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MEMORANDUM

TO: Daniel Balise, CPA

FROM: Gary D. Eisenberg, Esq. 

RE: Carmel Enterprises, LLC

DATE: April 30, 2002

Daniel:

Enclosed please find the original Declaration of Restrictive Covenants, Cross Parking and Cross Access Easement and Drainage Easement which was recorded in the records of the Bernalillo County Clerk on April 29, 2002.

If you have any questions, please call.

**DECLARATION OF RESTRICTIVE COVENANTS, CROSS
PARKING AND CROSS ACCESS EASEMENT AND DRAINAGE EASEMENT**

This Declaration of Restrictive Covenants, Cross Parking and Cross Access Easement and Drainage Easement ("Declaration") is made this 24th day of April, 2002, by CARMEL ENTERPRISES, LLC, a New Mexico limited liability company ("Carmel"), ANAHEIM ENTERPRISES, LLC, a New Mexico limited liability company ("Anaheim"), JOHN F. SCHIFFER ("Schiffer") and KENT ARLEN GARNER INTER VIVOS TRUST ("Garner") (collectively "Declarants").

The following described land, which is located in Bernalillo County, New Mexico, is referred to herein as the "Property" and is owned by the Declarants:

Lots 12-15, 20 and 21, Block 16, Tract A Unit B, North Albuquerque
Acres, filed in the office of the County Clerk of Bernalillo County,
New Mexico on April 24, 1936.

Carmel owns Lots 13, 20 and 21, Garner owns Lot 12, Schiffer owns Lot 14 and Anaheim owns Lot 15.

It hereby is declared that the Property is now held, and hereafter shall be held, transferred, sold, leased, conveyed, occupied, and used subject to the terms and restrictions contained in this Declaration, each and all of which are for, and shall inure to the benefit of and pass with each and every parcel of the Property and shall apply to and bind the heirs, assignees and successors in interest of all or any part of the Property.

ARTICLE 1. - - DEFINITIONS

(a) "Declarants" - means Carmel Enterprises, LLC, a New Mexico limited liability company, Anaheim Enterprises, LLC, a New Mexico limited liability company, John F. Schiffer and Kent Arlen Garner Inter Vivos Trust, their successors and assigns.

(b) "Owner" - means the person or persons, partnership, corporation or other entity in which title to a lot or other parcel within the Property is vested, as shown by the records of the County Clerk of Bernalillo County, New Mexico. Persons excluded from the term "Owner" are persons who are merely lessees or tenants under a lease, mortgagees, trustees or other beneficiaries under deeds of trust, or holders of indebtedness secured by a mortgage or deed of trust unless and until such party has acquired title through foreclosure or conveyance in lieu of foreclosure.

(c) "Site(s)" - means a lot as shown and designated on the recorded plat of the Property, identified above, or on subsequent replats of any portion of the Property.

(d) "Building(s)" - means roofed and walled structures built on a site for permanent use, and all projections or extensions thereof;



Mary Herrera

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(e) "Structure(s)" - means any improvement having either walls or a roof or both, and includes any Building.

(f) "Improvement(s)" - means and includes Parking Areas, loading areas, fences, walls, poles, signs, landscaping, and any Structures or facilities of any kind or type.

(g) "Parking Area" - means that area occupied by parking spaces together with adequate ingress, egress and circulation to the parking spaces;

ARTICLE 2. — REGULATION OF OPERATIONS AND USES

2.01 Permitted Operations and Uses.

(a) The Sites and Buildings shall be used only for light industrial uses and such other uses as the Declarants shall determine in their sole discretion to be in harmony with the purposes and development of the Property.

