

DECLARATION OF COVENANTS,
[REDACTED]

This DECLARATION OF COVENANTS, FOR [REDACTED]
[REDACTED] (“Declaration”) are entered into as of [REDACTED],
2004 by and among the [REDACTED]
[REDACTED]

RECITALS

A. The real property depicted on Exhibit A hereto is denominated as the
[REDACTED]

[REDACTED] (the “Master Development Plan”).

B. [REDACTED] are each owners of certain real estate within
the Park, more particularly described on Exhibit B where ownership of each parcel is
attributed to one of the three owners that are included within the Park.

[REDACTED]
[REDACTED] for the purpose of overseeing the development and
operation of the Park.

D. [REDACTED] program office established
to provide the day-to-day management of the operation and marketing of business
opportunities of the Park.

E. [REDACTED] desire to provide for
certain conditions related to development and use of the Property, and to provide for
common area maintenance, all consistent with the Master Development Plan.

F. In order to facilitate development, [REDACTED] convened a Selection
Committee and the Selection Committee selected a Master Developer for the Park.

G. [REDACTED] intend for the provisions of this Declaration
to run with the land and be binding on all successors and assigns of the Original
Landowners.

H. The rights and obligations hereunder of [REDACTED] shall
bind and inure to the benefit of their successors, assigns and designees.

AGREEMENT

Now therefore, the parties declare that the Property and all improvements located thereon or to be located thereon are subject to the provisions of this Declaration as recited above and set forth below, which provisions shall run with the land and be binding upon and inure to the benefit of all successors and assigns of the Original Landowners.

ARTICLE I DEFINITIONS

As used herein, the following terms shall have the following meanings:

1.1. "85% Threshold" means the point in time when 85% of the Property is (i) Developed, (ii) Improved and (iii) sold or leased.

1.2. [REDACTED]

1.3. "ACC" means the Architectural Control Committee of the Association.

1.4. [REDACTED]

1.5. "Board" means the Board of Directors of the Association.

1.6. "CAM" means Common Area Maintenance.

1.7. "CAM Costs" means the cost of operation and maintenance of the Common Area and other expenses approved by the Board.

1.8. "Common Area" means that portion of the Property described as common area in the Master Development Plan and shown on Exhibit C to this Declaration.

1.9. "Developed" or "Development" means having completed the roads described in the Master Development Plan.

1.10. "Improved" or "Improvement" means having obtained a substantial completion document from the City of Xxxxxx with regard to features that do not require a certificate of occupancy or a shell certificate of occupancy from the City of Xxxxxx with regard to features requiring a certificate of occupancy.

[REDACTED] "Initial Board" means representatives of the Original Landowners and one representative from [REDACTED]

██████████ “MOU” means the Memorandum of Understanding dated February 28, 2000 by and among ██████████
██████████
██████████

1.13. “Operation Agreement” means the agreement between the Operator and the Association made from time to time, describing the Operator’s duties for operating and managing the Common Areas.

1.14. “Master Development Plan” has the meaning given in Recital A.

1.15. “Membership” has the meaning given in Section 2.2 of this Declaration.

1.16. “Operator” means the entity responsible for the operation and maintenance of the Common Area and for other responsibilities under the Operation Agreement.

1.17. “Original Landowners” means ██████████.

1.18. “Owner” means any holder of a fee simple interest in the Property.

1.19. “Parcel” means all real property located within the Property and included in a site plan approved by the ACC. If Improvements under a site plan are shown in phases, “Parcel” means all real property in the phase being Improved.

1.20. “Park” means the real property described on Exhibit A.

1.21. “Property” means certain real estate within the Park, more particularly described on Exhibit B, and any other real estate within the Park hereafter made subject to this Declaration by the execution and recording of a Declaration of Inclusion in Covenants after the requisite approvals have been obtained pursuant to Section 6.1 below.

1.22. “Proportionate Share” means the fraction in which the acreage of an Owner’s Parcels of the Property that contain Improvements is the numerator and the total acreage of the Parcels of the Property that contain Improvements is the denominator.

██████████ “SLO” means the Commissioner of ██████████
██████████
██████████
██████████

1.26. “Special Assessment” means the cost levied by the Board (i) for all or a portion of the cost of any reconstruction, repair or replacement of a capital improvement upon Common Area not included in the budget approved by the Board and any applicable gross receipts or other tax required to be paid by the Operator with respect to such

assessments; (ii) for all or a portion of the cost of making a Parcel comply with this Declaration where the Parcel Owner is in default; (iii) for all or a portion of the cost of enforcement of this Declaration and (iv) any applicable gross receipts or other tax required to be paid by the Operator with respect to such assessments or the obligations for which the assessments were levied.

