

GREAT WESTERN ABSTRACT & TITLE CO.

Accom CLR

**AMENDED AND RESTATED
 DECLARATION OF
 COVENANTS, CONDITIONS AND RESTRICTIONS,
 EASEMENTS, CHARGES AND LIENS
 ON AND FOR**

**Lots 1-8, Block A, Lots 1-16, Block B
 Lots 1-16, Block C, Lots 1-16, Block D
 Lots 1-18, Block E, Lots 1-19, Block F
 Lots 1-16 and Lot 18, Block G,
 Lots 1-22, Block H, Lots 1-12, Block I,
 Lots 1-38, Block J, Lots 1-28, Block K,
 Lots 1-8, Block L, Lots 1-8, Block M,
 Lots 1-8, Block N, Lots 1-20, Block O,
 Lots 1-10, Block P, Lots 1-15, Block Q,
 Lots 1-5, Block R, Lots 1-17, Block S,
 Lots 1-8, Block T**

EDGEMONT SUBDIVISION, PHASES I, II AND III

REVISED: NOVEMBER 1, 2017

A Subdivision in
 Sunland Park, Dona Ana County, New Mexico



1801183 JAN 16, 2018 03:23:55 PM PAGES: 54
 COVENANTS Deputy: Gerardo Barrera
 Scott Krahlmg, County Clerk, Dona Ana, NM



* Accom CCR

**AMENDED AND RESTATED
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS,
EASEMENTS, CHARGES AND LIENS
ON AND FOR**

**Lots 1-8, Block A, Lots 1-16, Block B
Lots 1-16, Block C, Lots 1-16, Block D
Lots 1-18, Block E, Lots 1-19, Block F
Lots 1-16 and Lot 18, Block G,
Lots 1-22, Block H, Lots 1-12, Block I,
Lots 1-38, Block J, Lots 1-28, Block K,
Lots 1-8, Block L, Lots 1-8, Block M,
Lots 1-8, Block N, Lots 1-20, Block O,
Lots 1-10, Block P, Lots 1-15, Block Q,
Lots 1-5, Block R, Lots 1-17, Block S,
Lots 1-8, Block T**

EDGEMONT SUBDIVISION, PHASES I, II AND III

REVISED: NOVEMBER 1, 2017

A Subdivision in
Sunland Park, Dona Ana County, New Mexico

TABLE OF CONTENTS

	<u>Page</u>
Preamble	1
Declaration	1
ARTICLE I. CONCEPTS AND DEFINITIONS	1
ARTICLE II. PROPERTY SUBJECT TO THIS DECLARATION	8
Section 1. Existing Property	8
Section 2. Additions to Existing Property	8
ARTICLE III. MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION	8
Section 1. Membership	9
Section 2. Voting Rights	9
Section 3. Board of Directors	9
Section 4. Notice and Voting Procedures	10
ARTICLE IV. RIGHTS OF ENJOYMENT IN THE COMMON PROPERTIES	10
Section 1. Easement	10
Section 2. Extent of Members' Easements	10
Section 3. Restricted Actions by Members	12
Section 4. Damage to the Common Properties	12
Section 5. Use of Common Properties	12
Section 6. User Fees and Charges	12
Section 7. Encroachments	13
ARTICLE V. COVENANTS FOR ASSESSMENTS	13
Section 1. Creation of the Lien and Personal Obligations of Assessments	13
Section 2. Purposes of Assessments	14
Section 3. Basis and Amount of Annual Assessments	14
Section 4. Special Group Assessments	15
Section 5. Rate of Assessments	15

Section 6.	Date of Commencement of Assessments; Due Dates	15
Section 7.	Duties of the Board of Directors with Respect to Assessments	15
Section 8.	Effect of Non-Payment of Assessments; the Personal Obligation of the Owner; the Lien; and Remedies of Association	16
Section 9.	Power of Sale	18
Section 10.	Subordination of the Lien to Mortgages	19
Section 11.	Exempt Property	20
ARTICLE VI. GENERAL POWERS AND DUTIES OF THE BOARD OF DIRECTORS OF THE ASSOCIATION		20
Section 1.	Powers, Duties and Rules	20
Section 2.	Board Powers	22
Section 3.	Maintenance Contracts	22
Section 4.	Liability Limitations	23
Section 5.	Reserve Funds	23
ARTICLE VII. INSURANCE; REPAIR; RESTORATION; COMMUNITY SERVICES ARRANGEMENTS		23
Section 1.	Right to Purchase Insurance	23
Section 2.	Insurance and Condemnation Proceeds	24
Section 3.	Insufficient Proceeds	24
ARTICLE VIII. ARCHITECTURAL REVIEW		24
Section 1.	Architectural Review Committee	24
Section 2.	ARC Jurisdiction	25
Section 3.	Design Guidelines	26
Section 4.	Preliminary and Final Plan Submissions	27
Section 5.	General	28
ARTICLE IX. USE OF LOTS IN THE SUBDIVISION; PROTECTIVE COVENANTS		29
Section 1.	Residential Lots	29
Section 2.	Restricted Uses	30
Section 3.	Outside Storage or Operations	30
Section 4.	Minimum Floor Space; Alarms	30
Section 5.	Garages; Parking	31

Section 6.	Setback Requirements	31
Section 7.	Height Limitations Elevations	31
Section 8.	Fences; Signs	31
Section 9.	Easements and Utilities	32
Section 10.	Temporary Structures and Vehicles	33
Section 11.	Site Maintenance; Garbage and Trash Collection	34
Section 12.	Offensive Activities; Pets	35
Section 13.	Landscaping; Maintenance	35
Section 14.	Exterior Surfaces	36
Section 15.	Yard Maintenance; Sprinkler System	37
Section 16.	Exterior Front Yard Ornamentation	38
Section 17.	Other Front Yard; Basketball Goal Posts and Other Items	37
 ARTICLE X. EASEMENTS		 37
Section 1.	Utility Easements	37
Section 2.	Sign Easements	38
Section 3.	Ingress, Egress and Maintenance by Association	38
 ARTICLE XI. REGISTRATION		 38
Section 1.	Registration with the Association	38
Section 2.	Special Assessments on Transfer	38
 ARTICLE XII. RIGHTS OF CERTAIN MORTGAGEES AND MORTGAGE INSURERS		 39
Section 1.	Notices of Action	40
Section 2.	Joinder to Documents	40
Section 3.	Special FHLMC Provisions	41
Section 4.	Approval of Amendments	42
Section 5.	Inspection of Books	42
Section 6.	Financial Statements	42
Section 7.	Enforcement	42
Section 8.	Attendance at Meetings	42
Section 9.	Annexation	42
 ARTICLE XIII. GENERAL PROVISIONS		 43
Section 1.	Power of Attorney	43
Section 2.	Duration	43
Section 3.	Amendments	44
Section 4.	Enforcement	44

