provisions of this Declaration, the Association may, at its option, give written notice to the Owner of the conditions complained of. The Owner shall correct same or, if not readily correctable within fifteen (15) days after notice from the Association, the Owner shall submit corrective plans proposing its remedy to the condition complained of with fifteen (15) days after notice from the Association. The Association shall approve or disapprove any plans submitted by the Owner and set forth a reasonable time for correction of the condition complained of. In the event such condition is not corrected according to the approved plans, within the allotted time, the Association shall have the right to undertake to remedy such condition or violation complained of. The cost thereof shall be deemed to be an assessment to such Owner and enforceable by the Association in the same manner any other unpaid assessment. The Association is hereby granted the right of entry on the affected Parcel to so correct the condition or violation complained of.

**O. CC&RA-6-2013 passed** Article 2O will remain blank and reserved for the adoption of a new CC&R in the future. (Approved by membership vote 08/07/13)

**P. CC&RA-7-2013 passed** Article 2P will remain blank and reserved for the adoption of a new CC&R in the future. The majority of the original paragraph is now covered in the revised Recital. (Approved by membership vote 08/07/13)

**Q.** The Association may employ or contract for maintenance of roadways and assess members for the cost thereof.

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**ARTICLE 3**  
**RESTRICTIONS**

**A. Single Family Residential and Recreational Use Only:** All Parcels shall be used for residential and recreational purposes only provided, however, livestock may be kept pursuant to conditions set forth herein. Notwithstanding anything contained in this Paragraph this restriction shall not prohibit home offices in a residential property where business is conducted through telephone, computer, or other electronic means and where the business is not apparent from the exterior of the residence; does not create noise or congestion from traffic or parking; and preserves the residential nature of the Property. All uses shall be in compliance with New Mexico State Building Codes and if applicable, Lincoln County zoning regulations and permitted uses.

**B. Dwelling Type:** There shall be only one single-family dwelling allowed per Parcel. Said dwelling shall have a minimum square footage of four-hundred (400) square feet of living space (not including camps or accessory structures). One guest cottage is permitted so long as it does not exceed twelve-hundred (1200) sq. ft. of living space. All dwellings within or on a Parcel must share the same septic system, water and power systems. The finished exterior shall be in harmony with its' natural surroundings. Septic permits must be obtained and the septic system installed and completed prior to placement of home. Building permits will be required by the State of New Mexico. Construction must be completed within twelve (12) months from beginning. No building or structure will be more than thirty (35') feet in height at its highest point from grade. Two-family and/or multi-family dwellings are prohibited. Singlewide Mobile Homes are prohibited. Doublewide Mobile Homes or Modular Homes are allowed so long as they do not exceed two (2) years in age from the date of manufacture to the date of installation. All dwellings that are to be used as residences must be on permanent foundations. The outside finish of all buildings must be completed within twelve (12) months after construction has started. No building paper, insulation board, sheathing or similar non-exterior materials shall be used for the exterior finish of any building. The exterior finish of all buildings shall be composed of earth tone colors harmonious with the existing environment.

**C. Temporary Structures:** No structure of temporary character, recreational vehicle, camper unit, trailer, travel trailer, mobile home, basement, tent shack, garage, accessory building or other out-building shall be used on any Parcel as a residence. A travel trailer, recreational vehicle, tent or camper unit may be used for recreational purpose, but such structures shall not be allowed to remain on any parcel for more than nine (9) months during a calendar year, unless the occupant has been issued a building permit by Lincoln County and is diligently proceeding to construct a permanent residence on a Parcel, so long as permitted by Lincoln County regulations, for a period not to exceed twelve (12) months.

**D. Sanitary Facilities:** All dwelling's and/or living quarters shall be self-contained, connected to a septic system, waterless toilet, or other alternative waste disposal system which has been designed by and approved by an engineer licensed in the state of New Mexico. Permits must be obtained from the appropriate governmental agency. All liquid waste disposal systems must be designed and approved by an engineer licensed in the state of New Mexico. Liquid waste disposal systems shall be located as not to potentially contaminate or pollute any drinking water supply, water course or body of water; are to be located so as not to potentially degrade recreational resources; located as not to create a nuisance; the distance between a well and an absorption field or a tank used as a part of an individual liquid waste disposal system must be no less than one hundred feet (100'); and the distance between an absorption field or tank used as a part of an individual liquid waste disposal system and the nearest boundary of a floodway must be no less than one hundred feet (100').