(b) All Sites shall conform to the following requirements:

- (1) Noise: At no point from any adjoining lot or any Street shall the sound pressure level of any singular operation or plant exceed the decibel levels as established by the City Council Bill No. 0-31, adopted 3/17/75, and as subsequently amended, pertaining to the regulation of noise within the City of Albuquerque.
- (2) Vibration: Equipment creating earthshaking vibrations shall be set back a sufficient distance from lot lines and shall be so mounted as to eliminate vibrations hazard of nuisance beyond the boundary of the Site on which the equipment is located.
- (3) Smoke: No operation shall discharge into the atmosphere any air contaminate producing a public nuisance or hazard.
- (4) Toxic or Noxious Materials: No facility shall discharge into the sewer system, storm drain or across the lot lines, any toxic or noxious material in such concentration as to be detrimental to or endanger the public health, safety or welfare or cause injury or damage to neighboring property or business.
- (5) Odorous Matter: No facility shall emit odorous matter in such quantity as to be readily detectable on any point along the perimeter of the Site on which the facility is located.



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- (6) Fire and Explosive Hazards: Businesses whose principal activities are storage, utilization or manufacture of active burning materials shall conduct such activities within completely enclosed Buildings of non-combustible construction.
- (i) Such Building shall be set back at least forty (40) feet from all points on the perimeter of the Site and shall be protected by an automatic sprinkler system complying with National Fire Protection Association standards.
- (ii) Materials that produce flammable or explosive vapors or gases under ordinary weather temperatures shall not be permitted unless required for emergency equipment or incidental to a principal operation such as paint spraying. In such cases, adequate protection shall be provided in conformance with the City Building Code.
- (7) Glare or Heat: Any operation producing intense glare or heat shall be performed within enclosures to avoid creating a public nuisance or hazard to adjoining or nearby properties.
- (8) Air Pollution: No industrial operation shall discharge into the air pollutants or contaminants sufficient to create a nuisance, and no processes which by their nature are likely to cause air pollution shall be undertaken or permitted unless there is available an adequate, economically feasible method of controlling the emission of contaminants, and such controls are routinely applied.

2.02 Prohibited Operations and Uses.

The following operations and uses shall not be permitted on any part of the Property:

- (a) Residential
- (b) Junk yards or automobile dismantling yards
- (c) On-site commercial excavation or mining activities
- (d) Dumping, disposal, incineration or reduction of garbage, sewage, dead animals or refuse

2.03 Other Operations and Uses.

Operations and uses which are neither specifically prohibited nor specifically authorized by this Declaration may be permitted in a specific case if operational plans and specifications are submitted to and approved in writing by the Declarants. Approval or disapproval of such operational plans and specifications shall be based upon the effect of such operations or uses upon other property subject to these restrictions or upon the occupants thereof. If the Declarants fail to either approve or disapprove such operational plans and specifications within thirty (30) days after the same have been submitted to them, it shall be conclusively presumed such plans and specifications have been disapproved.

ARTICLE 3. — REGULATION OF BUILDING AND IMPROVEMENTS

3.01 Color.

Colors, materials and finishes are to be coordinated on all exterior elevations of the Buildings to achieve total on-site continuity. All roof-mounted mechanical equipment, ductwork, and ventilators are to be painted consistent with the color scheme of the building or screened from view. Gutters and downspouts are to be painted to match the surface to which attached. Vents, louvers, exposed flashing, tanks, stacks, overhead doors, rolling doors and "man" service doors are to be painted consistent with the color scheme of the Building.

3.02 Building Site Coverage.

At all times, Buildings constructed on the Site shall contain at least 7,500 square feet of floor space (gross). A Site may not be subdivided without the prior written consent of the Declarants (so long as the Declarants remain in title to one or more Sites), and no subdivision of a Site will reduce the building requirements set out in this Declaration.

3.03 Unpaved Areas and Expansion areas.

All undeveloped sites, and all unpaved areas of developed Sites shall be kept in a weed-free condition.

3.04 Parking Areas.

At all times the Owner of each Site shall maintain on that Site the number of parking spaces required by the City of Albuquerque. At all times the off-street parking provided on each Site, shall adequately accommodate the parking needs for all employees, customers, visitors, and company vehicles for that Site.