1.27. "Trust" means [REDACTED]

**ARTICLE II
ASSOCIATION**

2.1 [REDACTED]. The Association shall oversee the operation and maintenance of the Common Areas, provide the members of the Architectural Control Committee as set forth in this Declaration, negotiate and enter into the Operation Agreement, monitor the performance of the Operator, facilitate effective communication among Owners, and exercise all powers necessary or convenient to effect any or all of the purposes for which the Association is organized, including all powers granted by law to non-profit corporations in Xxxxxx.

2.2 Membership. An Owner is a member of the Association upon becoming an owner of a fee simple interest in the Property. Membership shall continue until such ownership ceases. [REDACTED] shall also be members of the Association. Except with regard to membership by [REDACTED] membership in the Association shall be appurtenant to a fee simple interest in the Property. Membership shall be held in accordance with the Articles and Bylaws of the Association.

2.3 Transfer of Membership. Membership in the Association shall not be transferred, encumbered, pledged or alienated in any way, except (i) upon conveyance of the portion of the fee simple interest in the Property to which it is appurtenant, and then only to the transferee of the fee simple interest or (ii) upon assignment of all or a portion of the membership interest to a party holding a leasehold interest in all or a portion of the Owner's Property in compliance with the terms of the Articles and Bylaws of the Association. Membership passes automatically upon conveyance of fee simple interest in the Property.

2.4 Association Board. The Association will be managed by the Board which shall initially be composed of five representatives (one from each of the Original Landowners and one representative from both the [REDACTED]). The representative from [REDACTED] shall serve as the Chair of the Board for an initial term of five years unless [REDACTED] relinquishes this role by written notice to the Board. Upon the expiration of the initial term of the Chair or upon relinquishment of the Chair by [REDACTED], the members of the Board will select a new Chair by a simple majority vote. Except as provided otherwise in this Section 2.4, each term for the Chair shall be one

year. The Initial Board shall manage the Association until the 85% Threshold is met or upon unanimous consent of the Board to earlier elections after which membership on the Board, except for the [REDACTED] positions, shall be elected by the Association members. Once the 85% Threshold is reached, the representative from [REDACTED] shall serve as the Chair of the Board for a term of five years unless [REDACTED] relinquishes this role by written notice to the Board. Upon the expiration of this five year term of the Chair or upon earlier relinquishment of the Chair by [REDACTED], the members of the Board will select a new Chair by a simple majority vote. The Chair can be removed by a vote of four of the five members of the Board. The [REDACTED] positions on the Board shall remain in place until either or both relinquish the position(s) by written notice to the Board. The members of the Board will use reasonable efforts to gather input from members of the Association before making decisions that will affect the Park.

2.5 Board Quorum; Voting. A quorum and a majority of the Board shall be three members as follows: either (i) three of the Owners' representatives or (ii) two Owners' representatives and one of either the [REDACTED] representative or the [REDACTED] representative. The vote of the majority of the Board shall constitute the action of the Board as to approval of the CAM budget, Special Assessments and expenditures on any capital improvements. As to all other required votes, the vote of four of the five members of the Board shall constitute the action of the Board. Except as otherwise provided herein, the Chair may vote in all matters before the Board. After notice of necessary action in accordance with the Association bylaws, votes by representatives may be taken by telephone, facsimile, or electronic mail in lieu of meeting in person so long as no representative objects to not having a meeting in person before the time specified for a vote.

2.6 Bylaws of Association. The Board shall develop bylaws for the operation of the Association, including, but not limited to the time, place, notice requirements, voting procedure and manner in which the business of the Board, the [REDACTED] and the Association shall be conducted. The bylaws shall not contradict the provisions of this Declaration. The bylaws and any amendments thereto shall be approved by a vote of four of the five members of the Board.

2.7 Membership Voting Rights. The Owner (as recorded in the [REDACTED] clerk's office) of each acre of Property within the Park shall be entitled to one (1) vote per acre as an Association member. For purposes of this Section 2.7, ownership of less than an acre shall be rounded as follows: less than .50 acres shall be rounded down to zero, and .50 or more shall be rounded up to one.