**E. Additional Subdivision of Parcels:** No Further subdivision of Parcels (regardless of size) is allowed.

**F. Clubs:** With the exception of the Association, no other buildings used primarily as clubhouses or meeting facilities shall be allowed to be constructed or placed on a Parcel or within the Project.

**G. Vehicles:** Any motor vehicle under repair or inoperable may not be parked on any roadway, driveway, or other easement. When said vehicles are parked on a Parcel, such motor vehicles must be hidden by walls, fences, screens, or foliage, so as the vehicle is not to be visible from roadways or other Parcels. All vehicles, engines, or motors must be operated with a muffler and/or spark arrestor.

**H. Trash:** No Parcel may be used for temporary or permanent storage of rubbish or trash (collectively, garbage). No garbage may be kept on any Parcel except in covered containers and screened from view from adjacent Parcels. Burying or dumping of garbage, junk, trash, oil, petroleum or other liquid or solid waste or littering of any kind on any Parcel is strictly prohibited.

**I. Junkyards, Auto Repair, Second-Hand Business, And Material Storage:** No junkyards, auto repair, second-hand businesses or other commercial uses shall be conducted on any Parcel. No storage of trucks, cars, buses, machinery, equipment or building materials shall be stored on any Parcel unless enclosed in a proper structure (which consists of a roof and enclosed walls) to not be visible from an adjoining Parcel or passing on the roadway.

**J. CC&RA-8-2013 passed Farm Animals and Pets:** No swine or sheep shall be raised, bred, or kept on any parcel. A parcel may be used for ranching that will include a reasonable number of horses, cattle, alpacas, or llamas provided the parcel has been fenced in accordance with the fencing guidelines and setbacks set forth in Article 3R. Under no circumstances shall a stockyard, dairy, riding stable, kennel, poultry farm, or any other commercial activity other than cattle, horses, alpacas, or llamas be permitted. Below is further clarification of the do's and don'ts concerning farm animals and pets:

1. Dogs are permitted as pets or work animals for ranching and security against wilderness predators. Dogs may not be allowed to roam free within the Windmill Ranches development and must stay within the confines of the owner's property. Dogs roaming free that are found attacking cattle (under the cattle lease agreement) may be shot and killed by the lessee or the lessee's hired help with no repercussions or liability towards the lessee or Windmill Ranches Home Owners Association. Dogs may be allowed to accompany owners or guests of owners who are horseback riding or hiking on the roads or common areas within the development. Dogs may not be raised for commercial purposes – no kennels.
2. Cats are permitted as pets or ranch animals to fend off vermin such as mice, rats, and rabbits. Cats cannot be raised for commercial purposes – no cat kennels.
3. Goats are permitted for personal use (milk or food) but must be kept within the confines of the owners parcel. Goats cannot be raised for commercial purposes.
4. Chickens are permitted for personal use only, but cannot be raised for commercial purposes – no poultry farms.
5. Horses, cattle, alpacas, and llamas are permitted so long as they remain within the confines of the owner's parcel.
6. No commercial riding stables are allowed. However, horses may be ridden by the owners and the owner's friends and family on the roads and common areas of the Windmill Ranches Development. The Windmill Ranches Home Owners Association will not be liable for any accidents or mishaps involving horses on the roads or common areas no matter what the circumstances.
7. Any other animals, birds, insects, or reptiles may not be raised for commercial purposes.
  - a. A few animal pets such as rabbits, skunks, monkeys or chinchillas are permitted, but must be kept within the confines of the owner's parcel. None of the aforementioned can be raised for commercial purposes.
  - b. A few birds such as parrots and parakeets may be kept as pets, but cannot be raised for commercial purposes. A few sporting birds such as hawks or falcons are permitted, but cannot be raised for commercial purposes.
  - c. A few (non-poisonous) insects or reptiles may be kept within the confines of the owner's home in a terrarium. However, the insects or reptiles must be approved by the State of NM. No poisonous insects or reptiles are allowed. No insects or reptiles may be raised or kept for commercial purposes.
  - d. No predatory exotic animals such as lions, tigers, or panthers may be kept or raised within the confines of the Windmill Ranches Development.
  - e. A few exotic animals such as zebras, giraffes, camels or elephants may be kept within the confines of the owner's parcel only if they are approved by the New Mexico Agricultural Dept. and are found not to carry any diseases harmful to humans, cattle, horses, goats, alpacas, or any other animal that is approved by Windmill Ranches H.O.A.
  - f. Bee keepers are permitted.
8. Windmill Ranch parcel owners of any animal, bird, reptile, or insect will accept full responsibility and liability for any accident, mishap, injury, or death to any human or other animal including the lessee's cattle that occurs anywhere within the Windmill Ranches development. Windmill Ranch Parcel owners of any animal, bird, reptile, or insect will accept full responsibility and liability for any damage or destruction done to any property, structure, vehicle, or road within the Windmill Ranches Development.

