

DISTRICT COURT, COUNTY OF EL PASO, STATE OF COLORADO

Civil Action No. 98CV2977, Division 3

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**ORDER APPROVING SETTLEMENT OF CLASS ACTION**

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KAB-PANKEY, LLC, a Colorado limited liability company,

Plaintiff,

v.

J. Patrick Kelly El Paso Cty, CO

09/16/1999

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Rec \$175.00

1 of 35



WOODMOOR IMPROVEMENT ASSOCIATION, a Colorado non-profit corporation, individually and as representative of a class; VICTOR PANKEY, MICHAEL G. JACOBS, DENISE DESSAINT-FERGUSON & LESTER C. FERGUSON, HAROLD D. PALMER & BETTY J. PALMER, PHILIP S. MAIORKA & MYRNA R. MAIORKA, BRUCE J. WALLACE & PATRICIA L. WALLACE, HARLA D. COX & CAROLYN L. COX, ROBERT C. KLEIST & IRENE A. KLEIST, JOHN F. WHOLEY, JR. & ELIZABETH R. WHOLEY, WILLIAM YOUNG, JR. & PATRICIA L. YOUNG, KATRINE MAXEY, JAMES J. KAMP & VIRGINIA F. KAMP, DANIEL MASIAS, STEVEN H. DODDER & SHAUNA P. DODDER, CHARLOTTE A. HANSEN, ALLEN A. ALCHIAN & ELISSA A. ALCHIAN, KEN L. RICHARDSON & FRANCES Z. RICHARDSON, ALBERT D. NIELSON, DALE L. BAKER & LYNN E. BAKER, SIAMAK ROUHANI, ROGER D. BREWER & BARBARA BREWER, ROBERT D. HICKEY & CHARLOTTE V. HICKEY, TIGGES CONSTRUCTION CO., an Iowa corporation in good standing, d/b/a THE WESTBROOK CO., INC., and KENT R. & CYNTHIA H. MURPHY,

Defendants.

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THIS MATTER coming on for the parties' Stipulation for Proposed Settlement of Class Action, and the Court, having considered said Stipulation, and being fully advised in the premises;

**DOES FIND AND ORDER:**

1. Plaintiff KAB-Pankey, LLC ("KAB-Pankey") filed its Complaint for Class Action and Declaratory Relief on August 27, 1998. In the Complaint KAB-Pankey requested that the Court enter a declaratory judgment that certain covenants allegedly affecting real property owned by it in the Woodmoor area (the "Property") were invalid, void and unenforceable.

2. In the Complaint KAB-Pankey also requested that the action be allowed to be maintained as a class action against the owners of certain other real property in the Woodmoor area who could claim a beneficial interest in enforcement of the disputed covenants against KAB-Pankey. By Order dated October 9, 1998, KAB-Pankey's request was granted. Thereafter,

the potential class members were notified of the class action as evidenced by the Proof of Service filed by KAB-Pankey on December 4, 1998.

3. Defendant Woodmoor Improvement Association ("WIA"), individually and as class representative, appeared in the action and answered the Complaint on behalf of itself and the defendant class.

4. Each of the potential class members who opted out of the class was later named individually as a defendant and was served with either the Amended Complaint for Declaratory Relief or the Second Amended Complaint for Declaratory Relief as evidenced by the Proof of Service filed by KAB-Pankey on February 26, 1999. None of the individuals named personally as defendants answered or otherwise defended the action and on March 26, 1999, the Clerk of the Court entered default against each of them pursuant to C.R.C.P. 55(a).

5. On May 6, 1999, the parties filed a Stipulation for Proposed Settlement of Class Action. By Order dated May 7, 1999, the Court directed that a Notice of Proposed Class Action Settlement be provided to the class members and defaulted parties pursuant to C.R.C.P. 23(e), which Notice has been provided as evidenced by the Proof of Service filed by KAB-Pankey on June 4, 1999. None of the class members or defaulted parties objected to the proposed settlement by the objection deadline of June 7, 1999.

6. KAB-Pankey's Property consists of land which is zoned for multi-family uses (the "Multi-Family Land") and land which is zoned for commercial uses (the "Commercial Land"). The Multi-Family Land is described in Exhibit 1 and the Commercial Land is described in Exhibit 2. There are currently protective covenants recorded against the Multi-Family Land described in Exhibit 1 in favor of WIA and its members, which covenants were purportedly amended by instrument recorded in Book 2421 at page 214, as ratified or amended in Book 2486 at Page 679, and Book 2496 beginning at Page 968, at the office of the El Paso County Clerk and Recorder. There are no protective covenants recorded against the Commercial Land owned by KAB-Pankey.

7. Defendant WIA needs access and maintenance easements over certain portions of KAB-Pankey's Property for the WIA Community Center.

8. Based upon the facts stated above, as well as the pleadings in the matter, the Court has considered the parties' Stipulation for Proposed Settlement of Class Action, finds that it is fair, adequate and reasonable, in the best interest of the parties and the class members and Orders:

A. The covenants recorded against the Multi-Family Land described in Exhibit 1, which covenants were purportedly amended by instrument recorded in Book 2421 at Page 214, as ratified or amended in Book 2486 at Page 679, and Book 2496 beginning at Page 968, at the office of the El Paso County Clerk and Recorder are invalid, void and unenforceable against the Multi-Family Land described in Exhibit 1 and are hereby replaced with the "Multi-Family Covenants" attached hereto as Exhibit 3, which "Multi-Family Covenants" shall be recorded as set forth in paragraph F. below.

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-2-

J. Patrick Kelly El Paso Cty, CO  
09/16/1999 08:46  
Doc \$0.00 Page  
Rec \$175.00 2 of 35

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B. KAB-Pankey shall subject the Commercial Land described in Exhibit 2 to "Commercial Covenants" in the form attached hereto as Exhibit 4, which "Commercial Covenants" shall be recorded as set forth in paragraph F below.

C. KAB-Pankey will grant WIA access and maintenance easements (the "Easements") for the WIA Community Center in the form attached hereto as Exhibit 5, which Easements shall be recorded as set forth in paragraph F. below. WIA has, at its expense, obtained a title insurance commitment (the "Commitment") for the Property which will be subject to the easements. WIA will, within fifteen (15) days after recording of the Easements, update the Commitment. Within fifteen (15) days of receipt of the updated Commitment, WIA will notify KAB-Pankey if it objects to any of the exceptions listed in the updated Commitment (an "Objection"). If no such notice is delivered to KAB-Pankey, all matters listed in the updated Commitment will be deemed acceptable to WIA. If WIA timely delivers notice of an Objection to KAB-Pankey, KAB-Pankey will, within fifteen (15) days of receipt of an Objection, notify WIA whether it will cure the Objection. If KAB-Pankey declines to cure the Objection, or does not notify WIA of its election, then WIA may either: 1) demand that the parties participate in binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association then in effect with respect to the Objection within seventy five (75) days of KAB-Pankey's receipt of the Objection, or 2) waive the Objection. At the time the Easements are conveyed and recorded, they will only be subject to matters listed on the updated Commitment, except for any Objections which have been cured by KAB-Pankey and except for any monetary encumbrances (other than real property taxes not yet due and payable), which will be removed by KAB-Pankey within fifteen (15) days after recording the Easements.

D. KAB-Pankey shall pay the attorney's fees and costs incurred by Sears & Swanson, P.C., counsel for WIA, as representative of the class, within thirty (30) days of the date hereof. All other parties shall pay their own attorney's fees and costs.

E. This Order is binding on the parties, the individual class members, the defaulted parties, and each of their successors and/or assigns.

F. This Order, including all Exhibits, shall be recorded in the office of the El Paso County Clerk and Recorder within seven (7) days of the date hereof.

Done in Open Court/Chambers this 19 day of August, 1999.

BY THE COURT:

THOMAS K. KANE  
\_\_\_\_\_  
Thomas K. Kane JUDGE  
District Court Judge

Exhibit 1

Waterside Condominiums, as described in plat recorded in Plat Book 2 at Page 47 in the records of El Paso County, Colorado.

All of The Cove at Woodmoor except Condominium Plat for The Cove at Woodmoor Supplement Group No. 1 and except that part lying Westerly of the West line of The Cove at Woodmoor Condominiums.

The Beach at Woodmoor, as described in plat recorded in Plat Book V-2 at Page 57 in the records of El Paso County, Colorado.

The Dunes at Woodmoor except that part lying Northwesterly of the Northwest line of property described in deed recorded September 27, 1967 in Book 2201 at Page 730.

The portion of the Northwest quarter of Section 14, Township 11 South, Range 67 West, of the 6<sup>th</sup> P.M., lying North of the south line extended easterly of The Dunes at Woodmoor, lying east of Woodmoor Drive as platted in "Lake Woodmoor Townhouse II" and north of the easterly extension of the south line of the tract conveyed by deed recorded December 4, 1973 in Book 2642 at Page 234, EXCEPT that part platted as "A Vacation and Replat of the Peninsula at Woodmoor", and except that portion conveyed by deed recorded December 4, 1973 in Book 2642 at Page 234 and except The Dunes at Woodmoor.

