

DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS  
FOR  
GATEWAY NORTH

43919

THIS DECLARATION is made this 21st day of June, 1994, by Amrep Southwest Inc., a New Mexico Corporation (hereinafter referred to as the "Developer"). The Developer declares that the real property in Sandoval County, New Mexico, more particularly described in Exhibit A attached hereto and incorporated herein by reference (hereinafter referred to in total as "GATEWAY NORTH"), currently owned by the Developer, is and shall be held, transferred, sold, conveyed, leased, and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to hereinafter as the "Restrictions") hereinafter set forth.

ARTICLE I  
PURPOSE

The purpose of these Restrictions is to insure the proper use and most appropriate development of GATEWAY NORTH (hereinafter sometimes abbreviated as "GN") through the imposition of uniform standards. It is the intent of these Restrictions to provide conditions, covenants, and restrictions, that insure that "GN" will be maintained as an attractive business environment.

ARTICLE II  
DEFINITIONS

The following words, when used in this Declaration, shall have the following meanings:

Section 2.1, "Architectural Review Committee" (hereinafter referred to as the "ARC"), shall be composed of no less than three (3) nor more than five (5) individuals designated from time to time by the Board of Directors of the Association, which individuals shall initially be Tracy Leonard, Mike Castillo, Cliff Spirock, and Kevin Reid, and shall have the powers and duties as set forth herein.

Section 2.2, "Association," shall mean and refer to Gateway Owners Association, a New Mexico non-profit corporation. This is the Declaration of Protective Covenants and Restrictions to which the Articles of Incorporation (hereinafter referred to as the "Articles") and By-Laws (hereinafter referred to as the "By-Laws") of the Association make reference.

Section 2.3, "Building," shall mean any improvement within a Building Site which contains space, either enclosed or open to the air, for which the conduct of office, retail, service or other occupancy is created, but not including exterior landscaping, sidewalks, drives and exterior areas.

Section 2.4, "Building Site," shall mean and refer to tracts C-1, C-2, C-3, C-4, C-5, C-6, C-7, C-8, C-9, C-10, C-12, C-13, C-14 and C-15 of Gateway North and any future replats thereof. Additional Building Site may be added to this Declaration pursuant to Section 10.1 hereinbelow.

Section 2.5, "Common Area," shall mean and refer to that certain real and personal property identified as Tract C-11 of Gateway North and those areas identified as easement areas Type 1, Type 4, Type 5, Type 6 and Type 7 as shown on the recorded plat of Gateway North. All of the Common Area constitutes a reciprocal access and use easement, as provided for in Article VI herein, and is for the mutual benefit of the Developer and all Owners. "Common Area" may also include any landscaped areas adjacent to or in the vicinity of the Gateway North, which the Association, by written instrument recorded in the office of the Sandoval County Clerk, agrees to accept as Common Area; including without limitation medians and right-of-way areas.

Section 2.6, "Developer," shall mean and refer to Amrep Southwest, Inc., a New Mexico corporation, its successors and assigns, and include any person or entity to which Developer may assign its rights, privileges, duties and obligations hereunder, which rights, privileges, duties and obligations are and shall be assignable.

Section 2.7, "Design Criteria," shall mean and refer to the quality and character specifications prepared by the Developer with this instrument and the approved Development Plan. The Design Criteria, listed in the approved GN Development Plan, contain the design standards/guidelines to which all developed lots shall adhere. The Development Plan may be modified or amended by Developer in its sole discretion and shall be binding upon all Owners and Occupants of GN.

Section 2.8, "GN," shall mean and refer to the Gateway North.

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Clerk of Court

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Section 2.9, "Gateway North Development Plan," shall refer to the document entitled "Developer Plan For Special Use Zoning, Commercial and Office Land Use, Within The City Of Rio Rancho, New Mexico, Gateway North and Gateway South," which was approved by the City of Rio Rancho governing body on November, 1993 and as subsequently amended.

Section 2.10, "Improvement," shall mean and refer to any man-made changes in the natural condition of the land including but not limited to structures and construction of any kind, whether above or below the land surface, such as any buildings, fence, wall, sign, addition, alteration, screen enclosure, sewer, drain, disposal, lake, waterway, road, paving, utilities, grading, landscaping, signs and exterior illumination.

Section 2.11, "Lot" shall mean and refer to any legally subdivided parcel of land in GN, together with any and all improvements thereon, created and existing by a plat recorded in the public records of Sandoval County, New Mexico, on which any improvement could be constructed, whether or not it has been constructed. "Lot" does not include any subdivided parcel designated wholly as Common Area.

Section 2.12, "Occupant," shall mean and refer to any person or organization which has occupied, purchased, leased, rented or is otherwise licensed or legally entitled to occupy and/or use any Lot or improvement in GN (whether or not such right is exercised).

Section 2.13, "Owner," shall mean and refer to the record owner, whether one or more partners, persons, trusts, corporations, or other entity, of the fee simple interest to a Lot or any other portion of GN, including contract purchasers (but not contract sellers), their heirs, successors, personal representatives or assigns. An Owner may, upon written notice to the Developer and/or Association, assign all or part of his rights, but not his duties hereunder, to the Occupant of the Owner's Lot.

Section 2.14, "Site Development Plan," shall mean any submittals, testimony, drawings and conditions of approval required by the ARC for the construction of any improvement in GN. The requirements for a Site Development Plan will be available from the ARC in written form.