**K. Nuisance Activities:** The unusual, unnecessary, prolonged, or indiscriminate creation of noise, dust, fumes, odors or any other offensive activity is prohibited, including but not limited to excessive gunfire, road racing and loud music.

**L. CC&RA-9-2013 passed Signs:** "No signs will be permitted (including but not limited to for sale, for rent, and business) except address & owner of the property. "No Hunting" and "No Trespassing" signs are permitted. Signs allowed cannot exceed four square feet. The H.O.A. reserves the right to remove any and all signs that are in violation of this provision. Nothing in this provision shall prohibit an owner from attempting to sell his or her property." (Revision approved by membership 08/07/13)

**M. Structure Setbacks:** All structures shall be built at least hundred (100') feet from the front, and hundred (100') feet from the sides and rear, of any Parcel boundary. If local governmental regulations provide for more restrictive setbacks, those regulations shall govern. In any event, any construction on a Parcel shall comply with the State of New Mexico building codes and regulations. Any fences constructed on a Parcel shall not be closer than thirty (30) feet to any Parcel line for the purpose of grazing animals and/or utility easements as stated on the Recorded Survey Plat creating the parcel.

**N. CC&RA-10-2013 not passed Easements:** a) Declarant hereby grants and dedicates a thirty foot (30') wide perpetual easement along and immediately adjacent to all Parcel lines shown on the Recorded Survey Plat(s) (entirely within the applicable Parcels) to the Windmill Ranches Homeowner's Association Inc. for purposes of ingress/egress, utility line construction, repairs and maintenance, recreational use by it's members, and for use by

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Lessee for grazing livestock and other related ranching activity. b) All roadways shown on the Recorded Survey Plat(s) shall be sixty-feet (60') in width and are granted and dedicated to the Windmill Ranches Homeowner's Association Inc. for purposes of ingress/egress, installation, maintenance and repair of utility lines, maintenance and repair of said roadways, and access to Common Area and existing waters and related facilities for the benefit of its members and Lessee. c) All Common Area (as shown on the Recorded Survey Plat) is hereby dedicated and granted to the Windmill Ranches Homeowner's Association Inc. for recreational use by its members and for use by Lessee for grazing livestock and any related ranching activity. d) The rights to existing surface and underground water and water facilities including, pipelines, drinking tubs, windmills, wells and stock tanks located within the Common Area are hereby granted to the Windmill Ranches Homeowner's Association Inc. for its use and for use by Lessee in watering livestock. e) Declarant hereby grants a "blanket easement" over the Property for the sole purpose of maintenance and repair of any pre-existing water lines, to the Windmill Ranches Homeowner's Association Inc. and to Lessee as an easement in gross. f) An easement to any pre-existing stock ponds/tanks located on individual Parcels is granted to the Windmill Ranches Homeowner's Association, Inc. to allow livestock to drink and to allow Lessee to maintain and move livestock. Said easement shall contain a sixty-foot (60') wide access corridor leading to the stock pond/tank from a designated roadway or Parcel boundary easement (at Owner's option) and shall surround the perimeter of the pond/tank with an area of one-hundred feet (100') on all sides. g) Parcels abutting Common Areas, which are adjacent to road easements, are hereby granted a sixty (60') foot wide easement(s) across said common area for the legal access to the Parcel. Said sixty (60') foot wide strip shall be perpendicular to the road easement at a location of the Owners choosing. h) Declarant hereby reserves the right to use all roadways, easements and Common Area for purposes of ingress/egress, marketing, maintenance, utility line construction and further expansion for their use as such. i) Declarant also reserves the right to grant use of said easements and roadways to additional persons or entities in the future, at its sole discretion.