ARTICLE III

ARCHITECTURAL CONTROL COMMITTEE

3.1 Architectural Control Committee Appointment. There is hereby established [REDACTED] Architectural Control Committee (the "ACC") for the purpose of reviewing plans for development of property within the

Park to insure compliance with the provisions and purposes of the Master Development Plan. The ACC shall consist of five (5) members. Until such time as the 85% Threshold is reached or upon unanimous consent of the Board to earlier elections, the ACC shall have membership as follows: one representative appointed by each Original Landowner, one representative appointed [REDACTED] and one representative appointed by [REDACTED]. At such time as the 85% Threshold is reached or upon unanimous consent of the Board to earlier elections, the three seats on the ACC previously appointed by each Original Landowner shall be elected by the membership of the Association for a specified term. The appointee from the [REDACTED] shall serve as the chair of the ACC for an initial term of five years after which time the chair shall be elected by a simple majority vote of the ACC. Each member of the ACC appointed by an Original Landowner, [REDACTED] or [REDACTED] shall serve at the pleasure of the entity that appointed him, and each such member can be removed at any time, with or without cause, by the entity that appointed him. Each entity shall send written notice to the Chair of the ACC of appointment of a member and removal of a member, if applicable. If at any time, no appointee has been appointed by a particular entity and that position has been vacant for three (3) months, the existing members of the ACC shall appoint a replacement for such appointee, who shall serve until such time as a replacement is appointed by the appointing entity. No compensation shall be due an appointee, except from the entity appointing him, if desired by that entity.

3.2 Quorum; Voting. A quorum and a majority of the ACC shall be three members as follows: either (i) three of the Owners' representatives or (ii) two Owners' representatives and one of either the [REDACTED] appointee or the XXXXXX appointee. The vote of a majority of the members present at a meeting shall constitute the action of the ACC on any matter before it. The Chair may vote on all matters before the ACC. After notice of necessary action in accordance with ACC bylaws, votes by appointees may be taken by telephone; facsimile or electronic mail in lieu of a meeting in person so long as no appointee objects to not having a meeting in person before the time specified for a vote. The ACC shall adopt rules governing the time, place, notice requirements and manner in which the business of the ACC will be conducted.

3.3 Approval of Plans. No construction of or exterior alteration of any building, improvement or landscaping may be initiated on the Property without written approval of the ACC stating that the plans and specifications for construction and use comply with the provisions and purposes of the Master Development Plan. This requirement is in addition to all required governmental approvals. The ACC shall establish "Guidelines and Policies" specifying materials required for plan review and approval. The list of guidelines and policies will be provided to the Property purchaser or lessee before the plans are submitted to the ACC. The ACC will also provide an estimate to the purchaser or lessee of the cost for review of plans by professional consultants. Review of plans by professional consultants for the ACC shall be paid for by a party other than the Board, Association and the ACC.

3.4 Uses Consistent with Master Development Plan; Change in Use. Except as provided in this Section 3.4, the Property shall be used in accordance with the

provisions of the Master Development Plan. Any change of use must be approved by the ACC. The ACC may approve a change in use that is not in accordance with the Master Development Plan if an Owner shows that the Owner has used reasonable efforts to find a user consistent with the Master Development Plan, but has been unable to find such a user. The granting of easements for pedestrian and/or vehicular circulation and use, maintenance and repair of the Common Areas may be required as a condition to ACC approval.

3.5 Variances. The ACC may grant variances or exceptions to the specific standards set forth in the Master Development Plan, this Declaration or the ACC's Guidelines and Policies, where a variance is necessary or desirable in order to achieve the general purposes of the Master Development Plan, this Declaration or the ACC's Guidelines and Policies. The ACC may impose conditions as to any variance or exception granted by it as it deems necessary to achieve the intent and purposes of the Master Development Plan, this Declaration or the ACC's Guidelines and Policies and may limit the period of time during which such variance or exception shall be exercised.

3.6 No Nuisance. In addition to the use restrictions set forth in Section 3.4, no Owner shall allow noxious or offensive trades, services or activities on the Property, nor shall anything be done therein which may be or become unsightly or an annoyance to any owner, tenant or occupant of the Property, including, without limitation, anything which results in an emission of fumes, odors, glare, vibration, gases, hazardous waste, pollutants, radiation, dust, liquid waste, smoke or noise in violation of any applicable law. This provision shall not apply to prohibit the remediation by the [REDACTED] of the former landfill site located on [REDACTED] in the Park.