### ARTICLE III ARCHITECTURAL REVIEW COMMITTEE

Section 3.1, Necessity of Architectural Review and Approvals. No improvement of any kind shall be commenced, constructed, erected, placed, altered or maintained upon any Lot, nor shall any addition, change, or alteration thereon or thereof be made, nor shall any subdivision platting or replatting of any Lot be made until plans and specifications with respect thereto, in manner and form satisfactory to the ARC showing the proposed improvements, plot layout and all exterior elevations, materials and colors, signs and landscaping and such other information as listed in the GN Development Plan have been submitted to and approved in writing by the ARC.

Section 3.2, Architectural Review Committee Review and Approval Process. The project owner and/or his or her agent shall follow the ARC review procedures outlined in the GN Development Plan. Approval shall be based upon, among other things, the conformity of the plans and specifications with the Development Plan and any Design Criteria contained within said document. The ARC shall not arbitrarily or unreasonably withhold its approval of such plans and specifications.

Section 3.3, Powers and Duties. The ARC shall have the following powers and duties:

- (A) To recommend from time to time to the Board of Directors of the Association modifications and/or amendments to the Development Plan. Any modification or amendment to the Development Plan shall be consistent with the provisions of this Declaration and shall not be effective until adopted by a majority of the members of the Board of Directors of the Association at meeting duly called and noticed and at which a quorum is present and voting, and are approved in writing by the Developer. Notice of any modification or amendment to the Development Plan, including a copy of such change or modification, shall be delivered to each member of the Association, provided that the delivery to each member of the Association of notice and a copy of any modification or amendment to the Development Plan shall not constitute a condition precedent to the effectiveness or validity of such change or modification.
- (B) To require a preliminary submittal which includes, but is not limited to, all of the elements listed in the GN Development Plan.
- (C) To require a final submittal which includes, but is not limited to, all of the documents listed in the GN Development Plan.

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- (D) To approve or disapprove any improvement or change or modification thereto, the construction, erection, performance or placement of which is proposed upon any Lot in GN and to approve or disapprove any exterior additions, changes, modifications or alterations therein or thereon. All decisions of the ARC shall be submitted in writing to the Association. Any party aggrieved by a decision of the ARC shall have the right to make a written request to the Association, within thirty (30) days after such decision, for a review thereof. The determination of the Board upon reviewing any such decision shall in all events be final and dispositive upon all parties.
- (E) If any improvement is changed, modified or altered without prior approval of the ARC, then the Owner shall upon demand cause the improvement to be restored to comply with the plans and specifications originally approved by the ARC and shall bear all costs and expenses of such restoration, including the costs and reasonable attorney's fees of the ARC, if the ARC is required to hire an attorney to cause the restoration.
- (F) To adopt a schedule of reasonable fees for processing requests for ARC approval of proposed improvements. Such fees, if any, shall be payable to the Association in cash at the time that plans and specifications are submitted to the ARC. In the event such fees, as well as any other costs or expenses of the ARC pursuant to any other provisions of this Article are not paid by the Owner, they shall become a lien of the Association on the Property, pursuant to Article VIII hereof.
- (G) To retain professional advisors including but not limited to attorneys and architects as may be necessary in the exercise of its powers.
- (H) To perform such incidental acts as may be necessary in the exercise of its powers.

Section 3.4, Liability. Neither the ARC nor the Developer nor their respective successors or assigns shall be liable in damages to anyone submitting plans to them for approval, or to any Owner affected by this Declaration, by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval, disapproval or failure to approve any such plans and specifications. Every person who submits plans to the ARC for approval agrees, by submission of such plans and specifications, and every Owner and Occupant of any of said Building Sites agrees, by acquiring title thereto or an interest therein, that he/she will not bring any action or suit against the ARC or Declarant to recover any such damages.

Section 3.5, Limitation of Action. Notwithstanding anything to the contrary herein contained, after the expiration of one (1) year from the date of issuance of a building permit by the appropriate governmental authority for any improvement, said improvement shall be deemed to be in compliance with all provisions of this Article, unless actual notice of such noncompliance or noncompletion, executed by the Association, shall appear of record in the public records of Sandoval County, New Mexico, or unless legal proceedings shall have been instituted to enforce compliance or completion.

#### ARTICLE IV REGULATION OF IMPROVEMENTS

Section 4.1, General. No improvement shall be commenced, erected, constructed, altered, or maintained upon any Building Site, nor shall any change or alteration thereon or thereof be made, nor any subdivision, plat or replat be made unless and until the plans, specifications and location shall have been submitted to and approved in writing by the ARC as more fully set forth in Article III of this Declaration.

##### Section 4.2, Architectural Theme.

All exterior building elevations, including walls and finishes, shall be reviewed by the ARC. The proposed building design must conform to at least the following criteria:

- (A) All roof-mounted equipment shall be screened from view of NM State Road 528 and all public traffic thereon in a manner that is compatible with the overall approved architectural design. Also all exterior equipment on the building must be appropriately screened from both adjacent streets and internal access roads.
- (B) No metal panel or prefabricated buildings or building components will be allowed to face any major street. Buildings which are constructed using exterior metal panels or exterior concrete block (common masonry units) must present an elevation to the street consisting primarily of decorative wood, finished concrete, architectural masonry, or other treatment approved by the ARC.
- (C) Loading facilities such as, landing areas, overhead doors, and loading docks, shall be prohibited on any building elevation which faces NM State Road 528 or Grande Blvd.