No structure, including fencing, shall be constructed on any easements as shown on the Recorded Survey Plat or described herein. However, cattle guards may be used. Owners will provide access to subject easements whenever requested by utility companies. Owners shall also provide access over any unfenced portion of their Parcel to Lessee for the collection of Lessee's livestock and will not prohibit Lessee from accessing any existing water lines for maintenance and repair. There shall be no further granting of easements by Owners without the express written approval of the Association. Legal access and usage shall be restricted to a maximum of two (2) driveways.

**O. Easement Revocation:** For fencing purposes, when one Owner purchases two or more contiguous Parcels, Owner may request that Declarant revoke those easements granted along the common boundary lines of the contiguous Parcels, PROVIDED said easements do not provide physical or necessary utility access to other Owners. Upon review and approval, Declarant shall revoke any said easements by executing and recording a unilateral "Declaration of Easement Revocation" which shall be effective only so long as one Owner owns all of the affected Parcels, HOWEVER if one or more of the subject Parcels are subsequently conveyed to separate, individual Owners, the "Revocation" shall terminate with regard to the affected Parcel(s) and the thirty foot (30') easement originally created along each side of the common boundary lines, shall be reinstated and thereafter run with the land. Nothing in this paragraph shall be construed as to allow for the construction of any structures, including fencing (other than perimeter fencing of the combined Parcels) within the original easement area of the common boundary lines.

**P. CC&R-1-2013 passed Roads Awareness:** All roads within Windmill Ranches that are maintained by the H.O.A. (except the county road Straley) are dirt and gravel. The speed limit on all roads including the county road is 25 mph.

To maintain the roads is costly. The amount of road work that can be performed and when it can be performed is determined by the amount of assessments received and the amount of funds received by the lease agreement. To keep assessments low, the funds must be saved for a few years at a time in order to afford a rock crusher to crush rock on site. Even after a large pile of rock is crushed, it costs to have the roads graded, the ditches pulled and the rock spread. The rock crushed will only cover a few miles of road. Thus, it takes years to maintain all 36 miles of road. Because of the monetary situation, H.O.A. members must be aware of the following:

1. The roads are subject to wind and water erosion. The "fines" that bind the gravel together can be blown away or washed away. The unbound gravel is then pushed aside by vehicular traffic exposing the base rock. The exposed base rock can shred tires. 10 ply tires are recommended for vehicles traveling on the roads. The H.O.A. will not be liable for any tire damage incurred by the lot owner or their guests while traveling on any of the roads within the Windmill Ranches Development.
2. Cattle and horses may be on the roads at any time of the day.
3. Severe torrential thunderstorms may wash out sections of the roads.
4. Heavy snow may make the roads impassable.
5. The H.O.A. keeps emergency funds available to repair washed out roads or plow snow covered roads. However, the availability of contractors at the time of the wash out or snow may determine how long it takes before the road can be repaired. Longer, alternate routes to a members property may have to be utilized until the roads are repaired.
6. Speeding may cause a vehicle to slip, slide, fishtail, or end up in an accident.

7. Water soaked roads due to heavy rains or melting snow may cause slipping and sliding of a vehicle. Awareness and care must be taken so that the vehicle does not end up in a ditch. 4 wheel drive vehicles are recommended in these conditions.
8. The H.O.A. is not responsible or liable for any vehicular accidents on the roads no matter what the circumstances, whether the accident be caused by an act of god or human carelessness. H.O.A. members, and their friends and family may be liable for injury or death of any livestock incurred by a collision with their vehicles on the roads.