J. Patrick Kelly El Paso Cty, CO  
09/16/1999 08:46  
Doc \$0.00 Page  
Rec \$175.00 4 of 35

099146134

Exhibit 2

The portion of the Northwest quarter of Section 14, Township 11 South, Range 67 West, of the 6<sup>th</sup> P.M., lying South of the south line extended easterly of The Dunes at Woodmoor, lying east of Woodmoor Drive as platted in "Lake Woodmoor Townhouse II" and north of the easterly extension of the south line of the tract conveyed by deed recorded December 4, 1973 in Book 2642 at Page 234, EXCEPT that part platted as "A Vacation and Replat of the Peninsula at Woodmoor", and except that portion conveyed by deed recorded December 4, 1973 in Book 2642 at Page 234 and except The Dunes at Woodmoor.

That portion of the Northwest quarter of Section 14, Township 11 South, Range 67 West of the 6<sup>th</sup> P.M., lying Northwesterly of the Northwest line of Lake Woodmoor Drive as replatted in Plat Book O-2 at Page 70, south of the south line extended easterly of Community Park Subdivision, and East of the East line of Woodmoor Drive as platted in Lake Woodmoor Townhouses II, EXCEPT property platted as Woodmoor Business/Commercial Park Filing No. 1 and except property described in Lease recorded June 5, 1972 in Book 2493 at Page 669 and except property described in Deed of Trust recorded July 11, 1972 in Book 2504 at Page 641, except that part lying south of the South line of property described in Partial Release recorded June 4, 1970 in Book 2347 at Page 155 and except property described in Quitclaim Deed recorded September 28, 1988 in Book 5559, Page 21.

# PROTECTIVE COVENANTS

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## Lake Woodmoor Multi-Family Land

KAB-Pankey, Limited Liability Company, a Colorado limited liability company (“Declarant”), owns that certain real property located in El Paso County, Colorado described on Exhibit A attached hereto (the “Property”). The Property is also graphically depicted on Exhibit B hereto (the “Map”). The Property is located in the area of El Paso County commonly known as “Woodmoor.” The Woodmoor Improvement Association (“WIA”) is a Colorado non-profit corporation, serving to maintain the quality of life in the Woodmoor area, among other functions. Declarant would like to assure development of the Property results in a quality multifamily community or communities, consistent with the goals of the WIA. To accomplish this, Declarant hereby subjects the Property to the following covenants:

1. Preamble. Parts or all of the Property may have been in the past subjected to other covenants, including without limitation, those described as Amendment II to Declaration of Covenants, Conditions and Restrictions recorded on July 12, 1971 in Book 2421 beginning at Page 215 of the real property records of El Paso County, Colorado, (all of which prior covenants are herein called the “Prior Covenants”). The Prior Covenants were subject to litigation between Declarant, the WIA, and its members which is described as *KAB-Pankey, LLC v. Woodmoor Improvement Association, et al.*, Civil Action No. 98 CV 2977, El Paso County District Court, pursuant to said litigation and the order entered therein, the Prior Covenants are superseded, revoked, amended and terminated to the Property by these Protective Covenants (“the Covenants”), except as otherwise provided in these Covenants, which are hereby declared to be binding upon the Property and any person or party having any interest therein. It is anticipated that additional protective covenants shall be recorded upon all or parts of the Property; such covenants shall not supersede, impair, replace or revoke these Covenants but shall be interpreted in harmony herewith.

2. Definitions. In addition to terms defined elsewhere in these Covenants, the following terms are defined:

a. “Lot” shall mean and refer to any plot of land shown as a lot upon any recorded subdivision map of the all or part of the Property. “Lot” shall include any condominium unit, townhouse unit or multi-family unit which is created by any subsequent replatting of all or part of the Property. “Lot” shall also include any current parcel of land in the Property which has been assigned a tax schedule number by the El Paso County taxing authority, even if not platted into a subdivision lot.

b. “Owner” shall be defined in that same manner as the Prior Covenants, which are incorporated by reference for this and any other purpose referenced in these Covenants.

c. “WIA Common Area” shall be defined as any lands now or hereafter owned by the WIA which have been designated as common areas as described in the Prior Covenants.

d. "MFA" shall mean and refer to any multi-family association, whether condominium, townhouse, or multi-family owners, organized and operating to represent the Owners of Lots into which the Property is subsequently subdivided. The MFA shall operate and maintain any WIA Common Areas within its boundaries.

e. "DSM" shall mean and refer to any design standards manual or comparable document now or hereafter adopted by the WIA, which are applicable to all other Woodmoor properties subject to WIA authority.

f. "Dwelling Unit" shall mean and refer to a condominium unit, townhouse unit or other multifamily unit.

g. "Improvement" shall mean and refer to any building, structures, thing or device, including related Improvements, such as accessory buildings, painting, fences, trees and landscaping, the placement of which upon any Lot might affect its architectural appearance, including by way of illustration and not limitation, any dwelling, building, garage, porch, shed, greenhouse, driveway, walk, patio, swimming pool, tennis court, fence, wall, tent, covering, antenna, mailbox, solar collector or outdoor lighting.

3. Use. The Property may be used only for multi-family residential uses, which shall be determined by the El Paso County zoning ordinances (the "Zoning Ordinances") and shall include the following accessory uses:

- a) Detached private parking garage or carport
- b) Storage shed (i.e., for small watercraft, pool or community area equipment)
- c) Gazebo
- d) Decks, docks and floats
- e) Swimming pool, hot tub, tennis courts or similar private recreational facilities
- f) Private greenhouse
- g) Fences, walls and hedges
- h) Low-impact home occupations (i.e. professional office, home crafts, tutoring limited to academic, art or music students, provided however, that no on-site sale of products is allowed). Any home occupation would also have to be approved by the County under their Zoning Ordinances.

4. Density. No more than a total of three hundred eighty-three (383) residential Dwelling Units may be constructed on the Property; if the Property is subdivided into various Lots, the sum of all such units on the entire Property shall not exceed three hundred eighty-three (383). All Improvements on any Lot shall be designed by a licensed architect to provide architectural diversity, and large, monolithic buildings or structures having an "army barracks" style of appearance shall not be permitted; all buildings and structures, including accessory uses under paragraph 3 above, shall have an appearance equal to or better than the buildings and structures, existing as of the date hereof, in the Lake Woodmoor Townhouses on Woodmoor Drive within Woodmoor.

5. Unit Size. No Dwelling Unit constructed on the Property will be less than five hundred (500) square feet of enclosed living space. In addition, no more than one hundred twenty-eight (128) Dwelling Units of less than 750 square feet of enclosed living space may be constructed on the Property. The determination of the size of Dwelling Units shall be in accordance with the DSM and shall exclude porches, decks and garages.

6. Height. No building constructed on the Property will have a height in excess of forty (40) feet, and the average height of the sides of any building on the Property will not exceed thirty-six (36) feet. The heights will be determined in accordance with WIA's DSM in effect at the time that a building is constructed and shall be determined in the same manner as such standards are applied to all other Woodmoor properties subject to WIA control. If there is no DSM in effect, then height will be determined in accordance with the Zoning Ordinances. No excavation or cut and fill, which exceeds four (4) feet from the land topography existing when these Covenants are recorded, shall be allowed on the Property, except where more than four (4) feet of excavation or cut and fill is reasonably necessary for practical and efficient utilization of the Property because of existing slopes.

7. Set-Backs. No buildings will be constructed within the "set-back" areas along the perimeter of the Property as shown on the Map. No rear set-backs are required along portions of the Property bordering Lake Woodmoor, since the lake serves as a natural buffer.

8. Landscaping.

(a) Except as permitted in Paragraph 10(c) below, native trees and shrubs more than fifteen (15) feet from the eavesline of any building will not be removed; the Lot will not be clear-cut. At least ten (10) feet along all public streets will be landscaped, with one tree at least every thirty (30) feet along the frontage. However, if the public street separates the multi-family land from any residential area, the landscaped area along the public street will be at least fifteen (15) feet in depth and have one tree at least every fifteen (15) feet. Additionally, for each acre developed as multi-family housing at least nine (9) trees will be planted on each acre so developed. At least one-third (1/3) of the trees will be evergreen. Evergreen trees will be at least six (6) feet in height and deciduous shade trees will be of at least 1 1/2 inch caliper measured six (6) feet above the ground. At least seventy-five percent (75%) of the landscaped area will consist of living grass, xeriscape plantings or other plant material. The remaining twenty-five (25%) of the landscaped area may consist of bark, wood chips, rock, stone or other landscape materials.

(b) Existing drainage amounts and routes shall not be changed to violate El Paso County standards or to the detriment of the neighboring properties, including without limitation, Woodmoor Lake.

(c) All landscaping shall be selected to be in harmony with the current landscaping in adjoining WIA residential neighborhoods. For example, there shall be no garish or intense colors (such as bright reds or other bright colors) nor shall any statue, ornament or unapproved Improvement be placed upon the landscaping.

(d) All landscaping shall be maintained in a sightly condition, with regular mowing and pruning to prevent an unkempt appearance. The condition of the landscaping shall equal or exceed its condition upon its original installation. Any areas of the Property which are not landscaped, shall be maintained with attractive, natural prairie vegetation which protects the soil from erosion. The growth of noxious weeds or shrubs and the creation of wildfire dangers shall be prohibited from both landscaped and unlandscaped areas.