- (D) Any outside storage shall be screened from the view of traffic on all public streets.

Section 4.3, Minimum Setback Lines. No structure of any kind and no part thereof shall be placed on any site closer to a property line or right-of-way line than as listed in the GN Special Use Development Plan Standards.

- (A) Front yard setbacks shall be a minimum of thirty-five feet (35'), except as follows:

- (1) from NMSR 528, Grande Blvd. and along the new cul-de-sac within Gateway North, forty (40) feet.

- (B) Side yard setbacks shall be a minimum of ten (10) feet unless reduced to zero (0) feet (common wall) with proposed attachment to adjacent structure.

Section 4.4, Height Restrictions. No building or appurtenance, including but not limited to elevators or elevator equipment, stairways, water towers or similar equipment, shall intrude beyond the restricted height area. These restricted heights are based on the location of the structure or appurtenance within its zone. The first zone being that area adjacent to the east right-of-way of the Grande Blvd. running generally north to south extending easterly 180' to the interior of either GN. The building height is established by proceeding east at a 22.5° angle measured horizontally from the newly established R/W line of Grande Boulevard with the maximum building height being 26'. The second zone is that area beginning with the end of the first zone and running to the western right-of-way line of the NMSR 528, approximately 310' wide. Within this zone, the same angle is followed with the same base beginning point on the east R/W of Grande Blvd., but the maximum height allowed is 40 feet in this zone.

Section 4.5, Landscaping.

- (A) All building sites shall be landscaped only in accordance with the GN Development Plan and approved in writing by the ARC prior to any development of the Building Site. ARC may adopt a specific plant list design to be used as a guide for the required landscape plan for each site. A landscaping plan shall include information regarding the type of sodding, the type of seeding, the types of trees, hedges and shrubs and information regarding other customary landscape treatment for the entire site, including fences, walls and screening. All landscaping plans shall also include an underground irrigation system and an individual water meter for irrigation. All landscaping shall be undertaken, completed and maintained in accordance with such approved plan and said plan may not be altered, amended or revised without submitting the revised landscaping plan for prior written approval by the ARC.

- (B) All landscaping required hereunder or otherwise to be provided on any Building Site shall be completed within sixty (60) days after the substantial completion of construction of any buildings to be constructed on the Building Site, provided, however, that if weather conditions do not at such time permit, then such landscaping shall be completed as soon thereafter as weather conditions permit. If any Owner fails to undertake and complete his landscaping within the time limit previously set forth herein, the Developer or the Association may, at its option, after giving the Owner ten (10) days written notice to undertake and complete the landscaping of the Building Site in accordance with the landscaping plan. If the Developer or the Association undertakes and completes such landscaping because of the failure of Owner to complete the same, the costs of such landscaping shall be assessed against the Owner, and if said assessment is not paid within thirty (30) days after written notice of such assessment, said assessment will constitute a lien on the Building Site and may be enforced as set forth in Article VIII hereof.

Section 4.6, Drainage and Water Retention. Every lot and/or individual development within GN must conform to the requirements of the approved Development Plan and Master Drainage Plan.

Section 4.7, Excavation and Site Grading. No excavation shall be made except in connection with construction of an improvement, and upon completion thereof, exposed openings shall be backfilled, graded, and leveled. Site grading shall be subject to the approval of the ARC and shall be in conformance with the GN Development Plan.

Section 4.8, Utility Connections. All utility connections, including all cable, gas, electrical, and telephone connections and installations of wires to buildings shall be designed and installed in accordance with the GN Development Plan.

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Section 4.9, Loading, Service and Outside Storage. Each Lot shall provide sufficient on-site loading facilities to accommodate site activities. All loading movement, including turnarounds, shall be made off of the public right-of-way. Loading areas shall be located and screened so as to minimize their visibility from any street, Common Area or principal view. Screening of service areas, loading docks and so forth may consist of any approved combination of earth mounding, landscaping, walls and/or fencing. All screened materials, supplies and equipment shall be permitted to remain outside of any building. Tanks, motors and special industrial equipment will be permitted to remain outside of any building as long as they are screened from the street and surrounding property. Rubbish and garbage facilities shall be screened and located in conformance with the GN Development Plan. Rubbish and garbage facilities for restaurants and other wet disposals shall include compactors and prevention of odors, insects and pests.

Section 4.10, Irrigation. Automatic irrigation systems shall be required on any Lot or combination of Lots within the Common Area and shall be from individual city water meters unless otherwise specified.

Section 4.11, Parking Areas. No parking shall be permitted on any street, lawn, median strip, public walkway, swale, berm, or other unpaved area or at any place other than on the paved parking spaces provided for in the Common Area or on designated areas of the Owner's Lot. Each Owner and Occupant shall be responsible for compliance with the foregoing by his employees and visitors. Off street parking shall be provided by each Owner and Occupant for customers and visitors unless a shared use agreement is executed between two or more Owners and is approved by the ARC. The location, number, and size of parking spaces shall be in accordance with the GN Development Plan, the approved Site Development Plan, and are subject to approval by the ARC, pursuant to Article III hereof. Proper visual screening, by means of, trees, earth mounding and other landscaping is desired between any parking lot and any street. Overnight parking of campers, mobile homes, boats, trailers or motor homes is prohibited unless prior written approval is obtained from the Developer or the Association. If parking requirements increase as a result of the change in use or number of employees, additional off street parking shall be provided to satisfy the intent of this Article.