(original paragraph replaced by approval of membership 08/07/13)

**Q. CC&RA-11-2013 passed Mineral Rights:** In no event shall any Owner or lessee use or cause to be used any portion of the Property, including his or her own Parcel, for the purposes of drilling, exploring, mining, or otherwise developing any deposits of oil, minerals, or other natural resources lying above, on, or under said Property. In no event shall any Owner or lessee use or cause to be used any portion of the Property, including his or her own Parcel, for the purposes of drilling, exploring, mining, or otherwise developing any deposits of oil, minerals, or other natural resources lying above, on, or under said Property. (original paragraph revised by approval of membership 08/07/13)

**R. CC&RA-12-2013 passed Grazing Rights:** Grazing rights and rights to pre-existing stock ponds/tanks on the Property are granted to the Windmill Ranches Homeowner's Association Inc. for their use as such and for use by Lessee in grazing and watering livestock and any related ranching activity. Owner may fence out and exclude Lessee's livestock from grazing on Owner's Parcel in accordance with the fencing guidelines set forth in paragraph S. below, at which time the grazing rights over the fenced portion shall be deemed suspended from the Association and Lessee. Owner may not fence in such a way as to prohibit livestock or Lessee from accessing a pre-existing stock pond/tank as referred to in paragraph N. above. It is the Home Owners Association intent to create a mutually beneficial relationship between the Association and the Lessee. Fees paid to the Association by Lessee for grazing livestock enables the Association to reduce association fees paid by its members, therefore Owners are strongly encouraged to allow Lessee's livestock to graze by not fencing an area of more than five (5) acres on Parcels of less than one hundred forty (140) acres in size, nor an area of more than ten (10) acres on Parcels of one hundred forty (140) acres or more in size. (declarant changed to Home Owners Association by approval of membership 08/07/13)

**S. Fencing Setbacks:** Subject to the blanket easement to water lines and all other easements defined on the Recorded Survey Plat or described in this Declaration, Owner may fence off all or any part of Owner's Parcel in order to restrict horses and other livestock from crossing or grazing on Owner's Parcel. However, in an attempt to preserve the character and integrity of the "working ranch" concept and in the interest of maintaining a mutually beneficial relationship between the Association and Lessee, Owners are encouraged to allow Parcels to remain unfenced with the exception of a five (5) or ten (10) acre area as described in paragraph R. above. Construction of all fences must be adequate to help keep off livestock. All fencing must be set back at least thirty (30") feet from Parcel lines and may not encroach upon any easement referred to on the Recorded Survey Plat and/or in this Declaration. Owner, at his/her expense, shall have the right to move any existing fence, which goes through Owner's Parcel, provided said fence so moved is reconnected so that there is no gap in the overall fencing. Any fences moved and/or installed by Owner, shall be at Owner's sole expense. All fences shall be constructed using "wildlife friendly" techniques as follows: Wherever barbed wire fencing is constructed, it shall have smooth wire on the bottom strand, which shall be twelve (12") inches above the ground and fence height shall not exceed sixty (60") inches. Additionally, all fencing shall be constructed with the following minimal requirements: a) with posts not more than fifteen (15") feet apart; b) not less than three (3) stays between posts; c) with five (5) continuous strands of wire and; d) such fence is adequate, in accordance with normal ranch standards to contain horses and other livestock.

**T. Environmental Protection:** The beauty of the Property is in the mixture of trees and open space. Trees having a minimum trunk diameter of six inches and measuring two feet above ground level and may only be cut if the following conditions are met: a) are dead or dying and; b) removal is required to clear land for building sites, access roads, fire prevention, enable installation of utilities, view corridors, or recreational open space. In any event not more than twenty percent (20%) of any one Parcel may be cut or cleared. Commercial wood harvesting is prohibited.

**U. Utility Installation:** Any utility construction on a Parcel shall be the Owner's responsibility at Owner's sole expense.

**V. Historical Preservation:** In the event an item of potential archaeological and/or native American historical significance such as native American artifacts is found on a Parcel within the Property the find should be reported to a non-profit organization that is dedicated to archeological preservation, research and education. Items of significance should not be disturbed or removed from the site except by a qualified archeologist and only for necessary historical preservation and educational purposes.