Section 5.	Validity	45
Section 6.	Proposals of Declarant	45
Section 7.	Service Mark	45
Section 8.	Headings	46
Section 9.	Notices to Resident / Member / Owner	46
Section 10.	Notices to Mortgagees	46
Section 11.	Disputes	46
Section 12.	Municipal Right of Entry	46

EXHIBIT "A"

Section 1.	Dwelling Quality and Size
Section 2.	Setback Requirements

**THIS AMENDED AND RESTATED DECLARATION OF COVENANTS,
RESTRICTIONS, EASEMENTS, CHARGES AND LIENS ON AND FOR:**

**Lots 1-8, Block A, Lots 1-16, Block B
Lots 1-16, Block C, Lots 1-16, Block D
Lots 1-18, Block E, Lots 1-19, Block F
Lots 1-16 and Lot 18, Block G,
Lots 1-22, Block H, Lots 1-12, Block I,
Lots 1-38, Block J, Lots 1-28, Block K,
Lots 1-8, Block L, Lots 1-8, Block M,
Lots 1-8, Block N, Lots 1-20, Block O,
Lots 1-10, Block P, Lots 1-15, Block Q,
Lots 1-5, Block R, Lots 1-17, Block S,
Lots 1-8, Block T**

of EDGEMONT, a subdivision in the City of Sunland Park, Dona Ana County, New Mexico is made effective as of June 20, 2017 by McNutt Properties, LLC, a New Mexico limited liability company (referred hereto as the "Declarant").

PREAMBLE

Declarant is the owner and developer of a 98 acre tract of land in Sunland Park, Dona Ana County, New Mexico, being a replat of three hundred nine lots in Sunland Park, Dona Ana County, New Mexico. Simultaneously with the recording of these Amended and Restated Covenants, the said property is being platted as and shall be now commonly known and described as:

The EDGEMONT Subdivision, a subdivision in Sunland Park, New Mexico, according to the Plat or Map thereof filed at Plat Book 22, Pages 431-435, in the Plat Records of Dona Ana County, New Mexico.

In addition to the said three hundred and nine lots, there is included within the Edgemont Subdivision certain Common Properties (as hereinafter defined), namely two neighborhood parks, a drainage way and a drainage pond. The Common Properties and the said three hundred and nine lots are together referred to as the "Properties".

Declarant purposes to establish and implement plans for residential living and quality-of-life considerations. The purposes of this Amended and Restated Declaration are to: Protect the Declarant and the Owners against inappropriate development and use of lots within the Properties; assure compatibility of design of improvements within the Edgemont Subdivision; secure and preserve sufficient setbacks and space between building so as to create an

aesthetically pleasing environment; provide for landscaping and the maintenance thereof; and in general, to encourage construction of attractive, quality permanent improvements that will promote the general welfare of the Declarant and the Owners. Declarant desires to impose these restrictions on the Properties now, and yet retain reasonable flexibility to respond to changing or unforeseen circumstances so as to guide, control and maintenance the quality and distinction of the project. The restrictive covenants herein below will also comply with the requirements of the City of Sunland Park, Dona Ana County, New Mexico and those of the utility companies providing service to the Subdivision, to better ensure the care and maintenance of the Common Properties and amenities within the Subdivision, and to preserve the best interests of the Declarant and of the Owners and Residents of the Subdivision after completion of all development and construction therein.

The Edgemont Homeowners Association, Inc. (the "Association") has been or will be chartered as a non-profit New Mexico corporation to assist in the ownership, management, use and care of the various Common Properties within the Subdivision and to assist in the administration and enforcement of the covenants, conditions, restrictions, easements, charges and liens set forth with this Declaration.

DECLARATION

The Declarant hereby declares that all three hundred and nine lots and the Common Properties constituting the Properties and located within the Edgemont Subdivision and such phases or additions thereto as may hereafter be made pursuant to Article II hereof, are and shall be owned, held, mortgage, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens (sometimes collectively referred to hereinafter as "the Covenants") hereinafter set forth.

ARTICLE I.

Concepts and Definitions

The following words, when used in this Declaration or in any amended or supplementary Declaration (unless the context shall otherwise clearly indicate or prohibit), shall have the following respective concepts and meanings:

"Amended Declaration" shall mean and refer to each and every instrument recorded in the Public Real Estate Records of Dona Ana County, New Mexico which amends, supplements, modifies, clarifies or restates some or all of the terms and provisions of this Declaration.

"Annual Assessment" shall have the meaning specified in Article V below.

"Architectural Control Committee" (sometimes referred to herein as the "ARC") shall mean and refer to that particular committee which is described and explained within Article VIII

below.

“Articles” shall mean and refer to the Articles of Incorporation (and any amendments thereto and restatements thereof) of the Association on file in the Office of the Secretary of State of the State of New Mexico.

“Assessable Property” shall mean and refer to each and every lot, parcel and tract within the entire Properties which: (1) the Declarant has subjected to and imposed upon a set of restrictive covenants call for, *inter alia*, the payment of an Annual Assessment to the Association; (2) may have been or will be given a separately identifiable tax or parcel number by the Dona Ana County Assessors Office, or a similar governmental agency; (3) is not designated as “open space” or otherwise a portion of the Common Properties. The Declarant proposes to cause each residential lot within the Properties to constitute an Assessable Property. However, the Declarant reserves the right and discretion to include or exclude any non-residential lot from the concept of “Assessable Property” and/or to prescribe a different assessment and/or valuation scheme(s) for any non-residential lot which is subject to covenants which require the payment of assessments to the Association.

“Association” shall mean and refer to the Edgemont Homeowners Association, Inc., a non-profit New Mexico corporation which has the power, duty and responsibility of maintaining and administering certain portions of the Properties and all of the Common Properties in the Subdivision, administering and enforcing the Covenants and otherwise maintaining and enhancing the quality of life within the Subdivision.

“Board” shall mean and refer to the Board of Directors of the Association.

The Board will consist of at least five (5) members whose term limits shall be staggered. Board members shall be replaced in the event of death, incapacity, resignation or when a Board member misses three (3) consecutive meetings.

“Bylaws” shall mean and refer to the Bylaws of the Association, as adopted and amended from time to time in accordance with the provisions of the New Mexico Non-Profit Corporation Act and this Declaration.