Section 4.12, Signs.

- (A) All signs which shall be erected shall have the prior written approval of the ARC as to size, color, location, and content and shall be in conformance with the GN Development Plan and harmonious to the look of GN. Initial architectural design shall provide for signage so as to avoid a tacked-on appearance. All signs must be professionally designed by an architect or graphics specialist. Two categories of signage, identification and information, are allowed and will conform to the following:
- (B) Identification signs shall typically be double-sided and placed perpendicular to the traffic. Signs shall be placed within the first 20% of the area between the vehicular entrance and the building and within the 20% of that distance nearest the building.
- (1) A common sign shall be placed within the landscaped median where two (2) businesses share a common entrance access. The ARC shall consider allowing an additional identification sign on each site.
  - (2) The height of an identification sign shall be determined by the location of the centerline of the main panel.
  - (3) Free-standing, low height signage is the only identification signage allowed except for cut-out letters placed on the facade of a buildings with limitation of size and percent coverage of building facades. All building facade signs must be unified in appearance for all Occupants within a building complex.
  - (4) A single sign shall be placed so as to not obscure any other identification, information or vehicular control signs. One two-sided identification sign will suffice except where a site has more than one vehicular entrance on different sides of the building or the orientation of the site and adjacent roadways is such that more than one sign would be required for proper identification. Any additional signage must be approved by ARC.
- Illumination of all signage is specifically limited to the hours of approved business operation.
- (C) Information signs. Information signs shall be low elevation informational (other than tenant identification and directional signs) and are recommended to be either (1) pipe- or pilaster-supported, non-illuminated, with single or double faces, or (2) illuminated light box version supported by the same type of structure as the primary identification signage.
- (1) All information signs shall follow the basic type styles as listed in the approved GN Development Plan and any additional styles/restrictions as adopted by ARC.
  - (2) No signs shall be placed closer than six feet (6') from any road or access drive.



- (3) A sign must be placed so that it is visible and legible to approaching vehicles in accordance with speed. The approved GN Development Plan lists the distances/speeds to be used as a guide.
- (4) The ARC may adopt a specific type of identification or vehicular control sign which shall be the only type allowed in Gateway North.

Section 4.13, Exterior Lighting. No exterior lighting shall be directed toward roads and adjacent sites.

Section 4.14, Commencement of Construction. After a Lot is purchased, the Owner must commence construction within one (1) year, unless such time is extended by the ARC in conjunction with tentative building plans and development concepts.

#### ARTICLE V MAINTENANCE

Section 5.1, Maintenance Responsibilities. The Owner and the Occupant of any Lot in GN shall, jointly and severally, have the duty and responsibility, at their sole cost and expense, to keep their Lot, including improvements and grounds, in a well-maintained, safe, clean and attractive condition at all times. Such maintenance includes but is not limited to the following:

- (A) Removing promptly all litter, trash, refuse and wastes.
- (B) Mowing of lawn when the grass is more than five (5) inches high; if the Lot is unimproved, weeds must be kept out below twenty-four (24) inches.
- (C) Pruning of trees and shrubbery.
- (D) Watering and fertilizing.
- (E) Keeping exterior lighting, signs and mechanical facilities in working order.
- (F) Keeping lawn and landscaped areas alive, free of weeds and attractive.
- (G) Keeping parking areas, driveways and roads in good repair.
- (H) Complying with all governmental, health, police and fire requirements, statutes and regulations.
- (I) Striping and sealing of parking and driveway areas.
- (J) During construction, it shall be the responsibility of each Owner to insure that Owner's construction site is kept free of unsightly accumulations of rubbish and scrap materials, and that construction materials, trailers, sheds and the like are kept in a neat and orderly manner.
- (K) Keeping all site irrigation and drainage systems in good repair and working order.
- (L) Maintaining of all weathering exterior colored surfaces shall be redone at least every five (5) years unless a waiver is obtained from the ARC.

Section 5.2, Enforcement. If, in the opinion of the Developer or the Association, any Owner or Occupant has failed in any of the foregoing duties or responsibilities, then the Developer or Association may give such person written notice of such failure and such person must within ten (10) days after receiving such notice, perform the maintenance required. Should any such person fail to fulfill this duty and responsibility within such period, then the Developer or Association, shall have the right and power to enter on to the premises and perform such maintenance without any liability for damages for wrongful entry, trespass or otherwise to any person. The Owners and Occupants for which such work is performed shall jointly and severally be liable for the cost of such work and shall promptly reimburse the Developer or Association for such cost. If such Owner or Occupant shall fail to reimburse the Developer or Association within thirty (30) days after receipt of a statement for such work from the Developer or Association, then said indebtedness shall be a debt of all of said persons, jointly and severally, and shall constitute a lien against the Lot on which said work was performed. Such lien shall have the same attributes as the lien for assessments and special assessments set forth in Article VIII and the Developer or Association shall have identical powers and rights in all respects including but not limited to the right of foreclosure.

Josie Parra  
Owner Operator

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Section 5.3, Access at Reasonable Hours. For the purpose of performing the maintenance authorized by this Article, the Association, its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot or any Improvements thereon at reasonable hours.