**W. Hiking and Equestrian:** Declarant has granted and dedicated all Common Area to the Association for the benefit of its members and to sublease grazing rights to those areas to Lessee. Owners, as members of the Association are granted use of the Common Areas for purposes of equestrian, pedestrian hiking or non-

motorized biking recreational purposes and the Association may establish designated trails for such purposes. The use of motorized vehicles i.e. ATV or motorcycles is prohibited within the Common Area. However, use of such vehicles shall be allowed on the designated roadways within the development and on Owner's private Parcel(s). No persons shall leave trash on roadways, easements, or Common Area or use them in any manner that is a nuisance, hazardous, offensive or violates the privacy of any other person.

**X. Water Well Requirements and Water Restrictions:** Any well drilled on a Parcel shall be the Owner's responsibility and at the Owner's sole expense. Well permits must be obtained from the New Mexico State Engineer Office. Wells must be a safe distance from any contaminant source; at least hundred feet (100') from a liquid waste disposal system of less than one thousand (1,000) gallons per day; at least two hundred (200') from a liquid waste disposal system of more than one thousand (1,000) gallons per day; at least seventy-five (75') from leak proof wastewater lines carrying less than one thousand (1,000) gallons per day; at least one hundred feet (100') from leak proof wastewater lines carrying more than one thousand (1,000) gallons per day; and at least twenty-five feet (25') from leak proof wastewater lines. Water conservation within the Property boundaries shall be encouraged. Water-saving fixtures shall be installed in all new residential structures. Water-saving fixtures shall include but not be limited to, low flush toilets, low flow shower heads, low flow faucets, any appliances that have water saving features such as washing machines and dish-washers and insulation of hot water pipes. For outdoor use, low water use landscaping techniques (xeriscaping) shall be promoted, using the techniques outlined in New Mexico State Engineer Office Technical Report no. 48. Irrigated turf areas shall not exceed three thousand square feet (3,000') in size on each Parcel. Swimming pools, water gardens, ponds or other outdoor water features holding more than one thousand (1,000) gallons may not be initially filled with ground water from the Property. Initial filling of pools, ponds, or other water features must be with water that has been brought in from a source outside of the development area (i.e. hauled water). Water harvesting features, including but not limited to cisterns, downspout collecting and grading, shall be encouraged. Water use is for domestic or livestock purposes only, industrial or commercial use as defined by the New Mexico State Engineer is prohibited.

**Y. CC&RA-13-2013 passed Waiver:** The Home Owners Association shall have the right to allow variances where strict enforcement of these restrictions would cause undue hardship, in accordance with a procedure to be adopted by the Association. (declarant changed to Home Owners Association by approval of membership 08/07/13)

#### ARTICLE 4 GENERAL PROVISIONS

**A. Enforcement:** The covenants, conditions, and restrictions contained in this Declaration shall run with the land and shall be binding upon all persons owning, leasing, subleasing or occupying any Parcel after the date on which this instrument shall have been recorded in the Office of the Clerk and Recorder of Lincoln County, New Mexico. This Declaration may be enforced by the Declarant, by any Owner, the Lessee or a lessee of any Parcel, by the holder of a Mortgage on any Parcel, by the Association, or by any one or more of said persons acting jointly; PROVIDED, HOWEVER, that any breach by reason thereof shall not defeat or adversely affect the lien of a Mortgage upon any Parcel, but each and all said covenants, conditions, and restrictions shall be binding upon and effective against any Owner, lessee or occupant of said Parcel whose title thereto is acquired by foreclosure, or otherwise, and FURTHER PROVIDED that the breach of any said covenants, conditions, and restrictions may be enjoined, abated or remedied by appropriate proceedings, notwithstanding the lien or existence of any such Mortgage. All instruments of conveyance or assignment of any interest in all or any party of the Property may refer to this Declaration and shall be subject thereto as fully as though this Declaration were therein set forth in full. These covenants, restrictions and easements shall inure to the benefit of the Owners herein, their heirs, legal representatives, successors and assignees.

**B. Invalidity:** These covenants, restrictions and easements may be enforced by the Owners of any Parcel in said Property including Declarant against any person or persons violating or attempting to violate any provision hereof, either to restrain or to recover damages caused thereby. The failure to enforce any of these covenants, restrictions or easements shall in no event be deemed a waiver of the right to do so thereafter. Invalidation of any of the covenants, conditions, and restrictions, contained herein by a court of competent jurisdiction, shall in no way affect the validity of any other provision of this Declaration, all of which shall remain in full force and effect.

