

**DECLARATION AND LICENSE AGREEMENT
REGARDING MAINTENANCE OF HACKMAN LATERAL DITCH**

This Declaration and License Agreement is made this 9th day of Nov, 1999, by L. Michael Messina, Patricia Madrid (Messina), GCM, Inc., John F. Heck IV, Katherine J. Heck, Melvin Scott Krein, and Loretta Francis Krein in favor of the Tierra Viva Subdivision Homeowners' Association, Inc. (hereinafter referred to as "Tierra Viva HOA").

WITNESSETH

WHEREAS, L. Michael Messina, Patricia Madrid (Messina), GCM, Inc., John F. Heck IV, Katherine J. Heck, Melvin Scott Krein, and Loretta Francis Krein are the owners (collectively referred to herein as "Owner"), either individually or collectively depending on the lot, of a fee simple estate in certain parcels of real property located in Tierra Viva Subdivision, Bernalillo County, New Mexico, more particularly described as Lots 1-P2 through 11-P2, 13-P2 through 17-P2, 19-P2 through 21-P2 (the "Lots") of the Tierra Viva Subdivision, as set forth on the plat of said Subdivision filed on August 20, 1997, and recorded in Volume # 97c, Folio 252, Document # 97085228, of the real property records of the Bernalillo County Clerk, Bernalillo, New Mexico.

WHEREAS the Middle Rio Grande Conservancy District (hereinafter "District") and L. Michael Messina, Patricia Madrid (Messina), William Caniglia, Donald Hedges and Marla Storms (referred to collectively as "Tierra Viva") entered into a written Settlement Agreement on _____, 1999 (hereinafter "Settlement Agreement") pertaining to the relationship of a ditch called the Hackman-Lateral ditch ("Ditch"), portions of which are adjacent to and now partially within the Subdivision.

WHEREAS, the Settlement Agreement provides for the removal of a road ("Road") currently adjacent to the Ditch, and also provides that portions of certain Lots will contain a footing and



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retaining wall (collectively referred to as "Retaining Wall"), and that the Tierra Viva HOA will maintain both the Retaining Wall and the Ditch adjacent to or within the Subdivision.

WHEREAS, the Owner desires to provide the Tierra Viva HOA a perpetual license to enter the Lots to perform construction, operation, preservation, maintenance, and improvement relating to the Ditch and Retaining Wall.

WHEREAS, the Owner may hereafter, sell, dispose of, convey, lease, or hypothecate one or more of the Lots and desires to create the aforementioned license to the Tierra Viva HOA and its successors in perpetuity.

**NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, THE OWNER
DECLARES AND AGREES:**

1. Entrance onto Lot by the Tierra Viva HOA or its successors. The Owner and all subsequent owners of the Lots shall allow the agents and employees of Tierra Viva HOA (or its successors), to temporarily, and with advance notice, enter upon that portion of the Lots as is reasonably necessary for the purpose of constructing, operating, preserving, maintaining, and/or improving the Ditch and Retaining Wall. Among other things, and without limitation, the Tierra Viva HOA and its successors have the right to:

- (a) Cause the removal of the road adjacent to the Ditch and all construction of and pertinent to the Retaining Wall as set forth in the Settlement Agreement entered by the District and Tierra Viva;
- (b) Keep and assure that the Ditch remains clear, clean and open for the conveyance of irrigation water between March 1 and October 31, inclusive, of each year;



- (c) Regularly remove silt or other build-up in the bottom of the Ditch, so as to maintain its full conveyance capacity and prevent any bank overflow;
- (d) Regularly inspect culverts or other ditch structures and remove any silt, weeds, debris or other obstructions that may reduce the carrying capacity of the Ditch or cause water back-up or Ditch bank overflow;
- (e) Maintain both the height integrity of the Ditch banks to assure full conveyance capability of the Ditch and to protect the Ditch and adjoining lands from any Ditch overflow or Ditch bank breach;
- (f) Keep the Ditch and Ditch banks clear of sprouting or growing weeds or other plants or trees;
- (g) Maintain the concrete lined Ditch and structures in good condition and replace or repair damaged sections of the Ditch.
- (h) Remove or otherwise modify the Ditch.

2. Property Damage. If the Tierra Viva HOA or the Middle Rio Grande Conservancy District causes any damage to a lot, including but not limited to buildings, structures, walls, or landscaping, arising from the aforementioned actions in Paragraph 1, then the Tierra Viva HOA or the Middle Rio Grande Conservancy District, whichever entity is responsible for the damage, shall correct and remedy original conditions or conditions acceptable to the Owner.

3. Preservation of the Ditch and the Retaining Wall. The Owner and subsequent owners of the Lots shall not, except insofar as they are acting as duly authorized agents of the Tierra Viva HOA (or its successors) with actual authority, remove or destroy any part of the Ditch or the Retaining Wall.



4. Binding on Future Lot Owners. The terms of this Agreement shall run with and bind the land and shall inure to the benefit of and be enforceable by the Tierra Viva HOA and its respective successors and assigns.

5. Modifications. No change to this Agreement shall be effective unless made by an instrument signed by the Tierra Viva HOA or its successors and recorded in Bernalillo County, New Mexico.

IN WITNESS WHEREOF, the Owner has hereunto executed this Agreement as of the day and year first above written.

By: *L. Michael Messina*
L. Michael Messina

By: *Patricia Madrid Messina*
Patricia Madrid (Messina)

GCM, Inc.
By: *L. Michael Messina*
L. Michael Messina
President

By: *John F. Heck IV*
John F. Heck IV

By: *Katherine J. Heck*
Katherine J. Heck

By: *Melvin Scott Krein*
Melvin Scott Krein

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

The foregoing instrument was subscribed, sworn, and acknowledged before me this 4th
day of November, 1999, by John F. Heck IV.

Delissa A. Parra

My Commission Expires:

June 16, 2000

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

The foregoing instrument was subscribed, sworn, and acknowledged before me this 4th
day of November, 1999, by Katherine J. Heck.

Delissa A. Parra

My Commission Expires:

June 16, 2000

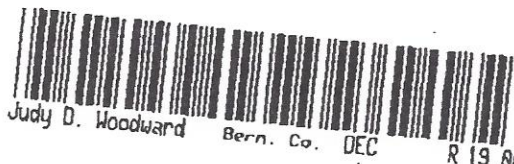
STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

The foregoing instrument was subscribed, sworn, and acknowledged before me this 3rd
day of November, 1999, by Melvin Scott Krein.

Donna Clara Delgado

My Commission Expires:

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