ARTICLE IV COMMON AREA

4.1 Common Areas. The "Common Areas" within the Property are those described and depicted on Exhibit C to this Declaration. Additions may be made to the Common Area by a grant from an Owner approved by a majority vote of the members of the Association and recording of a dedication document showing acceptance by the Association. Anything to the contrary in this Declaration notwithstanding, if the ACC determines Common Area Improvements are necessary or desirable to be completed at the time of occupancy of a building on a Parcel, but the cost of maintenance should not be paid by all Owners, the ACC can require an Owner to build the Improvements and maintain them until such time as maintenance of such improvements is paid through CAM costs.

4.2 Common Area Improvements. Prior to the occupancy of any building on a Parcel of the Property, all improvements to the Parcel as required on the Master Development Plan shall be completed, including, but not limited to Common Area improvements. No improvements shall be built in the Common Area without approval of the ACC. Anything to the contrary in this Declaration notwithstanding, if the

ACC determines that all or a portion of the Common Area improvements are not necessary or desirable to be completed prior to occupancy of a building on a Parcel, the ACC can require an Owner to deposit 125% of the documented costs of completion of such improvements and set a different date for commencement and completion of such improvements. Upon completion of such improvements on or before the completion date set by the ACC, the deposit shall be returned to the Owner. If the Owner fails to begin construction on such improvements by the commencement date set by the ACC, the ACC may use the deposit to complete the improvements.

4.3 Common Area Operator. [REDACTED] is the Operator until such time as XXXXXX declines the designation of Operator in writing to the Association pursuant to the Operation Agreement or is removed by the Board pursuant to Section 4.5. [REDACTED] may contract with one or more third parties to carry out its duties under this Declaration. Upon resignation or removal of [REDACTED] as Operator, the Board shall appoint a successor.

4.4 Common Area Operation and Maintenance. The Operator shall use its reasonable efforts to operate and maintain or cause to be operated and maintained the Common Areas and shall keep the Common Areas in good order, condition and repair, subject to the terms of the Operation Agreement. The Owner of each Parcel shall be responsible for completion of improvements in the Common Area on their Parcel, including but not limited to, paving, sidewalks and landscaping. The Operator shall be required to operate, maintain, repair and replace such improvements, as necessary and as approved and funded by the Association.

4.5 Removal of the Operator. Upon a material breach of the Operation Agreement by the Operator, notice of such breach by the Board to the Operator and an opportunity for the Operator to cure such breach, the Operator may be removed by a unanimous vote of the Owner representatives on the Board, pursuant to the terms of the Operation Agreement.

4.6 Original Landowners' Proportionate Share of Common Area Operation and Maintenance. The Operator shall from time to time, but no more often than once each calendar quarter, send to the Owners or Owner's designee (as provided to Operator in writing) and the Board an estimate of the quarterly CAM Costs for that calendar year, including an industry standard percentage for a management fee (which must be approved by the Board), and within thirty (30) days after receipt thereof, each and every Owner shall pay to the Operator on or before the tenth (10th) day of the month immediately following the calendar quarter (April, July October and January) the Owner's Proportionate Share of the estimated CAM Costs. **CAM Costs shall not be charged on an Original Landowner's Property until such time as a Parcel is Improved and then only as to the Improved Parcel.** The [REDACTED], due to its unique nature and trust responsibilities, will not be responsible for CAM Costs calculated on any of its Developed and Improved Parcels in the Park. However, notwithstanding section 1.22 of this Declaration, the parties agree that the [REDACTED] Proportionate Share of CAM Costs, for purposes of this section, shall be 25% more than the figure otherwise resulting from the