“Common Properties” shall mean and refer to any and all areas of land within the Properties which are known, described or designated as common areas, parks, recreational easements, detention basins, desilting ponds, perimeter fences and columns, monuments and directional signs, landscape easements, greenbelts, open spaces, paths and trails, including without limitation those shown on any recorded subdivision plat or portions of the Properties, if any, as well as those not shown on a recorded subdivision plat but which are intended for or devoted to the common use and enjoyment of the Members of the Association, together with any and all improvements that are now or that may hereafter be constructed thereon. The Declarant reserves the right to use, during the Development Period, portions of the Common Properties

(e.g. a sales information center) for business matters directly or indirectly related to the Edgemont Subdivision. The concept of Common Properties will also include: (1) any and all public right-of-way lands for which the City of Sunland Park has required that the Declarant and/or the Association expend private, non-reimbursable time and monies to care for and maintain, but not limited to street medians, streetscapes, hike and bike trails, park areas and quasi-governmental service facilities; and (2) any and all facilities provided by the Declarant and/or the Association to or for the benefit of the local police, fire and similar governmental departments. Declarant shall convey record title to some or all of the Common Properties to the Association if, as and when deemed appropriate by Declarant or as may be required by governmental officials and Declarant shall, at all times, have and retain the right to effect minor redesigns or minor reconfigurations of the Common Properties (particularly along the edges).

"Covenants" shall mean and refer to all covenants, conditions, restrictions, easements, charges and liens set forth within this Declaration.

"Declarant" shall mean and refer to McNutt Properties, LLC, a New Mexico limited liability company, and any successor(s) and assign(s) of New Mexico, with respect to the voluntary or involuntary disposition of all (or substantially all) of the assets and/or share interest of McNutt Properties, LLC and/or the voluntary or involuntary disposition of all (or substantially all) of the right, title and interest of McNutt Properties, Llc in and to the Properties. However, no person or entity merely purchasing one or more lots from McNutt Properties, LLC, in the ordinary course of business, shall be considered a "Declarant".

"Declaration" shall mean and refer to this particular instrument entitled "Amended and Restated Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens on and for three hundred and nine lots in the Edgemont Subdivision, a Subdivision in Dona Ana County, New Mexico", together with any and all amendments or supplements hereto.

"Deed" shall mean and refer to any deed, assignment, testamentary bequest, muniment of title or other instrument or intestate inheritance and succession, conveying or transferring fee simple title or a leasehold interest or another legally recognized estate in a lot.

"Design Guidelines" shall mean and refer to those particular standards, restrictions, guidelines, recommendations and specifications applicable to most of the aspects of construction, placement, location, alteration, maintenance and design of any improvements to or within the Properties, and all amendments, bulletins, modifications, supplements and interpretations thereof. The initial Design Guidelines are attached hereto as Exhibit "A".

"Development Period" shall mean a period commencing on the date of the recording of the Declaration in the public real estate records of Dona Ana county, New Mexico and continuing thereafter until and ending the earlier to occur of: (1) substantial completion of all development within the Properties, as determined by the Declarant, and sale of all lots by the Declarant; or (2) the tenth (10th) anniversary of the date of recordation of this Declaration in the

real property records of Dona Ana County, New Mexico; or (3) Declarant's recordation in the real property records of Dona Ana County, New Mexico of an instrument specifying the end of the Development Period at such earlier date than otherwise established by (2), in Declarant's sole and absolute discretion.

"Dwelling Unit" shall mean and refer to any building or portion of a building situated upon the Properties which is designed and intended for use and occupancy as a residence by a single family.

"Easement Area" shall mean and refer to those areas which may be covered by an easement specified in Articles IX and X.

"Eligible Insurers" is defined in Article XII.

"Eligible Mortgages" is defined in Article XII.

"Exempt Property" shall mean and refer to the following portions of the Properties: (1) all land and improvements owned by the United States of America, the State of New Mexico, Dona Ana County, the City of Sunland Park, or any instrumentality, political subdivision or agency of any such government entity acting in a governmental (rather than a proprietary) capacity; (2) all land and improvements owned (including legal and beneficial ownership, whether now or in the future) by the Association or constituting a portion of the Common Properties; (3) all land and improvements which are not only exempt from the payment of ad valorem real property taxes by the City of Sunland Park, the Gadsden Independent School District, and the State of New Mexico, but also are exempt from the payment of any assessments hereunder as expressly determined by written resolution of the Declarant and/or the Association; and (4) such other land(s) and/or improvement(s) and/or lot(s) which are specifically exempt from the payment of annual Assessments in accordance with a special resolution of the Board.

"Fiscal Year" shall mean each twelve (12) month period commencing on January 1 and ending December 31, unless the Board shall otherwise select an alternative twelve month period.

"Governing Body" shall mean the Board representing the homeowners association.

"Good Standing" shall mean: An owner, resident or member shall not be in "good standing" or allowed to serve as chairperson or member of any committee, if such person or entity is: (1) in violation of any portion of these Covenants, the Design Guidelines, or any rule or regulation promulgated by the Board; (2) delinquent in the full, complete and timely payment of any annual assessment, special assessment or any other fee, charge or fine which is levied, payable or collectible pursuant to the provisions of these Covenants, the Bylaws or any rule or regulation promulgated by the Board.

"Greenway Frontage" shall mean and refer to community facilities, common green space,

recreational facilities (including hike and bike trails and the like), floodway easement areas which are adjacent to rear or side yard lot lines and/or clearly visible from public streets, sidewalks and rights-of-way.

"Homebuilder" shall mean and refer to each entity and/or individual which: (1) is regularly engaged in the ordinary business of constructing residential dwellings on subdivision lots for sale to third party homeowners as their intended primary residence; and (2) has entered into a contract with the Declarant to purchase one or more lots.

"Improvement" shall mean any physical change to raw land or to an existing structure which alters the physical appearance, characteristics or properties of the land or structure, including but not limited to adding or removing square footage area space to or from a structure, painting or repainting a structure, or in any way altering the size, shape or physical appearance of any land or structure.

"Institutional Mortgage" shall mean and refer to any bona-fide mortgage, lien or security interest held by a bank, trust company, insurance company, savings and loan association or other recognized lending institution, or by an institutional or governmental purchaser of mortgage loans in the secondary market, such a Federal National Mortgage Association, Federal Home Loan Mortgage Corporation or their successors or guaranteed or subsidized by the FHA and/or VA.

"Lot" shall be limited to those Lots described at the beginning of these Amended and Restated Covenants and shall mean and refer to each separately identifiable portion of the Assessable Property which is platted, filed and recorded in the Office of the County Clerk of Dona Ana County, New Mexico and which is assessed by any one or more of the Taxing Authorities and which is not intended to be an "open space" or a portion of the Common Properties.

"Member" shall mean and refer to each Resident or Owner who is in good standing with the Association and who has filed a proper statement of residence with the Association and who has complied with all directives and requirements of the Association. Each and every Owner shall and must take such affirmative steps as are necessary to become and remain a Member of, and in good standing in, the Association. Each and every Resident (who is not otherwise an Owner) may, but is not required to, be a Member of the Association.