#### ARTICLE VI PROPERTY RIGHTS

Section 6.1, Owners' Easements of Enjoyment. Every Owner shall have an easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to their Lot, subject to the following:

- (A) The right of the Association to take such steps as are reasonably necessary to protect the Common Area against foreclosure.
- (B) All contrary or limiting provisions of this Declaration, any plat of all or any part of GN and the Articles and By-Laws of the Association.
- (C) Rules and regulations governing use and enjoyment of the Common Area adopted by the Association.
- (D) Restrictions contained on any and all plats of all or any part of the Common Area or filed separately with respect to all or any part or parts of GN.
- (E) The Association shall have the sole right to execute documents conveying, waiving, disclaiming, moving or otherwise affecting the Common Area and no document affecting title, interests, or rights in the Common Area shall require any Owners execution to be valid and binding.

Section 6.2, Allowed Operations and Uses. All of the Lots within GN are intended to be used for commercial and office uses including accessory or directly related services. Uses as specifically defined in the City of Rio Rancho zoning ordinance governing GN as now existing or as hereafter amended are allowed.

Unless otherwise specifically prohibited by the governing municipal and regulatory agencies, the GN Development Plan or this Declaration, any operation and use, as described above, will be permitted if it is performed or carried out entirely within a building that is so designed and constructed that the enclosed operations and uses do not cause or produce a nuisance to adjacent Lots including but not limited to vibration, sound, electromechanical disturbance, radiation, discharge of waste materials, electromagnetic disturbance, air or water pollution, dust emission or odorous, toxic or non-toxic matter. All site lighting is to be from and confined within property lines. Further, no noxious or offensive trade, service or activity shall be permitted.

Section 6.3, Delegation of Use. Subject to such limitations as may be imposed by the By-Laws, each Owner may delegate this right of enjoyment in and to the Common Area and facilities to its tenants and invitees.

Section 6.4 Easements of Encroachment. There shall exist reciprocal appurtenant easements as between adjacent Lots and between a Lot and any portion or portions of the Common Area adjacent thereto for any encroachment due to the unwillful placement, settling, or shifting of the Improvements constructed, reconstructed, or altered thereon, provided such construction, reconstruction, or alteration is in accordance with the terms of this Declaration. Such easement shall exist to a distance of not more than one (1) foot as measured from any point on the common boundary between adjacent Lots, and between each Lot and any adjacent portion of the Common Area, along a line perpendicular to such boundary at such point. No easement for encroachment shall exist as to any encroachment occurring due to the willful conduct of an Owner.

Section 6.5, Other Easements. Other easements benefiting the Owners, the Developer and/or the Association exist as shown on the recorded plat of Gateway North.

Section 6.6, Right of Entry. The Association, through its duly authorized employees and contractors, shall have the right after reasonable notice to the Owner thereof to enter any Lot subject to this Declaration at any reasonable hour on any day to perform such inspection and/or maintenance as may be authorized herein.

Section 6.7, No Partition. There shall be no judicial partition of the Common Area, nor shall Developer, or any Owner or any other person acquiring any interest in or any part thereof, seek judicial partition thereof.

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ARTICLE VII  
ASSOCIATION

Section 7.1, Membership. Every person or entity who is a record fee simple Owner of a Lot in GN, including the Developer as long as it owns all or any part of GN, shall be a member of the Association, provided that any such person or entity who holds such interest only as security for the performance of an obligation shall not be a member. When one or more persons or entities holds fee simple title to any part of the GN, all such persons or entities shall be members but voting power is limited as provided in the Articles and/or Bylaws. Membership shall be appurtenant to, and may not be separated from, the ownership of any Lot.

Section 7.2, Voting. Voting rights in the Association shall be as set forth in the Articles and Bylaws of the Association.

ARTICLE VIII  
MAINTENANCE ASSESSMENTS

Section 8.1, Creation of the Lien and Personal Obligation of Assessments. Each Owner of a Lot in GN (by acceptance of a deed for Lot, whether or not it shall be so expressed in any such deed or other conveyance), including any purchaser at a judicial sale, shall be deemed to covenant and agree to pay to the Association any annual assessments or charges, and any special assessments to be fixed, established and collected from time to time as provided in this Declaration. All such assessments, together with interest thereon from the due date, at the rate of fifteen (15) percent per annum and costs of collection thereof (including reasonable attorney's fees), shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such assessment is made, and shall also be the personal obligation of the Owner. No Owner of a Lot may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or by abandonment. No portion of GN which does not constitute a Lot will be liable for any annual or special assessment under this Section.

Section 8.2, Purpose of Assessments. The annual and special assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety, security and welfare of the Owners of GN and in particular for the improvement and maintenance of the Common Area and of any easement in favor of the Association and maintenance and beautification of adjacent public rights-of-way, if not maintained by a public body, including but not limited to the cost of taxes, insurance, labor, equipment, materials, management, maintenance and supervision thereof, as well as for such other purposes as are permissible activities of, and undertaken by, the Association.

Section 8.3, Annual Assessments. Except as hereinafter provided, the annual assessment, excluding any special assessment, shall be set by a two-thirds (2/3) vote of the Board of Directors of the Association. The amount of the annual assessment shall be determined by the Board of Directors in accordance with the projected financial needs of the Association. The decision of the Board of Directors of the Association as to such amount shall be final.