application of section 1.22. The [REDACTED] lessees, directly or through the [REDACTED] as the [REDACTED] deems fit, shall pay the estimated CAM costs plus such extra 25% premium into an escrow account to be held by the Association for the benefit of the [REDACTED]. The amount in the escrow account shall grow until it first reaches a cap equal to the sum of the immediately prior eighteen (18) monthly payments of the base [REDACTED] Proportionate Share of CAM Costs (i.e. the Proportionate Share of CAM Costs figured without regard to the 25% premium). Once the cap is reached, the SLO will attempt to ensure, through language in any relevant leases, that any future lessees replenish and maintain the cap if a period of vacancy has depleted it in whole or in part. The escrow account shall be used exclusively to benefit SLO Parcels. The escrow account shall remain the property of the SLO subject to its ability to enter into, in its sole discretion, any agreements with its lessees by which it may wish to require one or more prospective SLO lessees to reimburse such amounts paid by any previous SLO lessee(s). The SLO shall be entitled to the return of any amounts remaining in the escrow account when the SLO shall have possibly sold all of its property in the Park. In the event XXXXXX chooses to lease any or all of its Parcels, XXXXXX shall have the same rights as the SLO set forth in this Section 4.6. Within three (3) months of the end of each calendar year, the Operator shall send reconciliations showing the actual amount spent on CAM costs compared to the estimated amount, and either provide a credit toward next year's budget to the Owners with regard to any excess or request additional funds from the Owners with regard to any overage in the actual amount compared to the estimated amount. In addition to CAM Costs estimated by the Operator, the Operator may request a Special Assessment be approved by the Board. Any Special Assessment approved by the Board shall be payable pursuant to the terms approved by the Board. Each Owner or its authorized representative shall have the right to examine the records of expenses in connection with the operation and maintenance of the Common Area at reasonable business hours and without unreasonable frequency.

4.7 Real Property Taxes; Liability Insurance. Each Owner shall be responsible for payment of real property taxes for Common Area on that portion of the Property it owns, and each Owner shall be responsible for its own insurance on such Common Area, including general public liability and property damage insurance against claims for personal injury or death and property damage occurring upon, in or about the Common Area, such insurance to afford protection to the limit of not less than \$1,000,000.00 in respect of injury or death of any number of persons arising out of any one occurrence and such insurance against property damage to afford protection to the limit of not less than \$500,000.00 in respect to any instance of property damage, naming the Association, as an additional insured on any such policy. The Owner shall provide to the Association a certificate of such insurance, showing the Association as an additional insured on each of these policies. Owners may provide evidence of self-insurance to meet these obligations, if such self-insurance is acceptable to the Board. If any Owner fails to provide the Association a current certificate naming the Association as an additional insured, the Association may purchase insurance for the Association and charge and collect the cost of such premium as a Special Assessment. Anything to the contrary in this Declaration notwithstanding, the SLO shall comply with the requirements for insurance in this Section 4.7 through Standard coverages by the Risk Management

Division of the Xxxxxx General Services Department, subject to the Xxxxxx Tort Claims Act; NMSA 1978, " 41-4-1 through 41-4-29, as amended from time to time.

ARTICLE V
OWNER AREA MAINTENANCE

5.1 Owner Maintenance. Each Owner, at its sole expense, shall keep, maintain, service and replace its building, site improvements, landscaping and other fixtures located on its Property, in a safe, clean, maintained and neat condition and with the exterior finish, improvements and landscaping approved by the ACC and shall comply in all respects with all governmental statutes, ordinances, regulations, health and police and fire requirements; provided, however, the requirements of maintenance and service shall not apply to the Common Areas being operated and maintained by the Operator, unless the Common Areas are damaged or destroyed by the acts or omissions of an Owner, its agent or representative.

ARTICLE VI
EXTENSION OF DECLARATION TO
PROPERTY WITHIN THE PARK

6.1 Addition of Property to Declaration. Any fee simple owner of property within the vicinity of the Park that is not currently included in this Declaration can agree to be bound by this Declaration and have his property made subject to this Declaration by (i) being proposed to the Board by a current Owner; (ii) obtaining approval of the Board; (iii) obtaining approval of the ACC in compliance with Article III of this Declaration; and (iv) submitting a signed Declaration of Inclusion in Covenants in the form attached hereto as Exhibit D to [REDACTED] along with a survey or plat of the property to be included. If inclusion is approved by the Board and the ACC, the Declaration of Inclusion in Covenants shall be recorded in the real property records of XXXXXX County, XXXXXX. Upon such inclusion, the Proportionate Shares shall be recalculated to include the added acreage as set forth on the survey or plat.

ARTICLE VII
MISCELLANEOUS

7.1 Duration, Modification and Termination. The conditions, covenants, restrictions, easements, and reservations set forth in this Declaration shall run with the land of the Property and any additions to the Property pursuant to section 6.1 for an initial term of fifty (50) years and shall automatically renew for consecutive terms of ten (10) years each until terminated pursuant to this Section 7.1. This Declaration shall inure to the benefit of and be binding on the Owners, any additional owner joining pursuant to section 6.1 and all of their respective successors, assigns and heirs. This Declaration can be amended or terminated by (i) an affirmative vote of four of the five members of the Board and (ii) recording notice of the amendment or termination in the real property records.