"Owner" shall mean and refer to the holder(s) of record title to the fee simple interest of any Lot whether or not such holder(s) actually reside(s) on any part of the Lot.

"Payment and Performance Lien" shall mean and refer to the lien described within Sections 8 and 9 of Article V below.

"Properties" shall mean and refer to: (1) the three hundred nine lots described at the

beginning of these Amended and Restated Covenants; and (2) the other land within the Subdivision but not limited to the Common Properties.

“Resident” shall mean and refer to: (1) each Owner of any Lot within the Properties; (2) each person residing on any part of the Assessable Property who is a bona-fide lessee pursuant to a legally cognizable lease agreement with an Owner; and (3) each individual lawfully domiciled in a Dwelling Unit other than an Owner or bona-fide lessee.

“Structure” shall mean and refer to: (1) anything or device, other than trees, shrubbery (less than two feet high if in the form of a hedge) and landscaping (the placement of which upon any Lot shall not adversely affect the appearance of such Lot) including, but not limited to, any building, garage, porch, shed, greenhouse or bathhouse, cabana, coop or cage, covered or uncovered patio, swimming pool, play apparatus, clothesline, fence, curbing, paving, wall or hedge more than two feet in height, signboard or other temporary or permanent living quarters or any temporary or permanent Improvement to any Lot; (2) any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any Lot; (3) any enclosure or receptacle for the concealment, collection and/or disposition of refuse; and (4) any change in the grade of any Lot of more than three (3) inches from that existing at the time of initial approval by the ARC.

“Subdivision” shall mean and refer to those Lots located in the Edgemont Subdivision and described at the beginning of these Amended and Restated Covenants, according to the plat or map thereof recorded in the Plat Records of Dona Ana County, New Mexico, as well as any and all amendments, revisions, modifications, corrections or clarifications thereto and to the Common Properties in the southerly portion of the Subdivision.

“Taxing Authorities” shall mean and refer to Dona Ana County, the Gadsen Independent School District, the City of Sunland Park and the State of New Mexico and any and all other governmental entities or agencies which have, or may in the future have, the power and authority to impose and collect ad valorem taxes on real property estates, in accordance with the New Mexico Constitution and Applicable statutes and codes.

“Trustee” shall mean and refer to that certain individual(s) or entity(ies) designated or appointed from time to time and at any time by the Association to perform the duties and responsibilities described within Section 9 of Article V below, and its successors and assigns.

“Zoning Ordinances” shall mean and refer any and all applicable City of Sunland Park and/or other applicable municipal zoning ordinance, governmental regulations and all amendments thereto.

ARTICLE II

Property Subject to this Declaration

Section 1. Existing Property

The Properties, including the three hundred nine lots, which are, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration within the southerly portion of Edgemont are more particularly described at the beginning of these Amended and Restated Covenants.

Section 2. Additions to Existing Property

Additional land(s) may become subject to this Declaration, or the general scheme, envisioned by this Declaration as follows:

(a) The Declarant (without the joinder and consent of any person or entity) add or annex additions of real property to the scheme of this Declaration within the next ten (10) years by filing of record an appropriate declaration, generally similar to this Declaration, which may extend the scheme of the Covenants to such property. Provided, however, that such other declaration(s) may contain such complementary additions and modifications of these Covenants as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the concept and purpose of this Declaration.

(b) In the event any person or entity other than the Declarant desires to add or annex additional Assessable Property and/or Common Property to the scheme of this Declaration, such annexation proposal must have the express approval of the Board.

Any additions made pursuant to this Section 2, when made, shall automatically extend the jurisdiction, functions, duties and membership of the Association to the properties added and correspondingly subject the properties added to the covenants of the enabling declaration. Upon any merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law or by lawful articles or agreement of merger, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law or by lawful articles or agreement of merger, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the Covenants established by this Declaration, together with the covenants and restrictions established upon any other properties, as one scheme.

ARTICLE III

Membership and Voting Rights in the Association

Section 1. Membership

Each and every Owner of each and every Lot which is subjected to these, or substantially similar, Covenants shall automatically be, and must at all times remain, a Member of the Association in good standing. Each and every Resident in a Lot (who is not otherwise an Owner) may, but is not required to be, a non-voting Member of the Association. During the Development Period, the Association shall have two (2) classes of Members: Class A and Class B.

Class A Members shall include all Lot Owners (other than the Declarant during the Development Period and all Residents of Lots (not otherwise Owners) who have properly and timely fulfilled all registration and related requirements prescribed by the Association.

Class B Member shall be the Declarant. Upon conclusion of the Development Period, the Class B membership shall terminate and the Declarant shall become a Class A Member.

Section 2. Voting Rights

There shall be two (2) classes of voting Members during the Development Period.

Class A: The Owner(s) of each Lot shall be entitled to one (1) vote per Lot. Where more than one Owner owns and holds a record fee interest in a Lot such Owner(s) may divide and cast portions of the one vote as they decide, but in no event shall one Lot yield more than one vote.

Class B: Class B Member shall have three (3) votes for each Lot it owns.

The Board may make such rules and regulations, consistent with the terms of this Declaration and the Bylaws, as it deems advisable, for any meeting of Members; proof of membership in the Association; the status of good standing; evidence of right to vote; the appointment and duties of examiners and inspectors of votes; the procedures for actual voting in person or by proxy; registration of Members for voting purposes; and such other matters concerning the conduct of meetings and voting as the Board shall deem fit.

Section 3. Board of Directors

The affairs of the Association shall be managed initially by a Board of two (2) individuals elected by the Class B Member. However, beginning no later than the fifth (5th) annual meeting of the Members of the Association and continuing thereafter, the Board shall be expanded. The Board shall consist of five (5) individual Directors, three of whom shall be elected by the Class B Member and two of whom shall be elected by the Class A Members. Beginning with the seventh (7th) annual meeting and continuing thereafter, the Board shall still consist of five (5) individual Directors, all of whom shall be elected by the Class A Members.

The Directors need not be Members of the Association. Directors shall be elected for two year terms of office and shall serve until their respective successors are elected and qualified. Any vacancy which occurs in the Board, by reason of death, resignation, removal or otherwise, may be filled at any meeting of the Board by the affirmative vote of a majority of the remaining Directors representing the same class of Members who elected the Director whose position has become vacant. Any Director elected to fill a vacancy shall serve as such until the expiration of the term of the Director whose position he/she was elected to fill.