**C. CC&RA-14-2013 passed Legal Fees and Costs:** The Declarant or the board of directors of the Association may cause a lawsuit to be commenced and maintained in the name of the Association against an Owner to enforce the payment of any delinquent assessment or to enforce any other pertinent provision of this Declaration. Any judgment rendered in any such action shall include the amount of the delinquency, interest at the rate of nine percent (9%) per annum from the date of delinquency, the amount of damages proven, court fees, and reasonable attorney's fees which are incurred by the Association as fixed by the court. Any Owner who violates these covenants, restrictions and easements shall be liable for the reasonable attorneys' fees and legal expenses of any other Owner who is successful in a legal action to enforce such covenant, restriction or easement. (interest rate changed to 9% by approval of membership 08/07/13)

**D. CC&RA-15-2013 passed Amendments:** After the Transition Date this Declaration may be amended from time to time in writing by sixty-six percent (66%) of the number of votes cast by Members at a meeting held for



such purpose (so long as the thirty three and one third percent (33 1/3%) quorum requirement is met). A Certificate of Amendment, setting forth the amendments to this Declaration and a record of roll call of votes of all Members voting upon the issue of amendment, identifying the name of the Members voting, the Parcels owned by each Member and the vote cast shall be prepared by the Association. Such amendment shall be recorded in the Office of the Lincoln County Clerk and become effective immediately thereafter. So long as it owns any Parcel, Declarant may amend this Declaration without approval of the Owners, to correct any inconsistencies or to make revisions or to comply with any law or regulation. Article 3, paragraphs R. and S. may not be amended by the Association after the Transition Date in such a way as to change or negate the rights provided to the Lessee in this Declaration. (51% changed to 33 1/3% by approval of membership 08/07/13)

**E. Term:** This Declaration shall be effective upon its recordation in the office of the County Clerk of Lincoln County, New Mexico and as amended from time to time, shall continue in full force for thirty (30) years and effect until the commencement of the calendar year 2032. Upon commencement of the calendar year 2032, this Declaration shall be automatically renewed and extended for successive periods of ten (10) years each, unless terminated by not less than sixty-six percent (66%) of the votes cast by the members entitled to vote or amended pursuant to Paragraph D above. Such termination or amendment shall be recorded in the Office of the Lincoln County Clerk and Recorder.

**F. CC&RA-16-2013 passed Liabilities of Declarant:** Article 4 F shall remain blank and reserved for an adoption of a new CC&R in the future.

#### **ARTICLE 5** **ANNEXATION OF ADDITIONAL PROPERTY**

**A.** Declarant, its successors and designees reserve all present and future rights to utilize all private roads and easements within the Project to comparably develop lands within or adjacent to the Project. Any such expansion to be included within this Declaration shall be subject to the terms and conditions of this Declaration, but may include reasonable variances.

**B.** At any time the Declarant shall have the right to annex and subject to this Declaration all or any portion of the additional property without the consent of any other Owner or person. An Owner's obligation to pay assessments shall commence as provided in this Declaration. If Declaration of Annexation annexing a portion of additional property divides the annexed portion into phases, the Declarant shall have the right to amend any such Declaration of Annexation to change the description of the phases within the annexed Project, except that the Declarant may not change any phase in which a Parcel has been conveyed to an Owner.

#### **ARTICLE 6** **DE-ANNEXATION eliminated and replaced 08/07/13** **WILDERNESS AND WILDLIFE AWARENESS CC&R-2-2013 passed**

Windmill Ranches is in a wilderness area. This Article is to inform H.O.A. members and their friends and families who are not accustomed to wilderness areas of the hazards involved.