9. Exterior Appearance. Each multi-family development shall consist of one style of architecture. The Improvements shall be constructed of redwood or cedar, stone or stucco with optional brick accents. No building or Improvement will be completely faced in brick or concrete nor shall brick, stone, or concrete constitute more than fifty percent (50%) of the exterior surfaces thereof. No exposed and unfinished concrete siding or foundation is permitted. Exterior colors shall be muted, generally tans, beige, grays, browns. Relatively small percentages of stronger accent colors may be used, provided they are not bright or eye-catching from a distance. Light colored wood shall be finished with a wood preservative that contains at least ten (10) percent color pigment. The following exterior wall materials will not be used unless specified by the WIA's Architectural Control Committee in writing: asphalt siding, asbestos siding, pressed hardboard siding, aluminum or other metal siding, vinyl siding, imitation logs, smooth plywood, raw concrete block or glass block (may be used in place of windows). All exposed metal such as skylights, frames, stacks, vents, gutters, downspouts, flashings, flues, air handling equipment, and other metal surfaces will be finished to blend with the building decor. Pitched roofs will be made of the materials selected from Exhibit "C" which is attached hereto and which provide the visual appearance comparable to natural-material roofs. Wood shingles will not be used on the roof of any structure. Each chimney or vent used in conjunction with any fireplace or any heating appliance in which solid or liquid fuel is used shall be equipped with a spark arrester. Driveways, interior roads and parking lots shall be paved with asphalt, concrete, stone or similar hard substance.

10. Additional Restrictions.

(a) Temporary Residence. No Improvement of temporary character, trailer, basement, tent, or accessory building shall be used on any Lot as a residence, temporarily or permanently, and no used Improvement of any sort shall be moved onto any Lot.

(b) Trailers or other vehicles. No trailers, mobile homes, manufactured housing, recreational vehicles, boats, or campers of any type shall be placed or kept on any Lot, unless such items are kept in enclosed garages or within other enclosed areas which are screened, as approved by the WIA's Architectural Control Committee, to obstruct completely any view of such items from residential Lots in Woodmoor. However, the temporary use of construction trailers and/or modular construction offices during periods of construction is permitted.

(c) Water. There shall be no water wells drilled or placed on any Lot or Property covered by these Covenants. Any residence constructed on any Lot shall be connected with public or community water and sewage disposal system.

(d) Clearing of Trees. Improvements, roads and parking areas on Lots shall be located so as to preserve existing trees to the maximum extent possible, consistent with quality development standards. Each Owner agrees that any of the trees cleared by him will be disposed of in such a way that all Lots, whether vacant or occupied by Improvements, shall be kept free of accumulations of brush, trash, or other materials which may constitute a fire hazard or renders a Lot unsightly, provided, however that this shall not operate or restrict grantees from storing fireplace wood in neat stacks on their Lots.

(e) Nuisance. Nothing shall be done or permitted on any Lot which may be or become an annoyance or nuisance to the neighborhood. Neither noxious or offensive activities nor commercial business or trade shall be carried upon any Lot, except that apartments or multifamily may have offices for managers and maintenance personnel and may also have sales offices and model units and that "home occupations" may be allowed if permitted by the WIA's Covenants or specific prior written approval by the WIA's Architectural Control Committee.

Outside aerials or antennas will not be permitted. No annoying sounds or lights shall emanate from any part of the Property. Exterior lighting shall be limited to a minimum intensity for safety and security of the Property and shall be indirect or shielded so that no light is projected from the light source onto any area beyond the boundaries of the Property or any subdivided portion of the Property. Recreational exterior lighting may be provided if controlled by a timer which is activated at the location and which assures the lights will automatically turn off within an hour or less if not manually reactivated and should not be visible on adjoining properties after 11:00 p.m.; similar measures shall be taken to prevent sound intrusions from security devices, sound systems or similar devices.

(f) Refuse and Rubbish. Rubbish, garbage, or other waste shall be kept and disposed of in a sanitary manner and placed in containers. No part of the Property shall be used or maintained as a dumping ground for rubbish. All containers or other equipment for the storage or disposal of garbage, trash, rubbish, or other refuse shall be kept in a clean, sanitary condition and shall be fully enclosed by structures having an exterior appearance comparable to adjacent buildings. No trash, litter, or junk shall be permitted to remain exposed upon the Lot or be visible from public roads or adjoining or nearby premises. Burning of trash will not be permitted.

(g) Signs. No sign of any character shall be displayed or placed upon any of the Property or Lots to the extent such sign violates the Zoning Ordinances of El Paso County. Billboards or commercial signs are prohibited.

(h) Animals. No animals, livestock, or poultry of any kind shall be housed, raised, or kept on any part of the Property either temporarily or permanently, except that commonly accepted domestic household pets may be kept provided they are not kept or maintained for any commercial purposes.

(i) Clotheslines and Exterior Tanks. No Owner shall place upon his premises any clotheslines, swimming pool filter tanks, fuel oil tanks, or similar tanks which may be visible from the street or from residential lots. All tanks must be enclosed or otherwise appropriately

screened so that they will not be visible from the street or from residential Lots. Protective enclosures to screen the above must completely obstruct the view of such items from residential Lots in Woodmoor.

11. Membership in WIA. Each Lot or parcel in the Property and each Owner thereof shall become a member of the WIA and be subject to the rights and duties of the WIA's Articles of Incorporation and Bylaws and of these Covenants, as follows:

(a) Single Family Lots. Any single family Lots and their Owners shall be subject to the Prior Covenants, except as expressly modified by these Covenants.

(b) Apartments. Any Lots containing apartments shall be subject to these Covenants, but the rate of assessment will be one assessment for each Lot which shall have one vote in the WIA. If a Lot receives multiple tax schedule numbers from the El Paso County taxing authorities, the Lot shall pay assessments and have votes equal to those multiple numbers. Assessments and voting rights will commence in the calendar year following the assignment of a tax schedule number by the El Paso County taxing authorities. If apartments are constructed upon any Lot which retains its existing tax schedule number, assessments and voting rights shall commence in the calendar year following the assessment of completed apartment Improvements on such Lot by the El Paso County taxing authorities. The Owner of the Lot shall notify the WIA of the assignment of tax schedule numbers or the assessment of apartment Improvements on a Lot.

(c) Condominiums and Townhouses. Any condominium or townhouse units, including without limitation, any apartment buildings converted to condominiums or any multi-family Lots such as duplexes, will be subject to these Covenants with each unit having one vote and paying one assessment. Assessments and voting rights will commence in the calendar year following the assignment of a tax schedule number to a condominium, townhouse or other multifamily unit by the El Paso County taxing authorities.

12. Assessments.

(a) Creation of the Lien and Personal Obligation of Assessments. Subject to the provisions of Paragraph 11 above, the Declarant, for the Property and each Lot now or hereafter owned within the properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the WIA: (1) annual assessments or charges, and (2) special assessments for capital Improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

(b) Purpose of Assessments. The assessments levied by the WIA shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in Woodmoor and for the Improvement and maintenance of the WIA Common Area.

(c) Maximum Annual Assessment. The maximum annual upon the Lots subject to these Covenants shall be the same as the maximum for existing lots in the WIA and, except as otherwise provided in these Covenants, such assessments shall be set and collected as provided in the Prior Covenants for the purposes set forth therein, including without limitation, the possible provision of security or protective services by the WIA. The WIA's Board of Directors may fix the annual assessment as provided herein in any amount not in excess of the maximum, provided however, notwithstanding any contrary provision of these Covenants, the maximum, average annual assessment of any Lot shall not exceed three hundred dollars (\$300.00) per year per Lot, exclusive of optional user fees and any insurance premiums paid by the WIA.

(d) Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the WIA 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, repair, or replacement of a capital Improvement upon the WIA Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the WIA's members who are voting in person or by proxy at a meeting duly called for this purpose.

(e) Notice and Quorum for any Action Authorized Under (c) and (d). Written notice of any meeting called for the purpose of taking any action authorized under subparagraphs (c) and (d) above shall be sent to all WIA members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of sixty percent (60%) of the members or of proxies entitled to vote shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be the same as the required quorum at the preceding meeting. No subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

(f) Uniform Rate of Assessment. Except as provided in Paragraph 11 above, both annual and special assessments must be fixed at a uniform rate for all Lots; this means that Lots in the Property shall be assessed at the same rate as Lots in the Woodmoor subdivisions assessed under the Prior Covenants. Such assessments may be collected as established by the WIA's Board of Directors.

(g) Date of Commencement of Annual Assessments Due Dates. The annual assessments provided for herein shall commence as to all Lots as provided in Paragraph 11 above. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The WIA's Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the WIA's Board of Directors. The WIA shall, upon demand, and for a

reasonable charge, furnish a certificate signed by an officer of the WIA setting forth whether the assessments on a specified Lot have been paid.

(h) Effect of Nonpayment of Assessments: Remedies of the WIA. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eight percent (8%) per annum. The WIA may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the WIA Common Area or abandonment of his Lot.

(i) Subordination of the Lien to the Mortgages. The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

(j) Exempt Property. All property dedicated to and accepted by a local public authority, and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Colorado shall be exempt from the assessments created herein. However, no land or Improvements devoted to dwellings or residential use shall be exempt from said assessments.

13. Enforcement. These Covenants are for the benefit of Declarant, the WIA, the MFA and all owners of any platted Lots or Dwelling Units within the Property, and may be enforced by any or all of said parties. In any action to enforce these Covenants, the prevailing party will be awarded all reasonable expenses incurred (including reasonable attorneys' fees).

14. Covenants Run with the Property. These Covenants run with the land and inure to and are binding on Declarant and all land within the Property, as well as upon each person or entity hereafter acquiring ownership or any right, title or interest in any portion of the Property.

15. Amendments. These Covenants may be amended by Declarant with respect to any portion of the Property wholly owned by Declarant, provided WIA's Board of Directors consents in writing to such amendment. These Covenants may also be amended by the owners of at least two-thirds (2/3's) of the platted Lots within the Property, provided the WIA's Board of Directors consents in writing to such amendment.