Unless otherwise prohibited by the Bylaws, the Board shall be entitled to have one or more private workshop meetings and to have one or more public meetings per Fiscal Year. The Board, no later than 10 days prior to the annual meeting of the Members, shall file with the Declarant and distribute to the Members (by whatever means the Board may deem reasonable and economical) a certification of the Directors to be elected by Class A Members, and the Directors to be elected by the Class B Member. The actual election of the Directors shall take place in accordance with the Bylaws or, to the extent not inconsistent with the Bylaws, the directives of the then existing Board.

Section 4. Notices and Voting Procedures

Quorum, notices and voting requirements of and pertaining to the Association may be set forth within the Articles and Bylaws, as either or both may be amended from time to time, and shall be in accordance with permitted New Mexico law.

ARTICLE IV

Right of Enjoyment in the Common Properties

Section 1. Easement

Subject to the provisions of Sections 2 through 7 of this Article, each and every Owner in good standing with the Association shall have a non-exclusive right and easement of enjoyment in and to all Common Properties, and such easement shall be appurtenant to and shall pass with every Lot. All Residents in good standing with the Association shall have a non-transferable, non-exclusive privilege to use and enjoy all Common Properties for so long as they are Members in good standing with the Association.

Section 2. Extent of Members' Easements

The rights and easements of use, recreation and enjoyment created hereby shall be subject to the following:

- (a) The right of the Declarant or Association to prescribe reasonable regulations and policies governing said easements, and to charge reasonable expense reimbursement and/or deposits (e.g., key, access card and/or radio transmitter device deposits) related to the use,

operation and maintenance of the Common Properties;

(b) Liens or mortgages placed against all or any portion of the Common Properties with respect to monies borrowed by the Declarant to develop and improve the Properties or Common Properties or by the Association to improve or maintain the Common Properties;

(c) The right of the Association to enter into and execute contracts with any party (including, without limitation, the Declarant or its corporate affiliates) for the purpose of providing management, maintenance or such other materials or services consistent with the purposes of the Association and/or this Declaration;

(d) The right of the Declarant or the Association to take such steps as are reasonable necessary to protect the Common Properties against foreclosure;

(e) The right of the Declarant or the Association to enter into and execute contracts with the owner-operators of any community antenna television system ("CATV") or other similar operations for the purpose of extending cable or utility or security service on, over or under the Common Properties to ultimately provide service to one or more of the Lots;

(f) The right of the Declarant or the Association to suspend the voting rights of any Member and to suspend the right of any Member to use or enjoy any of the Common Properties for any period during which any assessment (including without limitation "fines") against a Lot resided upon by such Member remains unpaid, or during which non-compliance with this Declaration or the Design Guidelines exists, and otherwise for any period deemed reasonable by the Association for an infraction of the then existing rules and regulations and/or architectural guidelines.

(g) The right of the Declarant and/or the Association to hold and sponsor, whether alone or in conjunction with municipal departments or other non-profit groups and entities, events and activities within the Common Properties which are not necessarily limited only to Owners, Residents and Members, but which may also include selected invitees and/or the general public, such as (but not necessarily limited to) children's summer recreational events, sports, festivals and tournaments, summer camps, day care centers, concerts-in-the-park, wedding receptions, reunions, conferences, picnics, national and/or state holiday commemorations, educational and cultural presentations and other similar events which the Board reasonably believes will be of direct or indirect benefit to the Association and/or an appreciable number of its Members.

(h) The right of the Declarant and/or the Association to dedicate or transfer all or any part of the Common Properties to any municipal corporation, public agency, governmental authority, or utility for such purposes and upon such conditions as may be agreed to by the Declarant and the Board; and

(i) The right of the Declarant and/or the Association to grant permits, licenses and

easements over the Common Properties for utilities, roads and other purposes necessary for the proper operation of the subdivision.

Section 3. Restricted Actions by Members

No Member shall permit anything to be done on or in the Common Properties which would violate any applicable public law or Zoning Ordinance or which would result in the cancellation of or the increase of premiums for any insurance carried by the Association, or which would be in violation of any law or any rule or regulation promulgated by the Board.

Section 4. Damage to the Common Properties

Each Member shall be liable to the Association for any damage to any portion of the Common Properties caused by the negligence or willful misconduct of the Member or his family and guests.

Section 5. Use of Common Properties

The Board shall have the power and authority to prescribe rules and regulations which extend to and cover matters such as (but not limited to) smoking, the possession and consumption of alcoholic beverages, loud and obnoxious noises and behavior, the removal of pet(s)' waste, dress and attire and the supervision by attending adults of children. No person or entity (excluding the Declarant) shall use any portion of the Common Properties to:

- (a) Solicit, promote or conduct business, religious or propaganda matters
- (b) Distribute handbills, newsletters, flyers, circulars or other printed materials

without the prior written consent of the Association (which consent may be withheld in its sole and absolute discretion). The Association may, on its own motion, permit and allow town hall meetings, voting precincts, community garage sales and bazaars and other reasonable activities to occur on the Common Properties in accordance with the rules and regulations deemed reasonable and appropriate by the Association.

Section 6. User Fees and Charges

The Board may levy and collect special charges and fees for any and all extraordinary operation and maintenance of the Common Properties and services which the Board determines to be necessary for the advancement, benefit and welfare of the Owners or Residents. Examples (by way of illustration and not limitation) of these special charges and fees would include: extraordinary utility consumption; additional gate and/or security personnel for parties or special events; management overtime services; and additional insurance conditions or requirements. In establishing special user fees, the Board may formulate reasonable classifications of users. Such

fees should be uniform within each class but need not be uniform from class to class. If an Owner shall fail to pay a charge or fee when due and payable, said unpaid charge or fee shall be delinquent and upon written notice to said Owner shall become a personal debt of said Owner. Failure of any owner to pay said fee and charge when due and payable, in addition, shall be a breach of these Covenants.

Section 7. Encroachments

If any (a) construction, reconstruction, or repair activities which have been approved by the ARC; or (b) shifting, settlement or other movement of any portion of the ARC approved improvements, resulting either in the Common Properties encroaching on a Lot or Dwelling Unit or in a Lot or Dwelling Unit encroaching on the Common Properties or on another Lot or Dwelling Unit, and unless otherwise directed by the ARC, a valid easement shall then and there exist to permit the encroachment and reasonable and necessary maintenance activities related thereto.