3.05 Sign Standards.

On-Site signs shall be integrated with the architectural design of the Buildings, in appropriate proportion with the scale of the Buildings. Signs shall be placed on the front side of a Building and only between the windows on the front side of the Building. All signs require the prior approval of the Declarants. Information submitted for approval of signage must include the location, materials, colors, method of lighting, construction details, and drawings showing a copy of the proposed signs.

3.06 Maintenance.

Each undeveloped Site, and the grounds, Buildings, and Improvements of each developed Site shall be kept in a safe, clean, wholesome condition.

Each Owner or tenant shall remove at his own expense any rubbish or trash which may collect on his Site. Such trash shall not be disposed of on the Site by burning in open fires or incinerators.

ARTICLE 4. — CROSS-PARKING AND CROSS-ACCESS EASEMENT

4.01 Declaration of Easement.

Declarants declare the creation of, on the terms contained in this Article 4, a non-exclusive easement over the parking, sidewalk and driveway areas of the Property for the purpose of providing parking and pedestrian and vehicular access to and from, and traffic across and among, all portions of the Property, including all subdivisions thereof, solely and exclusively for (i) the owners and tenants of all or any part of the Property and their respective employees, customers, patrons, invitees and licensees, and (ii) fire, police, solid refuse and liquid waste disposal, ambulance, animal control and other emergency services.

4.02 Maintenance and Repair.

The portions of the Property subject to the easement described in paragraph 4.01 shall be kept in a state of good repair and maintenance at all times. The respective owners of the Property shall have the responsibility for the cost and direction of maintenance of their own portions of the Property.

4.03 Limitations on Easement and Enforcement.

The enforcement of the terms of the easement granted in this Article 4 is subject to the following limitations:



(A) The use of the easement will comply with all applicable laws, ordinances, regulations, orders or rulings of any federal, state, county or municipal government, court or public authority having jurisdiction over (i) the Property, (ii) the owners or tenants of the Property, (iii) the employees, customers, patrons, invitees and licensees of the owners and tenants of the Property or (iv) any improvements or activities on the Property.

(B) The easement does not limit the rights of an owner of any portion of the Property to grant to third parties further non-exclusive or exclusive easements encumbering such owner's portion of the Property or to make alterations or improvements to such owner's portion of the Property; provided, however, that such further easements, alterations or improvements shall not materially adversely affect the use and enjoyment of the easement granted by this Article 4.

4.04 Insurance.

The respective owners of each portion of the Property, as to the Property owned by each, will maintain or cause the tenants on the Property to maintain at all times general public liability insurance insuring each such owner's interest with an insurer licensed to do business in New Mexico.

ARTICLE 5. — VOTING

All decisions of the Declarants under this Declaration require the vote of a majority of the owners of the Sites. Each Site is entitled to one vote.

ARTICLE 6. — SUBMISSION AND APPROVAL OF PLANS

6.01 Submission of Plans

(A) All new Buildings, Improvements or Structures on the Property and all changes to the exterior appearance of any existing Building (including color changes and changes in exterior lighting) must have the approval of the Declarants before such construction or changes are begun.

Two sets of plans are to be submitted to the Declarants or their committee for all drawing phases discussed herein (i.e., master site plan, preliminary site plan, working drawings, revisions, additions). One set will be returned to the applicant with comments.

(B) A preliminary site plan must be submitted to the Declarants for approval or disapproval. (The submission of a preliminary plan may save the Site Owner considerable time and expense.) The preliminary site plan shall include without limitation the following Site, architectural, engineering and landscape information:

- i size of Site and lot number;
- ii vehicular and pedestrian ingress, egress and circulation;

- iii employee and guest parking layout;
- iv Building location and square footage;
- v projected number of employees;
- vi Building and roof lines
- vii service and loading areas;
- viii building elevations showing materials, colors and finishes for all exterior design elements;
- ix location and design of fencing and screening;
- x planting areas;
- xi signs;
- xii indication of existing topography;
- xiii finished grades;
- xiv drainage and utility connections to existing lines;
- xv such other information as the Declarants may require.