16. Duration. These Covenants will have an initial term of twenty (20) years after the date they were first placed of record in EL Paso County, Colorado, and will automatically be extended for successive ten-year terms unless prior to the expiration of the initial or any successive term, the Owners of at least two-thirds (2/3's) of the platted Lots within the Property and WIA's Board of Directors agree in writing not to renew them.

17. Non-Liability of Employees. No manager or member of Declarant, nor any member of WIA or any of its committees or boards, nor any of their employees or agents, will be liable to any party whatsoever for any act or omission taken pursuant to these Covenants, unless the act or omission is in bad faith or amounts to fraud or willful misconduct.

18. Severability. If any provision of these Covenants is held invalid or becomes unenforceable, the other provision of these Covenants will not be affected or impaired and will remain in full force and effect.

Dated: July 15, 1999

KAB-Pankey, Limited Liability Company

By: [Signature]

Its Manager

STATE OF COLORADO)

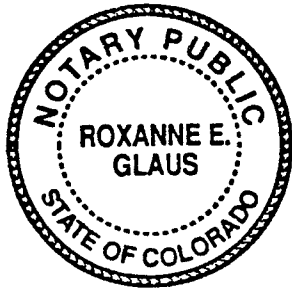
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of July, 1999, by Charles Choi as Manager of KAB-Pankey, Limited Liability Company.

Witness my hand and official seal.

My commission expires: April 13, 2002

[SEAL]



[Signature]  
Notary Public

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Rec \$175.00 14 of 35

Exhibit A to  
Protective Covenants  
Lake Woodmoor Multi-Family Land

Waterside Condominiums, as described in plat recorded in Plat Book 2 at Page 47 in the records of El Paso County, Colorado.

All of The Cove at Woodmoor except Condominium Plat for The Cove at Woodmoor Supplement Group No. 1 and except that part lying Westerly of the West line of The Cove at Woodmoor Condominiums.

The Beach at Woodmoor, as described in plat recorded in Plat Book V-2 at Page 57 in the records of El Paso County, Colorado.

The Dunes at Woodmoor except that part lying Northwesterly of the Northwest line of property described in deed recorded September 27, 1967 in Book 2201 at Page 730.

The portion of the Northwest quarter of Section 14, Township 11 South, Range 67 West, of the 6<sup>th</sup> P.M., lying North of the south line extended easterly of The Dunes at Woodmoor, lying east of Woodmoor Drive as platted in "Lake Woodmoor Townhouse II" and north of the easterly extension of the south line of the tract conveyed by deed recorded December 4, 1973 in Book 2642 at Page 234, EXCEPT that part platted as "A Vacation and Replat of the Peninsula at Woodmoor", and except that portion conveyed by deed recorded December 4, 1973 in Book 2642 at Page 234 and except The Dunes at Woodmoor.

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# E G E N D

VEGETATION  
K.A.B. SHORE LENGTH



COMMERCIAL  
AREAS

*A Multi-Family*

099146134/1b

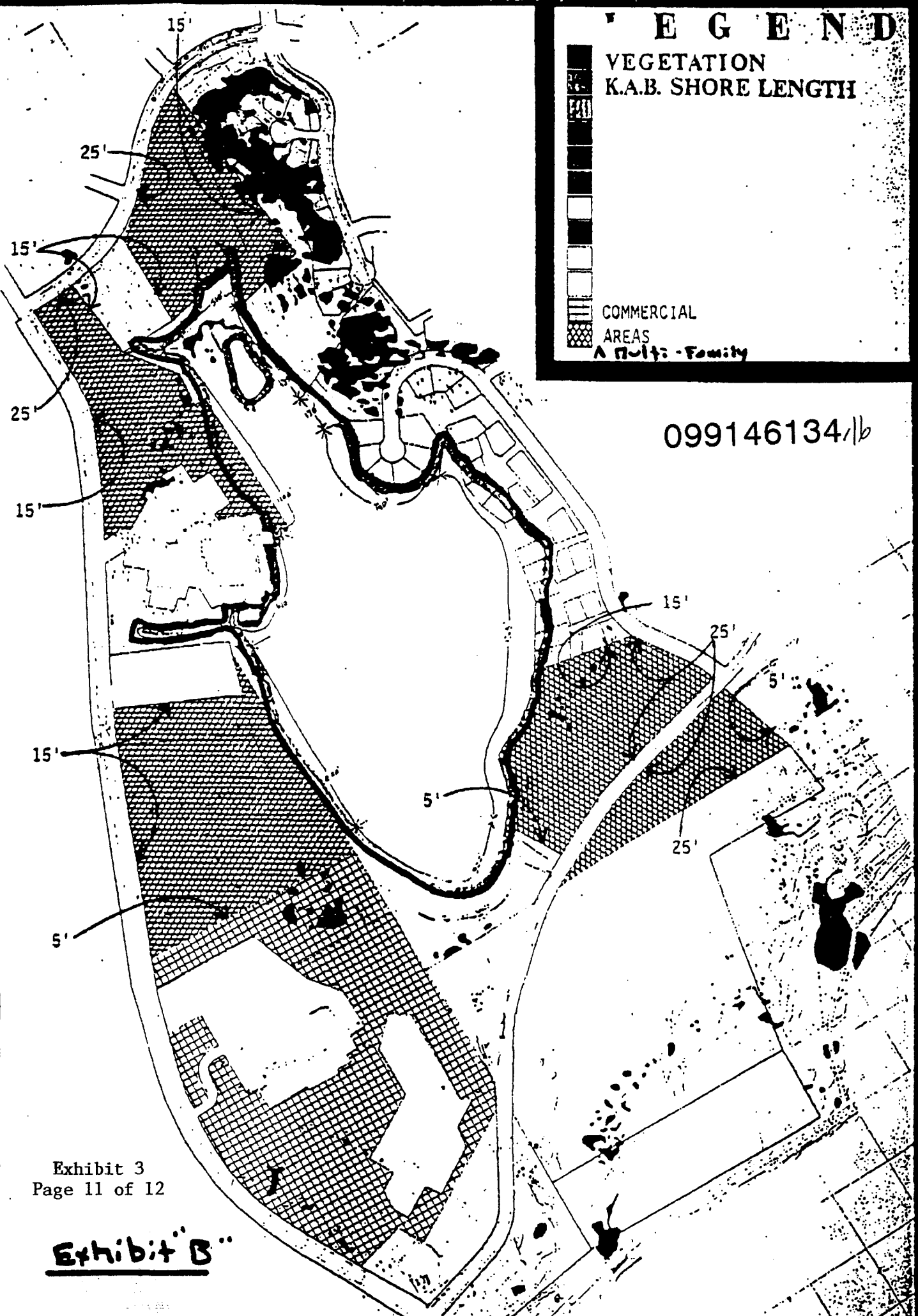


Exhibit 3  
Page 11 of 12

Exhibit B

J. Patrick Kelly El Paso Cty, CO  
09/16/1999 08:46  
Doc \$0.00 Page  
Rec \$175.00 17 of 35

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### APPROVED ROOFING

CLAY TILE\*

CONCRETE TILE\*

CONCRETE TILE WITH WOOD FIBER\*

SLATE\*

\* GRAY AND SUBDUED COLORS.

ASPHALT

BRAND

APPROVED COLORS

<b>Celotex Presidential</b>	Bark Brown, Shadow Gray, Weathered Wood, Slate Gray.
<b>Elk Prestique Plus</b>	Weatheredwood, Hickory, Barkwood, Sablewood, Forest Green.
<b>Grand Manor</b>	Sherwood Forest, Heirloom silver, Stately Black, Brownstone, Stonegate Gray, Colonial Slate.
<b>Cedarlite</b>	Muirwood, Heartwood, Silverwood, Ironwood.
<b>Featherstone Shake</b>	Cedar Tan, Weathered Gray, Burnished Oak, Aged Charcoal.
<b>Featherstone Slate</b>	Oxford, Colonial, Williamsburg.
<b>FireFree Color-Tru</b>	Rustic Shake, Quarry Slate

Note: Asphalt shingles of other brands with at least a 40 year warranty and Underwriters Laboratories(UL) Class "A" fire rating may be substituted. Materials should exhibit texture and diminsion to produce a shadowing effect. Colors should be earth tone similar to those listed above.

Exhibit "C"

# PROTECTIVE COVENANTS

## Lake Woodmoor Commercial Land

KAB-Pankey, LLC, a Colorado limited liability company, ("Declarant"), owns that certain real property located in El Paso County, Colorado described on Exhibit "A" attached hereto (the "Property"). The Property is also graphically depicted on Exhibit "B" hereto (the "Map"). The Property is located in the area of El Paso County commonly known as "Woodmoor." The Woodmoor Improvement Association ("WIA") is a Colorado non-profit corporation, serving to maintain the quality of life in the Woodmoor area, among other functions. Declarant would like to assure that development of the property results in commercial usages intended to be consistent with the goals of the WIA and these protective covenants (the "Covenants"). To accomplish this, Declarant hereby subjects the Property to the following covenants:

1. Preamble. Declarant has covenanted and agreed to subject the Property to these Covenants as part of a settlement with the WIA involving other protective covenants on adjacent property.