Section 8.4, Special Assessments. In addition to any annual assessments, the Association may levy in any assessment 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, unexpected repair or replacement of a capital improvement as approved by the Board of Directors of the Association, including the necessary fixtures and personal property related thereto, or to make up the difference between actual operating costs and the annual assessment; provided that any such assessment shall have the assent of a majority of the voting power of the Association.

Section 8.5, Uniform Rate of Assessment. All annual and special assessments shall be at a uniform rate for each acre in GN exclusive of Common Areas.

Section 8.6, Date of Commencement of Annual Assessments and Due Date. The assessments for which provision is herein made shall commence on the date or dates (which shall be the first day of a month) fixed by the Board of Directors of the Association to be the date of commencement. The due date of any assessment shall be fixed in the resolution authorizing such assessments, and any such assessment shall be payable in advance in monthly, quarterly, semi-annual or annual installments, as determined by the Board.

Section 8.7, Duties of the Board of Directors. At least thirty (30) days before an assessment due date, the Board of Directors of the Association shall determine the date of commencement and the amount of the assessment against each Lot for each assessment period. In addition, the Board of Directors shall at such time prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written

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notice of the assessment shall be sent to every Owner subject thereto not later than seven (7) days after fixing the date of commencement. The Association shall upon demand furnish to any Lot Owner liable for said assessment a certificate in writing, signed by an officer of the Association, setting forth whether said assessment has been paid.

**Section 8.8, Repair Assessment.** If in the process of construction upon any Lot or in the making of any improvement, the Owner, its employees, agents or independent contractors cause damage to any other Lot, improvement, Common Area, dedicated roads or to any other property owned by someone else within GN, the Owner shall be responsible for such damage. If the Association, either voluntarily or involuntarily, makes repairs or otherwise cures the damage caused by the Owner, its employees, agents or independent contractors, the Owner shall be obligated to reimburse the Association for all expenses the Association incurred in curing the damage. Such amount shall be treated as a special assessment and the Association shall have all rights and powers as provided in this Article.

**Section 8.9, Effect of Non-Payment of Assessment - the Lien, the Personal Obligation, Remedies of the Association.** The lien of the Association upon a Lot shall be effective from and after recording, in the public records of Sandoval County, New Mexico, a claim of lien stating the description of the Lot encumbered thereby, the name of the Owner and the amount and date when due. Such claim of lien shall include assessments which are due and payable when the claim of lien is recorded, interest, costs, attorney's fees, advances to pay taxes and prior encumbrances and interest thereon, and such additional assessments which accrue from the first non-payment to which the claim of lien relates to the entry of a judgment in favor of the Association with respect to such lien. Such claims of lien shall be signed and verified by an officer or agent of the Association. Upon full payment of all sums accrued by such claim of lien, the same shall be satisfied of record. If the assessment is not paid within thirty (30) days after the delinquency date, which shall be set by the Board of Directors of the Association, the assessment shall bear interest from the date due at the rate of fifteen (15) percent per annum, and the Association may at any time thereafter bring an action to foreclose the lien against the Lot in like manner as a foreclosure of a mortgage on real property, and/or a suit on the personal obligation against the Owner(s), and there shall be added to the amount of such assessment the cost of preparing and filing the complaint in such action including reasonable attorney's fees, and, in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and reasonable attorney's fees to be fixed by the Court, together with the cost of the action.

**Section 8.10, Subordination to Lien of Mortgages.** The lien of the assessments for which provision is herein made, as well as in any other Article of this Declaration, shall be subordinate to the lien of any first mortgage to a federal- or state-chartered bank, life insurance company, federal or state savings and loan association, real estate investment trust, retirement fund or institutional mortgage company. Such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure of such mortgage. No sale or transfer shall relieve any Lot from liability for any assessment thereafter becoming due nor from the lien of any such subsequent assessment. The written opinion of either the Developer or the Association that the lien is subordinate to a mortgage shall be dispositive of any questions of subordination.

**Section 8.11, Exempt Property.** The Board of Directors shall have the right to exempt any Lot subject to this Declaration from the assessments, charges and liens described herein provided that such Lot exempted is used (and for only as long as it is used) for any of the following purposes:

- (A) As an easement or other interest therein dedicated to and accepted by the local governmental authority and devoted to public use.
- (B) As Common Area as defined in Section 2.5 hereof.

Notwithstanding any provisions herein, no Lot devoted primarily to office (including related uses) or commercial use shall be exempt from said assessments, charges or liens.

#### ARTICLE IX REPURCHASE RIGHTS OF DEVELOPER

**Section 9.1, Right to Repurchase if No Construction.** If after one (1) year from the date of a sale of any Lot within GN any Owner shall not have begun in good faith the construction of an accepted and approved building upon such Lot the Developer, at his option, may require the Owner to reconvey the Lot to the Developer, free and clear of all encumbrances except those encumbrances which existed at the time of Developer's conveyance of such Lot to Owner. The repurchase price shall be the price paid by the Owner for the Lot when purchased from the Developer. The Developer shall give thirty (30) days written notice of intent to repurchase. In the event the Owner refuses or fails to reconvey the Lot, the Developer may seek specific performance of this covenant by filing an action in a court of competent jurisdiction. The Developer may also recover its court costs and reasonable attorney's fees in enforcing this provision.