7.2 Enforcement of Declaration. Enforcement of the provisions of this Declaration shall be by any appropriate proceeding at law or in equity brought by the

Association, an Owner, XXXXXX, XXXXXX, their successor and assigns against any person or entity violating or attempting to violate the provisions of this Declaration, to enforce personal liability, or to recover damages, or by an appropriate proceeding at law or in equity against the land to enforce any lien or charge arising hereunder, except as prohibited by law. The failure of the Owners or XXXXXX or XXXXXX to enforce any provisions of this Declaration shall in no event be deemed a waiver of the right to do so thereafter. In addition to rights of enforcement, if an Owner fails to comply with its obligations hereunder, Operator may give such Owner written notice specifying the default and the action required to correct the default. If the default is not corrected to the reasonable satisfaction of Operator within a period of thirty (30) days from the date of such notice, or, where the condition relating to the default is not susceptible of being corrected within such period of time, and the Owner has not, within such thirty (30) day period, commenced correcting the default with diligence, Operator shall have the right, but not the obligation, to correct or cause to be corrected the default, and in connection therewith, it and its agents and subcontractors shall have the right to enter upon the affected property and improvements to perform all acts deemed necessary by Operator for purpose of correcting or remedying the default, to collect from the Owner amounts due for such correction and collection of those amounts, including without limitation, attorneys fees. All amounts owed under this Declaration shall bear interest at the higher of (i) Judgment Rate of Interest established pursuant to Section 56-8-4 NMSA 1978 or (ii) the rate of interest which is 400 basis points above the U.S. Prime Rate published in the *Wall Street Journal*, as adjusted on the third Tuesday of March, June, September and December while the Assessment is outstanding (and if said third Tuesday is a legal holiday, said Prime Rate published the next following business day).

7.3 Amounts Owed; Lien in Favor of Association. Except as prohibited by law, all amounts owed under this Declaration are secured by a continuing lien on the Parcel or Parcels to which it applies (including, but not limited to any Leasehold interest) in favor of the Association. The Association shall have the right to record a Claim of Lien on each Parcel, except as prohibited by law. The right of redemption with respect to the foreclosure of such lien shall be **one (1) month in lieu of nine (9) months**. A suit to recover a money judgment for unpaid amounts owed under this Declaration may be maintained without foreclosing, waiving, or otherwise impairing the Associations' lien or its priority. No Owner may waive or otherwise escape liability for the Assessments provided for herein by abandonment of a Parcel.

The continuing lien herein granted is subject and inferior to the lien for all sums secured by any first mortgage encumbering such Parcel excepting assessments that are past due and unpaid for which a Claim of Lien against such Parcel is filed in the Public Records by the Association prior to the recording in the Public Records of such first mortgage; but all other Persons acquiring liens on any Parcel, after this Declaration is recorded, are deemed to consent that such liens are inferior to the lien established by this Declaration whether or not such consent is set forth in the instrument creating such lien. The sale or transfer of any Parcel pursuant to the foreclosure of a first mortgage or any proceeding or conveyance in lieu thereof, shall extinguish the lien of amounts owed under this Declaration as to payments which became due prior to such sale or transfer, without

prejudice however, to the Association's right to collect such amounts from the Owner personally liable for their payment. Any encumbrancer holding a lien on a Parcel may pay, but is not required to pay, any amount secured by the lien created by this Article; and such encumbrancer then will be subrogated to all rights of the Association with respect to such lien, including priority, to the extent of such payment.

Amounts owed under this Declaration shall be the personal obligation of the Owner of a Parcel at the time when such amounts become due. However, the personal obligation of an Owner for delinquent amounts under this Declaration shall not pass to said Owner's successors in title unless expressly assumed in writing by such successors, but shall continue to be a charge on and lien against the Property owned at any time by Owner which, if not paid, shall entitle the Association to exercise its remedy of foreclosure, as further provided herein, against the Owner's Property subject to the continuing lien for the delinquent amounts under this Declaration and, at the option of the Association, to exercise its collection remedies, either in the foreclosure action or by separate action, against the Owner of such Parcel at the time when such amounts fell due.