2. Use. The Property may be used only for neighborhood business district uses as currently permitted in the applicable zoning ordinances of El Paso County, Colorado (the "Zoning Ordinance"). The following are prohibited:

- a. Billiard Parlor
- b. Bowling Alley
- c. Towers (private or commercial)
- d. Adult Uses, including without limitation, massage parlors, adult bookstores, casinos, and gambling parlors
- e. Above-ground storage tanks for gasoline or hazardous substances or any use involving toxic substances, trash hauling (except enclosed recycling), or bulk storage.
- f. Commercial parking lot; parking garage; lot for storage, sale, or repair of trucks, motor homes, recreational vehicles, mobile homes, automobiles, or similar vehicles, except that storage of boats and recreational vehicles, including motor homes, travel trailers and camper trailers is allowed on that portion of the Property depicted as "Storage" on Exhibit "C" attached hereto, provided however, the storage area must be screened so that the stored vehicles will not be visible in any way from adjacent public streets or residential properties in Woodmoor.
- g. Manufacturing buildings or mini-warehouses.

J. Patrick Kelly El Paso Cty, CO  
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Doc \$0.00 Page  
Rec \$175.00 18 of 35

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3. Height. No building constructed on the Property will have a height in excess of 30 feet. Height will be determined in accordance with the Zoning Ordinances. No excavation or cut and fill shall be allowed on the Property which exceeds four (4) feet from the land topography existing when these Covenants are recorded, except where more than four (4) feet of

excavation or cut and fill is reasonably necessary for practical and efficient utilization of the Property because of existing slopes. No fill shall be allowed for the purpose of raising the structure above the minimum needed to establish a level foundation and adequate drainage.

4. Landscaping. At least ten (10) feet along all public streets will be landscaped, with one tree at least every thirty (30) feet along the frontage, except for asphalt entryways. However, if the public street separates the commercial land from any residential area, the landscaped area along the public street will be at least fifteen (15) feet in depth and have one tree at least every fifteen (15) feet. At least one-third (1/3) of the trees will be evergreen. Evergreen trees will be at least six (6) feet in height, and deciduous shade trees will be of at least one and one-half (1 1/2) inch caliper measured six feet above the ground. At least seventy-five percent (75%) of the landscaped area will consist of living grass or other plant material. The remaining twenty-five percent (25%) of the landscaped area may consist of bark, wood chips, rock, stone or other landscape materials.

All landscaping shall be selected to be in harmony with the current landscaping in adjoining WIA residential neighborhoods. For example, there shall be no garish or intense colors (such as bright reds or other bright colors) nor any statues, ornaments, signs or commercial figures placed on the landscaping, except for the signs permitted in Section 5 hereof.

All landscaping shall be well maintained, with regular mowing and pruning to prevent an unkempt appearance. Any areas of the Property which are not landscaped, shall be maintained with attractive, natural prairie vegetation which protects the soil from erosion. The growth of noxious weeds or shrubs and the creation of wildfire dangers shall be prohibited from both landscaped and unlandscaped areas.

5. Signs. All signs on the Property shall conform to the Zoning Ordinance and the following provisions:

5.1 Size. No more than two square feet for each linear foot of building wall, or forty (40) square feet, whichever is smaller, except that one Center Identification sign complying with the Zoning Ordinance may also be allowed if portions of the Property are developed as a unified center.

5.2 Lights. No blinking or flashing lights will be permitted (but this will not prevent a typical "time and temperature" sign).

5.3 Height. Except for a Center Identification sign, no sign may be higher than the height of the building on the Property. Individual building signs within a Center may not be higher than six (6) feet.

5.4 Wall Signs. Wall signs on buildings will not exceed one and one-half (1 1/2) square feet of signage per linear foot of exterior building wall.

Exhibit 4

Page 2 c

J. Patrick Kelly El Paso Cty, CO

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Doc \$0.00 Page

Rec \$175.00 19 of 35

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5.5 Window Signs. Window signs are permitted in addition to other signs, provided they do not exceed fifty percent (50%) of the window area.

5.6 Miscellaneous Signs. Normal traffic, directional and directory signs will be permitted to the extent allowed by the Zoning Ordinance.

5.7 Billboards Prohibited. Signs for off-premises businesses or products are prohibited, and all billboards are also prohibited.

6. Nuisances. Nothing shall be done or permitted on any portion of the Property which may be or become an annoyance or nuisance to the neighborhood. Rubbish, garbage, and other waste shall be disposed of in a sanitary manner in attractive, fully enclosed areas having an exterior appearance comparable to adjacent buildings. All containers or other equipment for the storage or disposal of garbage, trash, rubbish or other waste shall be kept in a clean, sanitary condition. No trash, litter or junk shall be visible or exposed to view from any public road or adjoining property. No annoying sounds or lights shall emanate from the Property. All buildings and improvements on the Property shall be kept in a clean, attractive, well-maintained condition.

7. Enforcement. These Covenants are for the benefit of Declarant, WIA, and all owners of any platted lots within the Property. In any action to enforce these Covenants, the prevailing party will be awarded all reasonable expenses incurred (including reasonable attorneys' fees).

8. Covenants Run with the Property. These Covenants run with the land and inure to and are binding on Declarant and all land within the Property, as well as upon each person or entity hereafter acquiring ownership or any right, title or interest in any portion of the Property.

9. Amendments. These Covenants may be amended by Declarant with respect to any portion of the Property wholly owned by Declarant, provided the WIA's Board of Directors consents in writing to such amendment. These Covenants may also be amended by the owners of at least two-thirds (2/3's) of the platted lots within the Property, provided the WIA Board of Directors has given its prior written consent to such amendment.

10. Duration. These covenants will have an initial term of twenty (20) years after the date when they were first placed of record in El Paso County, Colorado, and will automatically be extended for successive ten-year terms unless prior to the expiration of the initial or any successive term, the owners of at least two-thirds (2/3's) of the platted lots within the Property and the WIA Board of Directors agree in writing not to renew them.

11. Non-Liability of Employees. No manager or member of Declarant, nor any member of WIA or any of its committees or boards, nor any of their employees or agents, will be liable to any party whatsoever for any act or omission taken in enforcing these Covenants unless the act or omission is willful and wanton.

Exhibit 4  
Page 3 of 7

J. Patrick Kelly El Paso Cty, CO  
09/16/1999 08:46  
Doc \$0.00 Page  
Rec \$175.00 20 of 35

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12. Severability. If any provision of these covenants is held invalid or becomes unenforceable, the other provisions of these covenants will not be affected or impaired and will remain in full force and effect.

Dated: July 15, 1999

KAB-Pankey, Limited Liability Company  
By: [Signature]  
Its: Manager

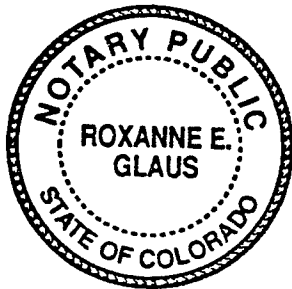
STATE OF COLORADO )  
COUNTY OF EL PASO )

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of July, 1999, by Charles Choi as Manager of KAB-Pankey, Limited Liability Company.

Witness my hand and official seal.

My commission expires: April 13, 2002

[SEAL]



[Signature]  
Notary Public

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Exhibit A to  
Protective Covenants  
Lake Woodmoor Commercial Land

The portion of the Northwest quarter of Section 14, Township 11 South, Range 67 West, of the 6<sup>th</sup> P.M., lying South of the south line extended easterly of The Dunes at Woodmoor, lying east of Woodmoor Drive as platted in "Lake Woodmoor Townhouse II" and north of the easterly extension of the south line of the tract conveyed by deed recorded December 4, 1973 in Book 2642 at Page 234, EXCEPT that part platted as "A Vacation and Replat of the Peninsula at Woodmoor", and except that portion conveyed by deed recorded December 4, 1973 in Book 2642 at Page 234 and except The Dunes at Woodmoor.

That portion of the Northwest quarter of Section 14, Township 11 South, Range 67 West of the 6<sup>th</sup> P.M., lying Northwesterly of the Northwest line of Lake Woodmoor Drive as replatted in Plat Book O-2 at Page 70, south of the south line extended easterly of Community Park Subdivision, and East of the East line of Woodmoor Drive as platted in Lake Woodmoor Townhouses II, EXCEPT property platted as Woodmoor Business/Commercial Park Filing No. 1 and except property described in Lease recorded June 5, 1972 in Book 2493 at Page 669 and except property described in Deed of Trust recorded July 11, 1972 in Book 2504 at Page 641, except that part lying south of the South line of property described in Partial Release recorded June 4, 1970 in Book 2347 at Page 155 and except property described in Quitclaim Deed recorded September 28, 1988 in Book 5559, Page 21.