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Section 9.2, Developer's Right of First Refusal on Transfer of Unimproved Lots. In addition to the Developer's rights under Section 9.1, and regardless of the length of time of ownership of the Lot, no Lot upon which a building has not been constructed shall be sold or transferred unless and until the Owner of such Lot has notified Developer and Developer has waived, in writing, its right to repurchase said Lot. This is to be accomplished in the following manner:

- (A) Any Owner intending to make a bona fide sale of his Lot shall give to the Developer notice of such intention, together with a fully executed copy of the proposed contract of sale (the "Proposed Contract"). Within thirty (30) days after receipt of such notice and information, Developer shall either exercise, or waive exercise of, its right of first refusal. If Developer elects to exercise its right of first refusal, it shall, within thirty (30) days after receipt of such notice and information, deliver to the Owner an agreement to purchase the Lot upon the following terms:
- (1) The price to be paid and the terms of payment shall be that stated in the Proposed Contract.
  - (2) The sale shall be closed within thirty (30) days after the making of said agreement to purchase.
- (B) If the Developer shall fail to exercise or waive exercise of its right of first refusal within the said thirty (30) days after receipt of the Proposed Contract, Developer's right of first refusal shall be deemed to have been waived.
- (C) If the Developer shall elect to waive its right of first refusal, or shall fail to exercise said right within thirty (30) days of receipt of the Proposed Contract, the Developer's waiver shall be evidenced by a certificate executed by the Developer in recordable form which shall be delivered to the Proposed Contract purchaser and may be recorded by the Owner in the public records of Sandoval County, New Mexico.

This Section shall not apply to any transfer to or sale by any national or state bank, life insurance company, federal or state savings and loan association, real estate investment trust, retirement fund or institutional mortgage company which acquires its title as a result of owning a mortgage upon the Lot concerned, and this shall be so whether the title is acquired by deed from the mortgagor or its successors in title or through foreclosure proceedings. This Section shall also not apply to any sale by any such institution which so acquires title. Neither shall this Section require the waiver by the Developer as to any transfer of title to a Lot at a duly advertised public sale with open bidding which is provided by law such as but not limited to execution sale, foreclosure sale, judicial sale or tax sale or any Lot upon which a building has been constructed and for which a certificate of occupancy has been issued therefore.

#### ARTICLE X DEVELOPER'S RESERVED RIGHTS TO PROPERTY

Section 10.1, Extension of Covenants and Restrictions to Include Additional Property. The Developer may, but shall not be obligated to, at any time make other properties subject to these Restrictions by executing an instrument in writing applying these Restrictions to such other properties and by recording the instrument in the public records of Sandoval County, New Mexico. Additional properties may include, partially or wholly, areas to be common area, areas to be Building Sites, and/or areas for right-of-way or landscaping.

Section 10.2, Withdrawal of Land. Developer may, but shall have no obligation to, withdraw at any time or from time to time portions of the land described in Exhibit A, provided only that the withdrawal of lands as aforesaid shall not, without the joinder or consent of a majority of the votes of the Association, materially increase the pro rata share of expenses of the Association payable by the Owners remaining subject hereto after such withdrawal. The withdrawal of lands as aforesaid shall be made and evidenced, by filing in the public records of Sandoval County, New Mexico, a supplementary Declaration with respect to the lands to be withdrawn. Developer reserves the right to so amend and supplement this Declaration without the consent or joinder of the Association or of any Owner and/or mortgagee of land in GN.

Section 10.3, Platting and Subdivision Restrictions. The Developer shall be entitled at any time and from time to time to plat and/or replat all or any part of GN and to file subdivision restrictions and/or amendments thereto with respect to any undeveloped portion or portions of GN. In connection with replatting, the Developer has the right and ability to revise, relocate, terminate and extend any and all easements for Common Area or otherwise shown on the recorded plat of Gateway North in Developer's sole discretion.

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Section 10.4, Public Roads - Easements. The Developer reserves the right from time to time hereafter to delineate, plat, grant or reserve within GN such public streets, roads, sidewalks, ways and appurtenances thereto, and easements for drainage and public utilities, as it may deem necessary or desirable for the development of GN (and from time to time to change the location of the same) free and clear of these Restrictions and to dedicate the same to public use or to grant the same to any governing municipal or regulatory authority, including any appropriate public utility corporations.

#### ARTICLE XI MISCELLANEOUS

Section 11.1, Term. This Declaration, every provision thereof, and every covenant, condition, restriction and reservation contained herein shall continue in full force and effect for a period of thirty (30) years from the date hereof, unless extended in a writing executed by the owners of a majority of the real estate in GN and recorded in the records of Sandoval County, New Mexico.

Section 11.2, Termination and Modification. This Declaration, or any provision hereof, or any covenant, condition or standard contained herein, may be terminated, extended, modified or amended, as to the whole of GN or any portion thereof, with the written consent of the Owners of sixty-five percent (65%) of the real estate subject to these Restrictions based on the number of acres owned by such consenting Owners' as compared to the total number of acres subject to these Restrictions (excluding those tracts wholly designated as Common Area); provided, however, that so long as Developer owns at least one Lot in GN subject to these Restrictions, no such termination, extension, modification or amendment shall be effective without the written approval of Developer thereto. No such termination, extension, modification or amendment shall be effective until a proper instrument in writing has been executed and acknowledged and recorded in the public records of Sandoval County, New Mexico. No such termination, extension, modification or amendment shall affect any plans, specifications or use therefore approved by Developer or the ARC under Article III hereof or any improvements theretofore or hereafter made pursuant to such approval.