(C) Final Construction Plans. Final construction plans, consistent with the preliminary site plan, must be submitted to the Declarants for approval or disapproval. These plans shall include the information listed above for Preliminary Site Plans and, in addition shall show:

- i fencing, screening and signing details;
- ii specifications showing the size, scope and placement of all exterior mechanical equipment;
- iii exterior lighting control;
- iv sign location and detail;
- v elevations (all sides) and construction details for the building(s);
- vi landscape plan, including trees, shrubs, groundcover and underground sprinkler/irrigation systems; and
- vii such other information as the Declarants may require.

6.02 Plan Approval.

Approval of Building plans by the City of Albuquerque does not constitute approval of the plans by the Declarants or their committee. Plans and specifications submitted to the Declarants shall be addressed to: Daniel W. Balise, 5711 Carmel Ave. NE, Suite C, Albuquerque, NM 87113, or to any such other address as the Declarants may designate in a written notice to Owners and tenants of portions of the Property.

The Declarants shall exercise their best judgment to see that all Buildings, Improvements, Structures and landscaping conform and harmonize with existing improvements on the Property as to external design, quality and type of construction, materials, color, siting, height, grade and finished ground elevation, and conformance with Article 3 of this Declaration. The actions of the Declarants through its approval or disapproval of plans and other information submitted pursuant hereto, or with respect to any other matter before it shall be conclusive and binding on all interested

parties. Neither the Declarants nor their committee will arbitrarily or unreasonably withhold their approval of such plans and specifications.

6.03 Response Time.

Within thirty (30) days after all required information, plans and specifications have been submitted, the Declarants shall either approve or disapprove, in writing, all preliminary plans and final plans. Failure to so respond within 30 days shall be considered a disapproval of the proposed plans.

6.04 Limitation on Liability.

Neither the Declarants nor their successors or assigns shall be liable for damages to anyone submitting plans for approval, or to any Owner or lessee of land affected by this Declaration, by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval, disapproval or failure to approve any such plans. Every person who submits plans for approval agrees, by the submission of such plans, and every Owner or lessee of any part of the Property agrees, by acquiring title thereto or interest therein, not to bring any action or suit against the Declarants to recover any such damages.

ARTICLE 7. — ENFORCEMENT OF COVENANTS

Violation or breach of any restrictions herein contained, after written notice of such violation or breach has been presented to such Owner, shall give each Owner and the Declarants the right to prosecute at law or in equity, the person or persons who have violated or are attempting to violate this Declaration, to enjoin or prevent them from doing so, to cause said violations to be remedied or to recover damages for such violation. Any one of the above-listed persons or entities may so enforce these covenants and the cooperation of any other person or entity is not required.

The result of every action or omission whereby any provision of this Declaration is violated in whole or in part, is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or equity against an Owner, either public or private, shall be applicable against every such result and may be exercised by the Declarants or by any Owner.

In any legal or equitable proceedings to enforce this Declaration or restrain a violation of this Declaration, the losing party or parties shall pay the reasonable attorneys' fees of the prevailing party or parties, in such amount as may be fixed by the court in such proceeding. All remedies provided herein or at law or in equity shall be cumulative and not exclusive.

The failure of the Declarants or any Owner to enforce any restriction herein contained shall not be deemed to be a waiver of the right to do so thereafter nor of the right to enforce any other restriction; provided, however, that no action shall be brought with respect to any Building, Structure

or Improvement allegedly violating this Declaration more than one (1) year after completion of such Building, Structure or Improvement.

ARTICLE 8. — AMENDMENT AND EXTENSION OF COVENANTS

8.01 Amendment.

This Declaration may be amended at any time by a written instrument which identifies the paragraph(s) to be amended and the nature and extent of the amendment, and is executed by the persons having the authority to make the amendment. This Declaration may be amended only by the Owners of a majority of the Sites. An amendment shall become effective upon its being executed by the required persons and recorded in the office of the County Clerk of Bernalillo County, New Mexico.