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Rec	\$175.00	22 of 35

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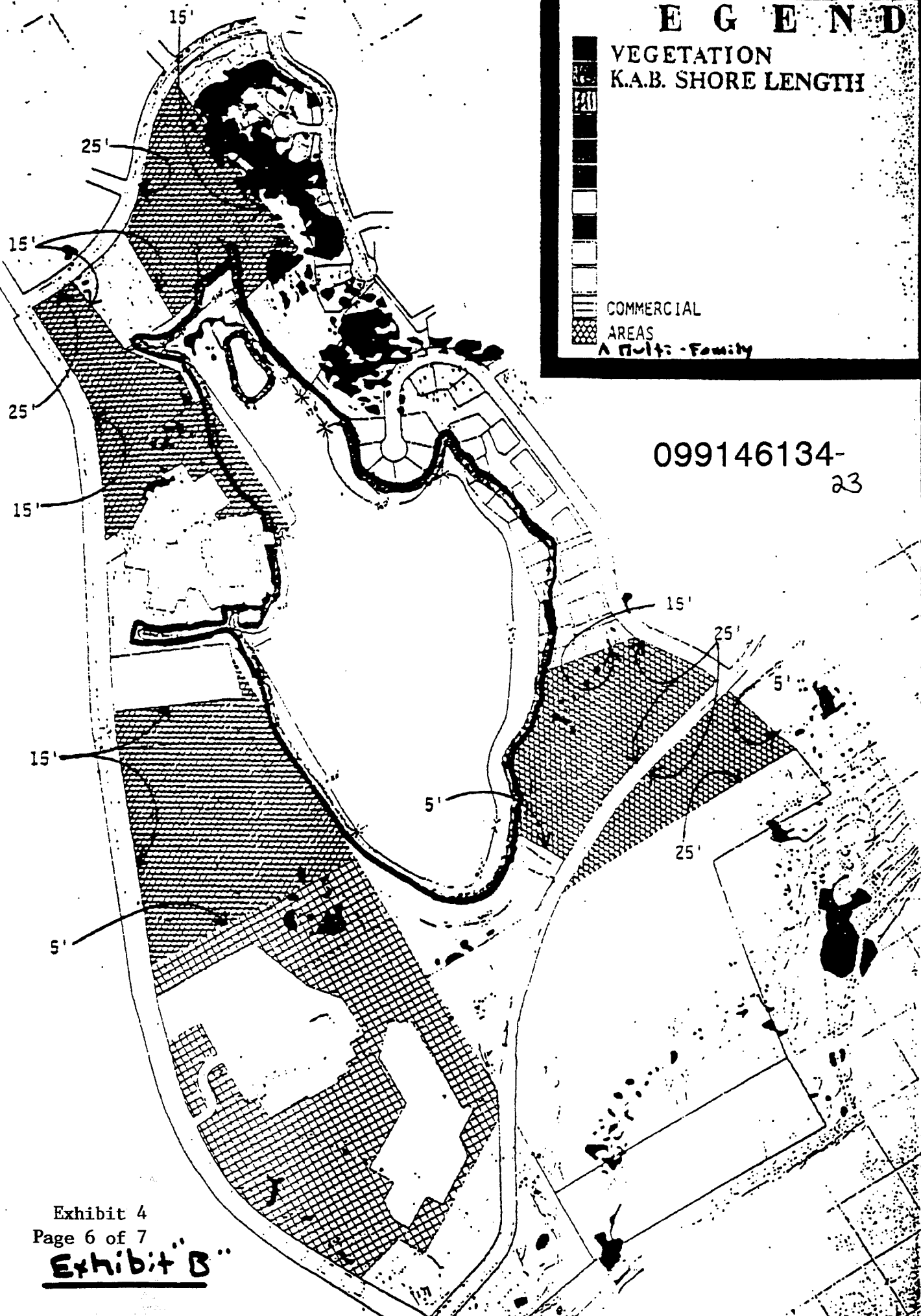
VEGETATION  
K.A.B. SHORE LENGTH



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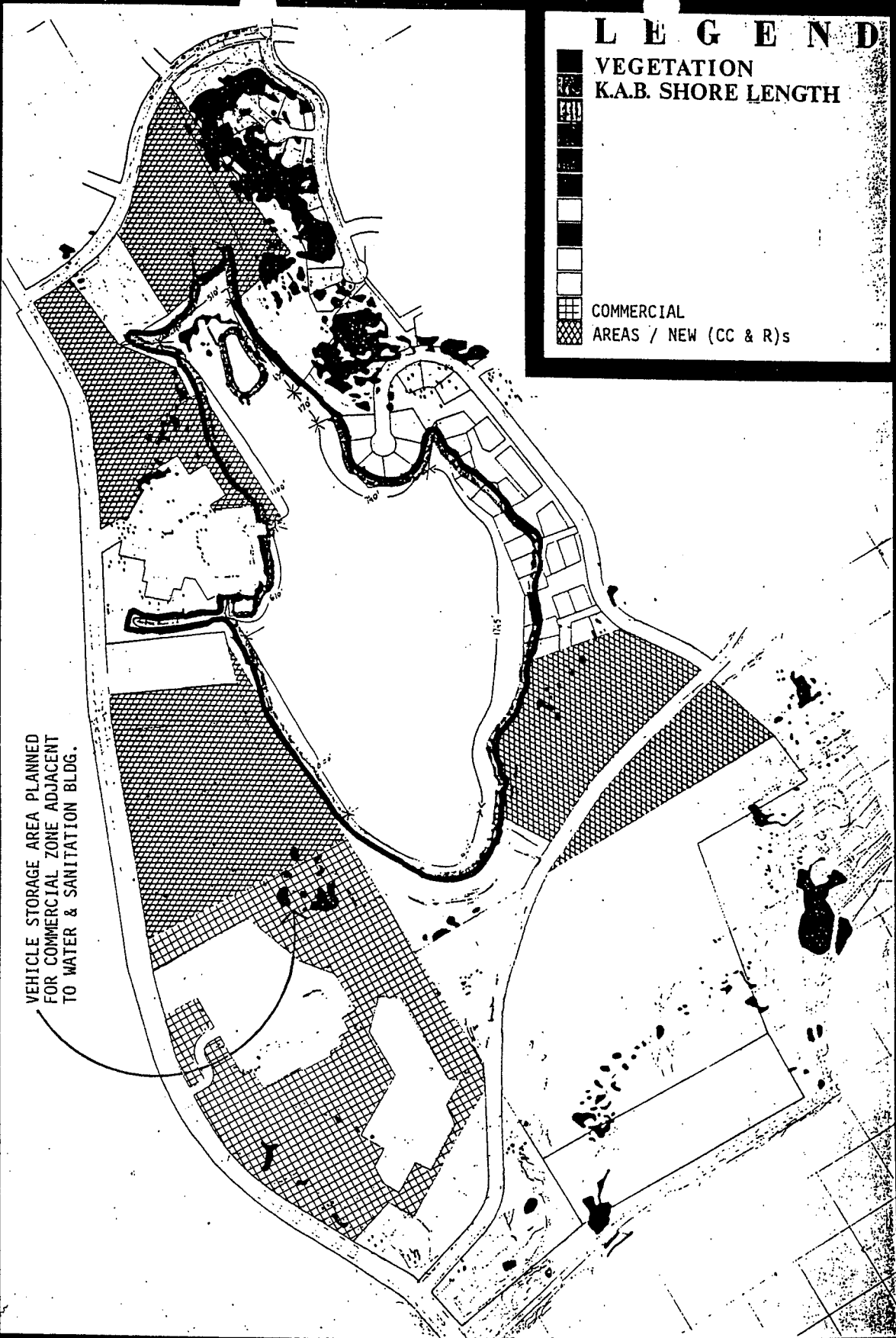


Exhibit 4  
Page 7 of 7  
Exhibit C

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Rec \$175.00 24 of 35

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## EASEMENTS

(WIA/KAB-PANKEY)

KAB/Pankey, LLC, a Colorado limited liability company ("KAB") owns considerable land in the vicinity of "Lake Woodmoor" in El Paso County, Colorado, generally to the north and east of Lake Woodmoor Townhouses II (as established by plat recorded in Plat Book M2 at Page 26 of the real property records of El Paso County, Colorado) and east of Woodmoor Drive (the "KAB Land"). Woodmoor Improvement Association, a Colorado non-profit corporation, ("WIA") owns Lot 1 of the Lake Woodmoor Townhouses III, as recorded in Plat Book M2 at Page 27, El Paso County, Colorado (the "Community Center"). WIA would like to obtain easements over the KAB Land which would enhance its use and enjoyment of the Community Center. KAB is willing to grant these easements as provided herein.

Now, therefore, in consideration of mutual covenants contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the following grants, agreements, and covenants and restrictions are made:

1. GRANT OF EASEMENT. KAB, for itself, its successors and assigns, hereby grants and conveys to WIA, its successors and assigns, the following described easements (the "Easements"):

(a) ACCESS EASEMENTS. Easements are hereby granted and conveyed for the purposes of pedestrian and vehicular ingress and egress over and through the KAB Land as described on Exhibit "A" attached hereto and incorporated herein by this reference.

(b) UTILITIES EASEMENTS. Easements are hereby granted and conveyed for the existing utility lines, if any, ("Utility Lines") serving the Community Center which cross the KAB Land. The exact location of such Utility Lines has not been determined, but when located, an amendment to these Easements will be prepared, duly executed and recorded, provided however, KAB may relocate the Utility Lines, at its expense, so long as such relocation does not materially interfere with, or degrade, the utility service involved.

(c) SIGN. Easements are hereby granted and conveyed for the installation, maintenance, repair, and replacement of a sign on the landscaped island described on Exhibit "A" hereto; provided however, KAB may relocate such sign to a common sign for the development of KAB's Land, but such relocation shall be at KAB's expense and shall require WIA's prior written consent that the relocated sign will provide reasonably adequate signage for the Community Center.