Section 11.3, Assignment of Developer's Rights and Duties. Any and all of the rights, powers and reservations of the Developer herein contained may be assigned to any person, corporation or association which will assume the duties of the Developer pertaining to the particular rights, powers and reservations assigned. Any such assignment shall be in writing and recorded in the public records of Sandoval County, New Mexico and the assignee shall join therein for the purpose of evidencing its acceptance of the same. Such assignee shall thereupon have the same rights, title, powers, obligations, discretion and duties as are herein reserved to the Developer and the Developer shall automatically be released from such responsibility. If at any time the Developer ceases to exist and has not made such an assignment, a successor Developer may be appointed in the same manner as these Restrictions may be terminated, extended, modified or amended hereunder. The Developer may from time to time delegate any or all of its rights, powers, discretion and duties hereunder to such agents as it may nominate.

Section 11.4, Mutuality and Reciprocity - Runs With Land. All covenants, restrictions, conditions and agreements contained herein are made for the direct, mutual and reciprocal benefit of each and every Lot and in favor of every other Lot shall create reciprocal rights and obligations between all grantees of said Lot, their heirs, successors, personal representatives and assigns, and shall, as to the Owner of each Lot, his heirs, successors, personal representatives and assigns, operate as covenants running with the land for the benefit of all other Lots.

Section 11.5, Benefits and Burdens. The terms and provisions contained in this Declaration of Protective Covenants and Restrictions shall bind and inure to the benefit of the Developer, the Owners of all Lots within GN, the Owners of additional real estate made subject to these Restrictions, and their respective heirs, successors, personal representatives and assigns.

Section 11.6, Notices. Any notice required or permitted herein shall be in writing and mailed, postage prepaid by registered or certified mail, return receipt requested, and shall be directed as follows: If intended for an Owner (A) to the address of the Lot if improved, (B) if the Lot is not improved, to the address set forth for the Owner of such Lot as Shown in the records of the Sandoval County Tax Assessor, or (C) if none of the foregoing, to the last known address of the Owner.

Section 11.7, Singular and Plural. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plus, and any other gender, masculine or feminine, as the context requires.

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Section 11.8, Failure to Enforce Not a Waiver of Rights. Any waiver or failure to enforce any provision of these Restrictions in a particular situation shall not be deemed a waiver or abandonment of such provisions as they may apply in any other situation or to the same or a similar situation at any other location in GN or of any other provision of these Restrictions. The failure of Developer, Association or any Owner to enforce any Restriction herein contained shall in no event be deemed to be a waiver of the right to do so thereafter nor of the right to enforce any other Restriction.

Section 11.9, Condominium. No Restriction contained herein shall be construed to limit or prevent a Lot and the Improvements thereon from being submitted to a plan of condominium ownership and particularly the recordation of a plan of condominium ownership for any Lot covered hereby shall not be construed as constituting a subdivision of the Lot.

Section 11.10, Constructive Notice and Acceptance. Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of GN has and shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained in the instrument by which such person acquired an interest in GN.

Section 11.11, No Waiver. All of the conditions, covenants, restrictions and reservations contained in this Declaration of Protective Covenants and Restrictions shall be construed together, but if it shall at any time be held that any one of said conditions, covenants, restrictions and reservations, or any part thereof, is invalid, or for any reason becomes unenforceable, no other conditions, covenants, restrictions and reservations nor any part thereof shall be thereby affected or impaired.

Section 11.12, Captions. The captions, section numbers and article numbers appearing in these Restrictions are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections or articles of the Restrictions nor in any way modify or affect these Restrictions.

Section 11.13, Severability. Invalidation of any one of these Restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

IN WITNESS WHEREOF, the Developer has caused this declaration to be executed as required by law on the day and year first above written.

AMREP SOUTHWEST, INC.,  
a New Mexico corporation,

BY: James Wall  
James Wall, President

STATE OF NEW MEXICO )  
 ) ss.  
COUNTY OF SANDOVAL )

The foregoing instrument was acknowledged before me this 11th day of June, 1994, by James Wall, President of Amrep Southwest, Inc., a New Mexico corporation, on behalf of said corporation.

My Commission Expires:  
11-20-96

Lois C. Richmond  
NOTARY PUBLIC  
OFFICIAL SEAL  
LOIS C. RICHMOND  
NOTARY PUBLIC STATE OF NEW MEXICO  
Notary Bond Filed With Secretary of State  
My Commission Expires 11-20-96



EXHIBIT A  
LEGAL DESCRIPTION

Tracts C-1 through C-15, inclusive, of the Gateway North Subdivision as said tracts are shown and described on the plat thereof entitled "GATEWAY NORTH, Tracts C-1 Through C-15, November 1993, Comprising all Of "Revised Tract C", Unit 16, Rio Rancho Estates" and recorded in the office of the County Clerk of Sandoval County, New Mexico on April 29, 1994 in Volume 4, Folio 1128-B as Instrument No. 39357.

STATE OF NEW MEXICO } ss  
COUNTY OF SANDOVAL }

This instrument was filed for record on

AT: 3:21 JUN 21 1994 A.M. P.M.

Recorded in Vol. Then 313 245  
of records of said county, Folio 245  
Sally Padilla, Clerk & Recorder 807  
By: Alison Deputy

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