ARTICLE V

Covenant for Assessments

Section 1. Creation of the Lien and Personal Obligation for Assessments

Declarant, for each Lot owned by it within the Subdivision, hereby covenants and agrees, and each subsequent Owner of any Lot, by acceptance of a Deed therefor, whether or not it shall be so expressed in any such Deed or other conveyance, shall be deemed to covenant and agree (and such covenant and agreement shall be deemed to constitute a portion of the purchase money and consideration for acquisition of the Lot so as to have affected the purchase price) to pay to the Association (or to an independent entity or agency which may be designated by the Association to receive such monies):

(a) regular Annual Assessments;

(b) special group assessments for capital improvements or unusual or emergency matters, such assessments to be fixed, established and collected from time to time as hereinafter provided;

(c) special individual assessments levied against individual Owners to reimburse the Association for extra or unusual costs incurred for items such as, but not limited to, maintenance and repairs to portions of the Properties caused by the willful or negligent acts of the individual Owner, Member or Resident; the remedy, cure or minimizing of problems caused by, or as a result of, violations of these Covenants by an Owner, Member or Resident;

(d) individual assessments and fines levied against an individual Owner, Member or Resident for violations of rules and regulations pertaining to the Association and/or the Common

Properties; and

- (e) special transfer assessment, discussed in Article XI below.

The regular, special group, special individual and individual assessments, together with such late charges, interest and costs of collection thereof as are hereinafter provided, shall be a charge on the land and shall be a continuing lien upon each Lot against which each such assessment is made and shall also be the continuing personal obligation of the then existing Owner, Member and Resident of such Lot at the time when the assessment fell due. Each Owner of each Lot shall be directly liable and responsible to the Association for the acts, conduct and omission of each and every Member and Resident associated with the Dwelling Unit(s) on such Owner's Lot.

Section 2. Purposes of Assessments

The assessments levied by the Association shall be used for the purposes of promoting the comfort, health, recreation, safety, convenience, welfare and quality of life of the Residents of the Properties and in supplementing some services and facilities normally provided by or associated with governmental or quasi-governmental entities, and otherwise for the improvement and maintenance of any improvements that exist or may exist in the future including floodway easement areas, walkways, street trees, common green, hike and bike trails, ponds, lakes recreational areas and other properties, services and facilities devoted and related to the use and enjoyment of the Common Properties and operation of the Association, including, but not limited to or for the payment of taxes on the Common Properties and insurance in connection with the Common Properties; the payment for utilities and the repair, replacement and additions of various items within the Common Properties; paying the cost of labor, equipment (including the expense of leasing of any equipment) and materials required for, and management and supervision of, the Common Properties; carrying out the duties of the Board of Directors of the Association as set forth in Articles IV and VI herein; carrying out the other various matters set forth or envisioned herein or in any Amended Declaration related thereto; and for any matter or thing designated by the City of Sunland Park in connection with any zoning, subdivision, platting, building, development or occupancy requirements. The items and areas described above are not intended to be exhaustive by merely illustrative.

Section 3. Basis and Amount of Annual Assessments

The Board of Directors may be permitted to increase the maximum Annual Assessment without a vote of the Members, but such an adjustment shall not exceed 20% of the previous year's maximum Annual Assessment.

Notwithstanding any provision herein to the contrary, any and all lots owned by the Declarant during the Development Period shall be exempt from the payment of any and all assessments of any kind or character, until such time as the lot is conveyed by Declarant.

Section 4. Special Group Assessments

In addition to the regular Annual Assessment authorized by Section 3 hereof, the Association may levy, in any Fiscal Year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of a capital improvement upon the Common Properties, including any necessary fixtures and personal property related thereto or for any unusual or emergency purpose(s), including, without limitation, those matters arising out of litigation and/or judgments; provided that any such assessment shall have the affirmative approval of at least 3/4ths of the individuals comprising the Board.

Section 5. Rate of Assessments

Both regular and special group assessments must be fixed at a uniform rate for all residential Lots owned by Class A Members.

Section 6. Date of Commencement of Assessments; Due Dates

The Annual Assessment shall be due and payable in full, in quarterly installments, in advance on the first day of each quarter of each Fiscal Year and shall, if not automatically paid within 30 consecutive calendar days thereafter, automatically become delinquent. The Board shall use reasonable efforts to provide each Owner with an invoice statement of the appropriate amount due, but any failure to provide such a notice shall not relieve any Owner of the obligation established by the preceding sentence. The Board may, but is not required to, however, prescribe time-price differential payment schedules which would permit the collection of an amount greater than the Annual Assessment on a semi-annual, quarterly or monthly basis provided that the creditworthiness of the Owner was acceptable to the Board and the inconvenience to the staff of the Association for additional invoicing and collection efforts was minimized or eliminated. The Board may further prescribe (a) procedures for collecting advance regular Annual Assessments from new Owners, Members or Residents out of "closing transactions"; and (b) different procedures for collecting assessments from Owners who have had recent history of being untimely in the payment(s) of assessments.

Section 7. Duties of the Board of Directors with Respect to Assessments

(a) In the event of a revision to the amount or rate of the Annual Assessment, or establishment of a special group assessment, the Board shall fix the amount of the assessment against each Lot, and the applicable due date(s) for each assessment, at least 60 days in advance of such date or period and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association;

(b) Written notice of the applicable assessment shall be actually or constructively furnished to every Owner subject thereto in accordance with the procedures then determined by

the Board as being reasonable and economic;

(c) The Board shall, upon reasonable demand notice, furnish to any Owner originally liable for said assessment, a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid. A reasonable charge may be made by the Board for the issuance of such certificate.

Section 8. Effect of Non-Payment of Assessment; the Personal Obligation of the Owner; the Lien; and Remedies of Association

(a) Effective as of, and from and after the filing and recordation of this Declaration, there shall exist a self-executing and continuing contract Payment and Performance Lien and equitable charge on each Lot to secure the full and timely payment of each and all assessments and all other charges and monetary amounts and performance obligations due hereunder. Such lien shall be, at all times, superior to any claim of homestead by an Owner. If any assessment, charge or fine or any part thereof is not paid on the date(s) when due, then the unpaid amount of such assessment, charge or fine shall (after the passage of any stated grace period) be considered delinquent and shall, together with any late charge and interest thereon at the highest lawful rate of interest per annum and costs of collection thereof, become a continuing debt secured by the self executing Payment and Performance Lien on the Lot of the non-paying Owner, Resident or Member which shall bind such Lot in the hands of the Owner and Owner's heirs, executors, administrators, devisees, personal representatives, successors and assigns. The Association shall have the right to reject partial payments of an unpaid assessment or other monetary obligation and demand the full payment thereof. The personal obligation of the then existing Owner to pay such assessment, however, shall remain the Owner's personal obligation and shall not pass to Owner's successors in title unless expressly assumed by them. However, the lien for unpaid assessments shall be unaffected by any sale or assignment of lot and shall continue in full force and effect. No Owner may waive or otherwise escape liability for any assessment provided herein by non-use of the Common Properties or abandonment of the Lot. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay such assessment being a separate and independent covenant on the part of each Owner;