Exhibit 5  
Page 1 of 11

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J. Patrick Kelly El Paso Cty, CO  
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Rec \$175.00 25 of 35

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2. **DURATION.** Subject to the relocation provisions contained in Paragraph 7 hereof, the Easements be perpetual and will continue to be valid and in full force and effect unless and until a written instrument signed by both KAB and WIA is recorded specifically modifying or releasing the Easement involved.
3. **USES OF EASEMENTS.** The Easements may be used for ingress, egress, utilities, landscaping, sprinkler systems, lighting, signs and uses related to any of the foregoing primary uses, including without limitation, repairing, maintaining and replacing any improvements in the Easements or on the Community Center. Use of the Easements is not confined to present improvements nor present means of ingress, egress and utilities. Subject to Paragraph 5 hereof, WIA will have the right to enter onto the Easements as reasonably necessary to perform installation, construction, maintenance or replacement of any improvement related to the Utility Lines, roads or other areas involved; all such work shall be at WIA's sole expense, except as otherwise provided herein or as necessitated by KAB's acts or omissions. The Easements are non-exclusive and so may be used by KAB, its successors and assigns so long as such use does not violate or unreasonably interfere with WIA's rights. Each party hereto, their successors and assigns shall indemnify and hold the other party, its successors and assigns, harmless from any loss, cost or expense (including reasonable attorneys fees) which may be asserted against or incurred by that party resulting from the other party's obligations under this instrument or use of the Easements. Neither party shall obstruct or unreasonably interfere with the other party's use and enjoyment of the Easements as provided herein.
4. **PUBLIC UTILITIES.** Either KAB or WIA, their successors and assigns, may assign rights to public or private utility companies to use the Easements, so as all utilities are placed underground (unless above ground boxes are approved in writing by both parties) and so long as any damages or injury is promptly corrected, restored or paid by the public or private utility company.
5. **INTERIM IMPROVEMENTS.** WIA may, at its expense, improve, maintain, repair and restore the existing improvements in the Easements, including without limitation, the Utility Lines and roadways, and may install the sign described above, but if WIA wishes to place any other improvements on the Easements, it will deliver to KAB for its approval plans and specification, showing in reasonable detail what WIA intends to do. If KAB rejects the proposed work in writing no later than fifteen (15) days from receipt, WIA will not commence construction until KAB's rejection is resolved to the satisfaction of both parties. KAB will not unreasonably withhold approval, and if WIA is not notified of an objection within the fifteen (15) days after KAB received the plans involved, the plans will be deemed approved. All work performed by WIA on the Easements will be in conformity with the approved plans.
6. **FURTHER ACKNOWLEDGMENTS.** If requested by KAB in connection with any sales, financing or other activity on the KAB Land, WIA will deliver to KAB a written acknowledgment confirming that none of the Easements affect the portion of the KAB Land involved in such activity. Any such request will be accompanied by KAB's

certification to WIA that none of the Easements affect the portion of the KAB Land involved. If KAB cannot give such a certification based on the location of the Easements shown on the Map, or if WIA is reasonably in doubt as to the accuracy of KAB's certification, KAB will, at its expense, cause a certified legal description for the Easement to be prepared, which will then be the basis for the requested clarification. WIA will deliver any such request for clarification within fifteen (15) days after receiving the request from KAB (unless a survey is required, in which case the clarification will be delivered to KAB within fifteen (15) days after the survey was delivered to WIA).

7. **RELOCATION OF EASEMENTS.** The parties contemplate that the location of these Easements may be relocated in the future. To accomplish this, in connection with the development of the KAB Land, KAB will, at its expense, prepare a certified legal description for the relocated permanent easement involved, and after review and approval by the WIA, which approval will not be unreasonably withheld, the parties will then enter into an appropriate amendment to the Easements on a form suitable for the utility and/or right-of-way easement involved. The recording of any such amendment relocating an easement will automatically terminate this instrument with respect to any area deleted herefrom. If relocation is requested by KAB, then KAB shall bear all expense for the preparation of the survey, legal description, preparation, review and recording of the amendment necessary to relocate the easement, but WIA will not be entitled to any compensation for interim improvements, which it may have placed on the Easements prior to their relocation, except that KAB shall bear the expenses of relocation as provided by Paragraphs 1(b) and 1(c) above. If WIA requests relocation, it shall bear all of the above described expenses.
8. **SUCCESSORS AND ASSIGNS.** These Easements and this instrument are for the benefit of and will be binding upon, their respective properties and the parties hereto and their respective successors and assigns.
9. **RUNNING OF BENEFITS AND BURDENS.** All provisions of these Easements and this instrument, including the benefits and burdens, run with the land, including the KAB Land and the Community Center. The Easements shall be for the primary benefit of the Community Center, and all users thereof, including without limitation, members of the WIA, their guests, any tenants, employees, agents and contractors of the WIA, and any subsequent owners of the Community Center.
10. **ENFORCEMENT.** These Easements and this instrument may be enforced by KAB, WIA, their respective successors and assigns, by legal or injunctive actions. All rights and remedies hereunder shall be cumulative, not exclusive, and may be exercised concurrently or successively.
11. **ATTORNEYS FEES.** Either party may enforce this instrument by appropriate action and should it prevail in such litigation, it shall recover as part of his costs a reasonable attorney's fee.

Exhibit 5  
Page 3 of 11

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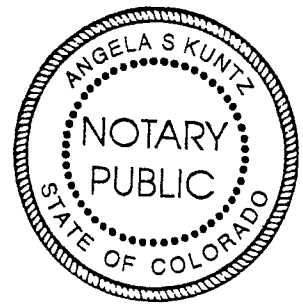
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STATE OF COLORADO )  
 ) ss.  
COUNTY OF EL PASO )

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of September, 1999, by Charles A. Brashous, President of WTA

Witness my hand and official seal.



Notary Public: Angela S. Kuntz  
My commission expires: My Commission Expires 03/13/2001

WOODMOOR IMPROVEMENT ASSOCIATION  
ACCESS EASEMENT ADJACENT WOODMOOR DRIVE

THAT PART OF THE SOUTH  $\frac{1}{4}$  OF SECTION 11, TOWNSHIP 11 SOUTH, RANGE 67 WEST OF THE 6TH P.M., COUNTY OF EL PASO, STATE OF COLORADO, ALSO BEING A PART OF "WATERSIDE CONDOMINIUMS SUBDIVISION" AS RECORDED AT EL PASO COUNTY IN PLAT BOOK 2 AT PAGE 47, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID "WATERSIDE CONDOMINIUMS SUBDIVISION" FROM WHENCE THE SOUTH  $\frac{1}{4}$  CORNER OF SAID SECTION 11 BEARS S14°45'28"E A DISTANCE OF 745.45 FEET; THENCE N28°40'00"E ALONG THE EASTERLY RIGHT-OF-WAY LINE OF WOODMOOR DRIVE A DISTANCE OF 36.09 FEET TO THE NORTHERLY LINE OF AN ACCESS EASEMENT DESCRIBED IN BOOK 2541 AT PAGE 778 OF THE EL PASO COUNTY RECORDS; THENCE S85°12'24"E ALONG THE NORTHERLY LINE OF SAID EASEMENT A DISTANCE OF 57.31 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID NORTHERLY LINE S85°12'24"E A DISTANCE OF 26.96 FEET; THENCE CONTINUING ALONG SAID NORTHERLY LINE S42°59'30"E A DISTANCE OF 50.60 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID "WATERSIDE CONDOMINIUMS SUBDIVISION"; THENCE ALONG SAID SOUTHERLY LINE N60°00'00"E A DISTANCE OF 27.97 FEET TO A POINT OF CURVE; THENCE ALONG THE ARC OF SAID CURVE TO THE RIGHT WHOSE RADIUS IS 25.00 FEET, WHOSE CENTRAL ANGLE IS 77°00'30", WHOSE LONG CHORD BEARS N81°29'45"W A DISTANCE OF 31.13 FEET, A ARC DISTANCE OF 33.60 FEET; THENCE N42°59'30"W A DISTANCE OF 116.32 FEET TO A POINT ON SAID EASTERLY RIGHT-OF-WAY OF WOODMOOR DRIVE; THENCE S28°40'00"W ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 27.39 FEET; THENCE S42°59'30"E A DISTANCE OF 55.21 FEET TO THE TRUE POINT OF BEGINNING. CONTAINING 2,368 SQUARE FEET MORE OR LESS.

WOODMOOR IMPROVEMENT ASSOCIATION  
ACCESS EASEMENT SOUTH OF LOT 1, LAKE WOODMOOR TOWNHOUSES III

THAT PART OF THE SOUTHEAST  $\frac{1}{4}$  OF SECTION 11, TOWNSHIP 11 SOUTH, RANGE 67 WEST OF THE 6TH P.M., COUNTY OF EL PASO, STATE OF COLORADO, ALSO BEING A PART OF "WATERSIDE CONDOMINIUMS SUBDIVISION" AS RECORDED AT EL PASO COUNTY IN PLAT BOOK 2 AT PAGE 47, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 1, "LAKE WOODMOOR TOWNHOUSES III" AS RECORDED AT EL PASO COUNTY IN PLAT BOOK M-2 AT PAGE 27 FROM WHENCE THE SOUTH  $\frac{1}{4}$  CORNER OF SAID SECTION 11 BEARS S21°51'35"W A DISTANCE OF 617.38 FEET; THENCE S02°15'00"E ALONG THE EASTERLY LINE OF THE COMMON AREA OF SAID LAKE WOODMOOR TOWNHOUSES III A DISTANCE OF 3.70 FEET TO THE TRUE POINT OF BEGINNING; THENCE S69°10'00"E A DISTANCE OF 31.25 FEET; THENCE N87°45'00"E A DISTANCE OF 22.93 FEET; THENCE N36°20'55"E A DISTANCE OF 17.84 FEET TO A POINT 2.00 FEET SOUTH OF THE SOUTH LINE OF SAID LOT 1; THENCE N87°45'00"E 2.00 FEET SOUTH OF AND PARALLEL TO SAID SOUTH LINE OF LOT 1 A DISTANCE OF 19.19 FEET; THENCE S36°20'55"W A DISTANCE OF 37.04 FEET; THENCE S87°45'00"W A DISTANCE OF 33.21 FEET; THENCE N69°10'00"W A DISTANCE OF 29.58 FEET TO AN ANGLE POINT IN THE EASTERLY LINE OF SAID COMMON AREA; THENCE N02°15'00"W ALONG THE EASTERLY LINE OF SAID COMMON AREA A DISTANCE OF 16.30 FEET TO THE TRUE POINT OF BEGINNING.  
CONTAINING 1,276 SQUARE FEET MORE OR LESS.