1. Wildlife includes but not limited to: mountain lions, lynx, bears, badgers, coyotes, porcupines, skunks, birds of prey (hawks, owls), snakes, rabbits, rats, and mice. Pets and small children are subject to predation by large predators or snake bite. Pets that interact with smaller predators like badgers or coyotes or even mice and rabbits may be subject to disease like rabies. While rare, hanta virus can be contracted from mice feces. There is no none cure for hanta virus. Bird feeders, pet food, and garbage attracts mice, rats, badgers, and rabbits. The small wildlife will attract the large predators, snakes, and birds of prey.
2. The terrain on your property and in the common areas could be hazardous. There are loose rocks and soil, steep terrain, hidden holes or burrows, tall grass, cacti, and many other prickly plants.
3. The average altitude is around 6,000 feet. Anyone with health issues or has lived at sea level for most of their life may have problems with the altitude.
4. The weather can be hazardous. Temperatures can range from well below zero degrees Fahrenheit to above one hundred degrees Fahrenheit. The summers are subject to intense thunderstorms with extreme lightning strikes. The winters can bring snow and make the roads impassable. Power failures occur from time to time due to lightning strikes or birds roosting on transformers. The extreme heat and dryness can subject the ranch to wildfire by lightning strike or human carelessness. Emergency firefighting equipment may take hours to reach the ranch.
5. Because of the remoteness of Windmill Ranches and all the hills and valleys, cell phone coverage in some areas is non-existent.
6. Anyone hiking or horseback riding alone on their property or in the common areas of the ranch should dress for the weather, carry food and water, and firearms with enough ammunition to sound several series of S.O.S signals. Mirrors, whistles, and GPS locator devices are handy as well.
7. Be aware that ambulance service may take hours and is costly. An ambulance that must be driven to the ranch and must take someone to the hospital in Ruidoso, Alamogordo, or Albuquerque may cost thousands of dollars. An air ambulance (helicopter) may cost tens of thousands of dollars. A snake bite, heart attack,

Declaration of Covenants, Conditions and Restrictions  
Windmill Ranches Home Owners Association, Inc.  
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Post Office 967, Carrizozo, New Mexico 88301-0967

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or severe accident where time is of the essence may necessitate an air ambulance. It is up to H.O.A. members to ensure that his or her insurance can cover the emergency costs.

8. The H.O.A. is not responsible or liable for any accident, predation by animal, or any accident or catastrophe caused by an act of God or human carelessness no matter what the circumstances on any part of the ranch whether it be private property, the common areas, or the roads.

**ARTICLE 7**  
**AMENDMENTS & ADOPTIONS CC&R-3-2013 passed**

The CC&R's that are accepted by vote by the membership on August 7, 2013:

- |                  |              |
|------------------|--------------|
| 1. CC&R-1-2013   | approved     |
| 2. CC&R-2-2013   | approved     |
| 3. CC&R-3-2013   | not approved |
| 4. CC&R-4-2013   | approved     |
| 5. CC&R-5-2013   | approved     |
| 6. CC&R-6-2013   | approved     |
| 7. CC&R-7-2013   | approved     |
| 8. CC&R-8-2013   | approved     |
| 9. CC&R-9-2013   | approved     |
| 10. CC&R-10-2013 | not approved |
| 11. CC&R-1-2013  | approved     |
| 12. CC&R-11-2013 | approved     |
| 13. CC&R-12-2013 | approved     |
| 14. CC&R-13-2013 | approved     |
| 15. CC&R-14-2013 | approved     |
| 16. CC&R-15-2013 | approved     |
| 17. CC&R-16-2013 | approved     |
| 18. CC&R-2-2013  | approved     |
| 19. CC&R-3-2013  | approved     |

Committee members – Robert Paul Henry, Sylviane Guilfoil, Judy Guevara and Anne Exterkamp

Board members accepted the proposed revisions prior to distribution to the membership for their vote. Board members Robert Simpson, Frances Scott, Robert Paul Henry, John Mruskovic and Richard "Red" Hill.

EXECUTED this 19 day of MARCH <sup>2014</sup><sub>2013</sub>

By: [Signature]  
Robert Paul Henry, Director  
Windmill Ranches Home Owners Association, Inc.

State of New Mexico )  
County of Lincoln )

This instrument was acknowledged before me this 19<sup>th</sup> day of March <sup>2014</sup><sub>2013</sub> by Robert Paul Henry, as Director of Windmill Ranches Home Owners Association, Inc.

[Signature]  
Notary of Public

My Commission expires:

5/3/15

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