The recording of this Declaration constitutes constructive notice to all subsequent purchasers and creditors, or either, of the existence of the Association's lien and its priority. The Association from time to time may, but is not required to, record in the real property records of XXXXXX County a notice of lien for any delinquent amounts due under this Declaration against any Parcel.

7.4 Severability. The invalidity or unenforceability of any covenant, term or condition in this Declaration, or any portion hereof shall not affect any other covenant, term or condition in this Declaration, and this Declaration shall remain in effect as if such invalid or unenforceable covenant, term or condition was not contained herein or was reduced to enforceable limits by a court of competent jurisdiction.

7.5 Choice of Law. This Declaration is governed by and shall be construed in accordance with the laws of the State of XXXXXX.

7.6 Compliance with Laws. The operations of the parties under this Declaration and the operations of the Association shall at all times be in compliance with all applicable laws, rules and regulations.

7.7 No Third Party Beneficiaries. This Declaration is for the benefit of the Original Landowners, XXXXXX and XXXXXX, their respective successors and assigns. It is not intended to and shall not benefit any other parties.

7.8 Nonliability. The parties to this Declaration, the Board and its members, and the ACC and its members, the Association and any principal, officer, member, successor in interest or assignee of any of the above shall not be liable for any damage, loss or prejudice suffered or claimed on account of (a) the approval of, disapproval of or failure to act upon any plans, drawings and specifications whether or not defective; (b) the construction or performance of any work whether or not pursuant to

approved plans, drawings and specifications; (c) the development of any of the Property; provided that the person or entity disclaimed from liability has acted reasonably. In reviewing any matter, the Board, the Association or the ACC, as applicable, shall not be responsible for the safety, whether structural or otherwise, of any item(s) submitted for review, nor the conformance with applicable building codes or other governmental laws or regulations, and any approval of an improvement by the ACC shall not be deemed an approval of any such matters.

7.9 Limitation on Indemnification. To the extent, if at all, a court of competent jurisdiction determines that Section 56-7-1 NMSA 1978 applies to any indemnification provisions in this Declaration, including certain types of insurance coverage as set forth in Section 56-7-1 NMSA 1978, such provisions shall not extend to liability, claims, damages, losses or expenses, including attorney fees, arising out of bodily injury to persons or damage to property caused by or resulting from, in whole or in part, the negligence, act or omission of the indemnitee or additional insured, as the case may be, its officers, employees or agents and shall further be modified, if required, by the provisions of Section 56-7-1B NMSA 1978.

The Parties hereto sign below as of _____, 2004.

BOARD OF EDUCATION OF THE CITY
OF XXXXXX, XXXXXX
MUNICIPAL SCHOOL DISTRICT

COMMISSIONER OF PUBLIC
LANDS FOR THE STATE OF
XXXXXX

By: _____
Name: _____
Title: Superintendent of Schools

By: _____
Name: _____
Title: Commissioner of Public Lands

PARK DEVELOPMENT
CORPORATION

By: Bank of XXXXXX, N.A.,
Trustee

By: _____
Name: _____
Title: Trustee

By: _____
Name: XXXXXX XXXXXX
Title: President

XXXXXX SCIENCE & TECHNOLOGY
PARK PROGRAM OFFICE

By: _____
Name: XXXXXXXXXX XXXXXX
Title: Executive Director

STATE OF XXXXXX
COUNTY OF _____

This instrument was acknowledged before me on _____, by

(Seal) Notary Public

My commission expires: _____

STATE OF XXXXXX
COUNTY OF _____

This instrument was acknowledged before me on _____, by

(Seal)

Notary Public

My commission expires: _____

STATE OF XXXXXX
COUNTY OF _____

This instrument was acknowledged before me on _____, by XXXXXX
XXXXXX as President of Science & Technology Park Development Corporation, a XXXXXX
corporation.

(Seal)

Notary Public

My commission expires:_____

STATE OF XXXXXX
COUNTY OF _____

This instrument was acknowledged before me on _____, by XXXXXX
XXXX XXXXXX as Executive Director of the XXXXXX Science & Technology Park Program
Office.