WOODMOOR IMPROVEMENT ASSOCIATION  
ACCESS EASEMENT ADJACENT TO LOT 1, LAKE WOODMOOR TOWNHOUSES III

THAT PART OF THE SOUTHEAST  $\frac{1}{4}$  OF SECTION 11, TOWNSHIP 11 SOUTH, RANGE 67 WEST OF THE 6TH P.M., COUNTY OF EL PASO, STATE OF COLORADO, ALSO BEING A PART OF "WATERSIDE CONDOMINIUMS SUBDIVISION" AS RECORDED AT EL PASO COUNTY IN PLAT BOOK 2 AT PAGE 47, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 1, "LAKE WOODMOOR TOWNHOUSES III" AS RECORDED AT EL PASO COUNTY IN PLAT BOOK M-2 AT PAGE 27 FROM WHENCE THE SOUTH  $\frac{1}{4}$  CORNER OF SAID SECTION 11 BEARS S21°51'35"W A DISTANCE OF 617.38 FEET; THENCE N87°45'00"E ALONG THE SOUTH LINE OF SAID LOT 1 A DISTANCE OF 74.00 FEET TO THE SOUTHEAST CORNER OF SAID LOT 1; THENCE N02°15'00"W ALONG THE EAST LINE OF SAID LOT 1 A DISTANCE OF 143.00 FEET TO THE NORTHEAST CORNER OF SAID LOT 1; THENCE S87°45'00"W ALONG THE NORTH LINE OF SAID LOT 1 A DISTANCE OF 74.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 1; THENCE N02°15'00"W ALONG THE EASTERLY LINE OF THE COMMON AREA OF SAID LAKE WOODMOOR TOWNHOUSES III A DISTANCE OF 4.00 FEET; THENCE N87°45'00"E 4.00 FEET NORTH OF AND PARALLEL TO SAID NORTH LINE OF LOT 1 A DISTANCE OF 82.00 FEET; THENCE S02°15'00"W 8.00 FEET EAST OF AND PARALLEL TO SAID EAST LINE OF LOT 1 A DISTANCE OF 149.00 FEET; THENCE S87°45'00"W 2.00 FEET SOUTH OF AND PARALLEL TO SAID SOUTH LINE OF LOT 1 A DISTANCE OF 82.00 FEET TO A POINT ON THE EASTERLY LINE OF THE COMMON AREA OF SAID LAKE WOODMOOR TOWNHOUSES III; THENCE N02°15'00"W ALONG SAID EASTERLY LINE 2.00 FEET TO THE TRUE POINT OF BEGINNING. CONTAINING 1636 SQUARE FEET MORE OR LESS.

J. Patrick Kelly El Paso Cty, CO

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Rec \$175.00 33 of 35

WOODMOOR IMPROVEMENT ASSOCIATION  
LANDSCAPE ISLAND ACCESS EASEMENT ADJACENT WOODMOOR DRIVE

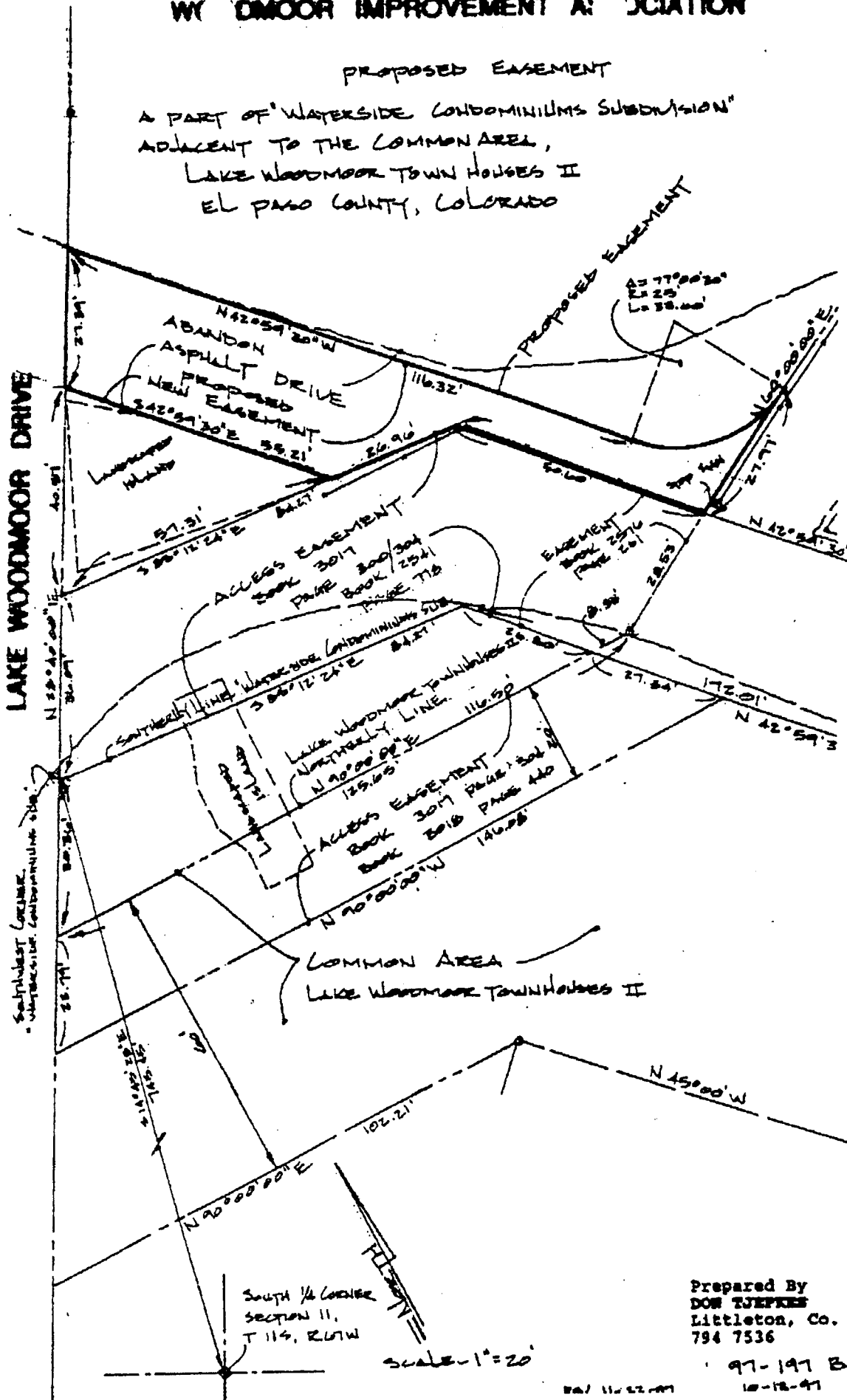
THAT PART OF THE SOUTH  $\frac{1}{2}$  OF SECTION 11, TOWNSHIP 11 SOUTH, RANGE 67 WEST OF THE 6TH P.M., COUNTY OF EL PASO, STATE OF COLORADO, ALSO BEING A PART OF "WATERSIDE CONDOMINIUMS SUBDIVISION" AS RECORDED AT EL PASO COUNTY IN PLAT BOOK 2 AT PAGE 47, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID "WATERSIDE CONDOMINIUMS SUBDIVISION" FROM WHENCE THE SOUTH  $\frac{1}{4}$  CORNER OF SAID SECTION 11 BEARS S14°45'28"E A DISTANCE OF 745.45 FEET; THENCE N28°40'00"E ALONG THE EASTERLY RIGHT-OF-WAY LINE OF WOODMOOR DRIVE A DISTANCE OF 36.09 FEET TO THE NORTHERLY LINE OF AN ACCESS EASEMENT DESCRIBED IN BOOK 2541 AT PAGE 778 OF THE EL PASO COUNTY RECORDS AND THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID EASTERLY RIGHT-OF-WAY OF WOODMOOR DRIVE N28°40'00"E A DISTANCE OF 40.57 FEET; THENCE S42°59'30"E A DISTANCE OF 55.21 FEET TO A POINT ON THE NORTHERLY LINE OF SAID ACCESS EASEMENT; THENCE N85°12'24"W ALONG SAID NORTHERLY LINE A DISTANCE OF 57.31 FEET TO THE TRUE POINT OF BEGINNING. CONTAINING 1,063 SQUARE FEET MORE OR LESS.

# WY WOODMOOR IMPROVEMENT ASSOCIATION

## PROPOSED EASEMENT

A PART OF "WATERSIDE CONDOMINIUMS SUBDIVISION"  
ADJACENT TO THE COMMON AREA,  
LAKE WOODMOOR TOWN HOUSES II  
EL PASO COUNTY, COLORADO



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Doc \$0.00  
Rec \$175.00 34 of 35