(b) The Association may also give written notification to the holder(s) of any mortgage on the Lot of the non-paying Owner of such Owner's default in paying any assessment, charge or fine, particularly where the Association has theretofore been furnished in writing with the correct name and address of the holder(s) of such mortgage, a reasonable supply of self-addressed postage prepaid envelopes, and a written request to receive such notification;

(c) If any assessment, charge or fine or part thereof is not paid when due, the Association shall have the right and option to impose a late charge (but only to the extent permitted by applicable law) to cover the additional administrative costs involved in handling the account and/or to reflect any time price differential assessment schedule adopted by the Association. The unpaid amount of any such delinquent assessment, charge or fine shall bear interest from and after the date when due at the highest lawful rate of interest per annum until fully paid. The Association may, at its election, retain the services of an attorney to review, monitor and/or collect unpaid assessments, charges, fines and delinquent accounts, and there shall also be added to the amount of any unpaid assessment, charge, fine or any delinquent account any and all attorney fees and other costs of collection incurred by the Association;

(d) The Association, at its discretion but subject to all applicable debt collection statutes: (1) prepare and file a lien affidavit in the public records of Dona Ana County, New Mexico which specifically identifies the unpaid assessments, charges or fines; and (2) publish and post, within one or more locations within the Properties, a list of those individuals or entities who are delinquent and, if applicable, their suspended use and enjoyment of the Common Properties until and unless the delinquency has been cured to the reasonable satisfaction of the Association. Each Owner consents to these procedures and authorizes the Board to undertake such measures for the general benefit of the Association.

(e) All agreements between any Owner and the Association and/or Declarant, whether now existing or hereafter arising and whether written or oral and whether implied or otherwise, are hereby expressly limited so that in no contingency or event whatsoever shall the amount paid, or agreed to be paid, to the Association and/or Declarant or for the payment or performance of any covenant or obligation contained herein or in any other document exceed the maximum amount permissible under applicable law. If, from any circumstance whatsoever fulfillment of any provision hereof or of such other document at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law, then, *ipso facto*, the obligation to be fulfilled shall be reduced to the limit of such validity, and, if from any such circumstance the Association and/or Declarant should ever receive an amount deemed interest by applicable law which shall exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the actual base assessment amount or principal amount owing hereunder and other indebtedness of the Owner to the Association and/or Declarant and not to the payment of interest if such excessive interest exceeds the unpaid balance of the actual Annual Assessment hereof and such other indebtedness, the excess shall be refunded to the Owner. All sums paid or agreed to be paid by any Owner for the use, forbearance or detention of any indebtedness to the Association and/or Declarant shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of such indebtedness until payment in full so that the interest charged, collected or received on account of such indebtedness is never more than the maximum amount permitted by applicable law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between any Owner and the Association and/or Declarant.

Section 9. Power of Sale

The lien described in the preceding Section is and shall be a contract Payment and Performance Lien. Each Owner, for the purpose of better securing each and all monetary obligations described in these Covenants, and in consideration of the benefits received and to be received by virtue of the ownership of real estate within the Subdivision, has granted, sold and conveyed and by these Covenants does grant, sell and convey unto the Trustee, such Owner's Lot, to have and to hold such Lot, together with the rights, privileges and appurtenances thereto belonging unto the said Trustee, and to its substitutes or successors, forever. Each Owner does hereby bind himself and/or herself, their heirs, executors, administrators and assigns to warrant and forever defend the Lot unto the said Trustee, its substitutes or successors and assigns forever, against the claim or claims of all persons claiming or to claim the same or any part hereof.

This conveyance is made in trust to secure payment of each and all assessments and other obligations prescribed by these Covenants and for the benefit of the Association as the Beneficiary. In the event of default in the payment of any obligation hereby secured, in accordance with the terms thereof, then, and in such event, Beneficiary may elect to declare the entire indebtedness hereby secured with all interest accrued thereon and all other sums hereby secured due and payable (subject to the New Mexico Deed of Trust Act) and in the event of default in the payment of said indebtedness when due or declared due, it shall thereupon, or at any time thereafter, be the duty of the Trustee, or its successors or substitutes as hereinafter provided, at the request of Beneficiary (which request is hereby conclusively presumed) to enforce this trust in accordance with laws of the State of New Mexico. The Trustee shall sell the Lot and make due conveyance to the Purchaser(s), with general warranty binding upon the Owner, his heirs and assigns; and out of the money arising from such sale, the Trustee shall first pay all expenses of advertising the sale and making the conveyance, including a reasonable commission to itself, which commission shall be due and owing in addition to the attorney fees provided for, and then to Beneficiary the full amount of principal, interest, attorney fees and other charges due and unpaid on said indebtedness secured hereby, rendering the balance of the sales price, if any, to the Owner, his heirs or assigns and/or to any other lien holders (if so required by applicable law); and the recitals in the conveyance to the Purchaser(s) shall be full and conclusive evidence of the trust of the matters therein stated, and all prerequisites to said sale shall be presumed to have been performed, and such sale and conveyance shall be conclusive against the Owner, his heirs and assigns.

It is agreed that in the event a foreclosure hereunder should be commenced by the Trustee, or its substitute or successor, Beneficiary may, at any time before the sale of said property, direct the said Trustee to abandon the sale and may then institute suit for the collection of said indebtedness, and for the foreclosure of this contract Payment and Performance Lien; it is further agreed that if Beneficiary should institute a suit for the collection thereof, and for a foreclosure of this contract lien, that it may, at any time before the entry of a final judgment in said suit, dismiss the same and require the Trustee, its substitute or successor to sell the Lot in accordance with the provisions of this section. Beneficiary, if it is the highest bidder, shall have

the right to purchase, at any sale of the Lot and to have the amount for which such Lot is sold, credited on the debt then owing. Beneficiary, in any event, is hereby authorized to appoint a substitute trustee, or a successor trustee, to act instead of the Trustee named herein without other formality than the designation in writing of a substitute or successor trustee; and the authority hereby conferred shall extend to the appointment of other successor and substitute trustees successively until the indebtedness hereby secured has been paid in full, or until said Lot is sold hereunder, and each substitute and successor trustee shall succeed to all of the rights and powers of the original Trustee named herein. In the event any sale is made of the Lot or any portion thereof, under the terms of this Section, the Owner, his heirs and assigns, shall forthwith, upon the making of such sale, surrender and deliver possession of the property so sold to the Purchaser at such sale, and in the even of his failure to do so shall thereupon from and after the making of such sale be and continue as tenants at will of such Purchaser, and in the event of his failure to surrender possession of said property upon demand, the Purchaser, his heirs or assigns, shall be entitled to institute and maintain an action for forcible detainer of said property in the Justice of the Peace Court in the Justice Precinct in which such property, or any part thereof, is situated. The foreclosure of the continuing lien on any one or more occasions shall not remove, replace, impair or extinguish the same continuing lien from securing all obligations arising from and after the date of foreclosure.