8.02 Extension and Termination.

This Declaration shall terminate on April 24, 2036, unless the Owners of a majority of the Sites have executed in writing and recorded an agreement that the Declaration shall continue for a further specified period and providing therein the means for a further extension of the Declaration.

ARTICLE 9. — MISCELLANEOUS PROVISIONS

9.01 Notice.

Any notice permitted or required hereunder shall be in writing, and shall be sent by registered or certified mail, return receipt requested, postage prepaid. If such notice is given or delivered by messenger delivery, the date of actual delivery shall fix the time thereof. If the notice is given or delivered by registered or certified mail, such notice shall be deemed given or delivered three (3) days after the date on which the sealed envelope containing the notice is deposited in the United States mail, properly addressed and with proper postage prepaid.

9.02 Assignments of Declarants' Rights and Duties.

Any and all of the rights, powers and reservations of Declarants herein contained may be assigned to any person, corporation or association that will assume the duties of Declarants pertaining to the particular rights, powers and reservations assigned, and upon such assignment and assume such duties the assignee, to the extent of such assignment, have the same rights, obligations and duties as are given to and assumed by Declarants herein. The term "Declarants" includes all such assignees and their heirs, successors and assigns.

9.03 Effect of Invalidation.

If any provision of this Declaration is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

9.04 Covenants Running with the Land.


All restrictions, conditions, covenants and agreements contained in this Declaration shall, as to the Owner of each Site, its heirs, successors and assigns, operate as covenants running with the land effective as of the date of this Declaration.

9.05 Constructive Notice and Acceptance.

Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained in this Declaration, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in the Property.

THIS DECLARATION is made the day and year first written above.

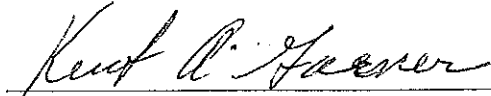
CARMEL ENTERPRISES, LLC,
a New Mexico limited liability company

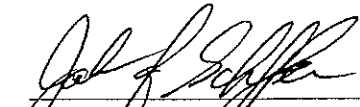
By 
Its Managing Member

ANAHEIM ENTERPRISES, LLC,
a New Mexico limited liability company

By 
Its Managing Member

KENT ARLEN GARNER INTER VIVOS
TRUST AGREEMENT


Kent A. Garner, Trustee


John F. Schiffer

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

This instrument was acknowledged before me on Apr. 24th, 2002, by Daniel W. Balise
as Managing Member of CARMEL ENTERPRISES, LLC, a New Mexico limited liability company.

Sherri L. Repukowski
Notary Public

My commission expires

May 16, 2003

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

This instrument was acknowledged before me on Apr. 24th, 2002, by Robin R. Harder,
as Managing Member of ANAHEIM ENTERPRISES, LLC, a New Mexico limited liability
company.

Sherri L. Repukowski
Notary Public

My commission expires

May 16, 2003

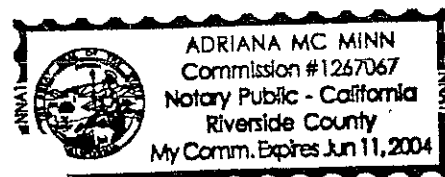
STATE OF NEW MEXICO)
 CALIFORNIA) ss.
COUNTY OF BERNALILLO)
 RIVERSIDE)

This instrument was acknowledged before me on 4-26, 2002, by KENT A. GARNER,
Trustee of the Kent Arlen Garner Inter Vivos Trust.

Adriana Mc Minn
Notary Public

My commission expires

6-11-2004



Mary Herrera

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

This instrument was acknowledged before me on Apr. 24th, 2002, by JOHN F. SCHIFFER.

Sherri L. Repachowski
Notary Public

My commission expires

May 16, 2003

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