(Seal)

Notary Public

My commission expires:_____

- Exhibit A – Legal Description of the Park
- Exhibit B – Legal Descriptions of each of the Owner's Property.
- Exhibit C – Legal Description of the Common Area
- Exhibit D – Declaration of Inclusion in Covenants

EXHIBIT A

Depiction of Park

EXHIBIT B
Legal Description of Each of the Owner's Property

Specific Ownership by Original Landowners of Real Property in the [REDACTED]

- Xxxxxxx Public Schools:

Tract A, 11.0132 acres more particularly described in Bulk Land Plat of Xxxxxxx Science and Technology Park, dated May 2001 recorded in Book 2001C, page 324 of the real property records of Xxxxxxx County, Xxxxxxx.

Tract B, 25.9414 acres more particularly described in Bulk Land Plat of Xxxxxxx Science and Technology Park, dated May 2001, and recorded in Book 2001C, page 324 of the real property records of Xxxxxxx County, Xxxxxxx.

Tract C, 0.6497 acres, more particularly described in Bulk Land Plat of Xxxxxxx Science and Technology Park, dated May 2001, and recorded in Book 2001C, page 324 of the real property records of Xxxxxxx County, Xxxxxxx.

Tract I, 11.0205 acres, more particularly described in Bulk Land Plat of Xxxxxxx Science and Technology Park, dated May 2001, and recorded in Book 2001C, page 324 of the real property records of Xxxxxxx County, Xxxxxxx.

Tract J, 27.0060 acres, more particularly described in Bulk Land Plat of Xxxxxxx Science and Technology Park, dated May 2001, and recorded in Book 2001C, page 324 of the real property records of Xxxxxxx County, Xxxxxxx.

- Xxxxxxx State Land Office:

Tract K, 20.2639 acres as more particularly described in the Bulk Land Plat of Xxxxxxx Science and Technology Park, dated May 2001, and recorded in Book 2001C, page 324 of the real property records of Xxxxxxx County, Xxxxxxx.

Parcel P4, 39.7183 acres more particularly described in the Summary Plat for Annexation, dated August 24, 1982 and recorded in Vol. C20, Folio 24 of the real property records of Xxxxxxx County, Xxxxxxx.

Parcel P5, 36.7139 acres more particularly described in the Summary Plat for Annexation dated August 24, 1982 and recorded in Vol. C20, Folio 24 of the real property records of XXXXXX County, XXXXXX.



Tract D 0.7966 acres more particularly described in the Bulk Land Plat of XXXXXX Science and Technology Park, recorded in the real property records of XXXXXX County, XXXXXX in [REDACTED]

Tract E 10.2024 acres more particularly described in the Bulk Land Plat of XXXXXX Science and Technology Park, recorded in the real property records of XXXXXX County, XXXXXX in Book [REDACTED]

Tract F 10.3933 acres more particularly described in the Bulk Land Plat of XXXXXX Science and Technology Park, recorded in the real property records of XXXXXX County, XXXXXX in Book [REDACTED]

Tract H2 2.1009 acres more particularly described in Tracts H-1 and H 2 XXXXXX Science and Technology Park, recorded in the real property records of XXXXXX County, XXXXXX in Book [REDACTED]

Science & Technology Park Development Corporation

Tract G 0.7229 acres more particularly described in the Bulk Land Plat of XXXXXX Science and Technology Park, recorded in the real property records of XXXXXX County, XXXXXX in Book [REDACTED]

EXHIBIT C

Common Areas

All of the following are as shown on the Master Development Plan of [REDACTED]
[REDACTED]

Common Area North and Common Area South –

Pocket Parks

Street Medians

Street Lighting and Lighting in the area described as Common Area

Trails and Paths

Two 75' x 75' Primary Entry Easement Areas on either side of Innovation Parkway.

Four 50' x 50' Secondary Entry Easement Areas.

All appurtenances in the area described as Common Area including but not limited to Bus Stops, Shelter, picnic tables, bicycle racks, litter receptacles, drinking fountains, sprinkler systems, park signs

EXHIBIT D

DECLARATION OF INCLUSION IN COVENANTS

_____, the owner of the real property located in
XXXXXX County, XXXXXX, more particularly described as follows:

(the "Property") hereby declares that the Property shall be subject to all of the terms and conditions of the Declaration of Covenants for XXXXXX Science & Technology Park, recorded at _____ of the real property records of XXXXXX County, XXXXXX (the "Declaration"), and the Property is part of the Property as defined in the Declaration.

Agreed and approved:

XXXXXX SCIENCE & TECHNOLOGY
PARK ASSOCIATION

By: _____

Name: _____

Title: _____