Section 10. Subordination of the Lien to Mortgages

The lien securing the payment of the assessments and other obligations provided for herein shall be superior to any and all other charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon any Lot whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage or other instrument, except for:

(a) bona fide first mortgage or deed of trust liens for purchase money and/or home improvement purposes placed upon a Lot, including, without limitation, Institutional Mortgages and Eligible Mortgages, in which event the Association's lien shall automatically become subordinate and inferior to such first lien;

(b) liens for taxes and other public charges as are by applicable law made superior to the Association's lien; and

(c) such other lien about which the Board may, in the exercise of its reasonable discretion, elect to voluntarily subordinate the Association's lien;

provided, however, such subordination shall apply only to: (1) the assessments which have been due and payable prior to the foreclosure (whether public or private) of such Lot pursuant to the terms and conditions of any such first mortgage or deed of trust or tax lien; (2) the permitted lien on the Lot alone and not on or to any easement appurtenant for use and enjoyment of the Common Properties. Such sale shall not relieve such Lot from liability for the amount of any assessment thereafter becoming due nor from the lien of any such subsequent assessment. Such

subordination shall not apply where the first mortgage and deed of trust is used as a device, scheme or artifice to evade the obligation to pay assessments and/or to hinder the Association in performing its functions hereunder.

Section 11. Exempt Property

The following property otherwise subject to this Declaration shall be exempted from any assessment, charge and lien created herein:

- (a) All properties dedicated to and accepted by a local public or governmental authority;
- (b) Common Properties; and
- (c) Exempt Property.

ARTICLE VI

General Powers, Rules & Duties of the Board of Directors of the Association

Section 1. Powers, Duties and Rules

The affairs of the Association shall be conducted by its Board. The Board, for the benefit of the Association, the Properties and the Owners and the Members and Residents may provide and may pay for, out of the assessment fund(s) provided for in Article V above, one or more of the following:

(a) Rules of the Board

All Members shall abide by any rules and regulations adopted by the Board. The Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and a Member determined to have violated said rules and regulations shall be liable to the Association for all damages and costs, including reasonable attorney fees;

(b) Care, preservation and maintenance of the Common Properties and the furnishing and upkeep of any desired personal property for use in or on the Common Properties;

(c) Recreational and social programs and activities for the general benefit of the Residents and programs which are designed only for separately identifiable sub-groups of Residents, such as (but not limited to) infants, adolescents, teenagers, students, mothers and senior citizens;

(d) Deleted

(e) Deleted

(f) The services of any person or firm (including the Declarant and any affiliates of the Declarant) to manage the Association or any separate portion thereof, to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by the manager of the Association. The Board is specifically authorized to hire and employ one or more managers, secretarial, clerical, staff and support employees. The Board is specifically authorized to engage personnel (such as ad valorem tax consultants and computer operators) and equipment (such as computer, software and electronic communication and transmission devices) and to purchase and/or rent magnetic tapes and the lie for the administration of the collection of assessments described within the preceding Article V;

(g) Legal and accounting services and all costs and expenses reasonably incurred by the HOA Board;

(h) Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, taxes or assessments which the Board is required to obtain or pay for pursuant to the terms of this Declaration or which, in its opinion, shall be necessary to proper for the operation or protection of the Association or for the enforcement of this Declaration;

The Board shall have the following additional rights, powers and duties:

(i) To execute all declarations of ownership for tax assessment purposes with regard to any of the Common Properties owned by the Association;

(j) The Board and Management company are responsible for enforcing the Covenants;

(k) To borrow funds (including, without limitation. the borrowing of funds from the Declarant and/or its affiliates) to pay costs of operation, secured by such assets of the Association as deemed appropriate by the lender and the Association;

(l) To enter into contracts, maintain one or more bank accounts and, generally, to have all the powers necessary or incidental to the operation and management of the Association;

(m) To protect or defend the Common Properties from loss or damage by suit or otherwise, to sue or defend in any court on behalf of the Association and to provide adequate reserves for repairs and replacements;

(n) To make reasonable rules and regulations for the operation of the Common Properties and to amend them from time to time and to enter into concession agreements regarding food, beverage, vending and other products and services within the Common Properties;

(o) To prepare an annual operating budget and to make available for review by each Owner at the regularly scheduled meeting within 90 days after the end of each Fiscal Year annual report;

(p) Pursuant to Article VII herein, to adjust the amount, collect and use any insurance proceedings to repair damage or replace lost property; and if proceeds are insufficient to repair damage or replace lost property, to assess the Owners in proportionate amounts to cover the deficiency; and

(q) To enforce the provisions of this Declaration and any rules made hereunder and to enjoin and seek damages from any Owner, Resident or Member for violation of such provisions or rules. The Board is specifically authorized and empowered to establish (and to revise and amend from time to time) a monetary "fine" system which may include component steps such as warning citations, ticketing, due process hearings and appeals and a flat rate or discretionary range or geometric progression of fine amounts, which, when pronounced, shall constitute a permitted individual Lot Owner assessment secured by the continuing Payment and Performance Lien herein established.

The Association may: (1) borrow monies from the Declarant; (2) lease equipment from the Declarant; (3) contract with the Declarant concerning the provision of any personnel, labor, supplies, materials and services, provided such contract terms and conditions are generally comparable (in terms of price, quality and timeliness) with those that might be otherwise obtained from unrelated third parties and, as to professional management contracts, terminable by the Association at any time for any reason whatsoever and without penalty upon furnishing at least 90 days advance notice thereof to Declarant. The Board shall not be required to solicit bids from unrelated third parties before entering into any contract with the Declarant and the reasonable judgment and resolution of the Board to enter into any such contract with the Declarant (absent fraud, gross negligence or willful misconduct) shall be final and conclusive and binding upon the Association and all of its Members.

Section 2. Board Powers

The Board shall have the right and obligation to perform the functions of the Board on behalf of the Association. In the event or if for any reason the Board is not deemed authorized to act for and on behalf of the Association and the Members, then the Declarant may exercise its power and authority under Article XIII, Section 1, to act for and on behalf of the Association and the Members, and the Association shall reimburse the Declarant for any and all reasonable expenses incurred in so acting.

Section 3. Maintenance Contracts

The Board, on behalf of the Association, shall have full power and authority to contract with any Owner, Member or Resident (including, without limitation, the Declarant) for

performance, on behalf of the Association, of services which the Association is otherwise required to perform pursuant to the terms thereof, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interests of the Association.

Section 4. Liability, Limitation

Neither any Resident nor the directors and officers and managers of the Association shall be personally liability for debts contracted for or otherwise incurred by the Association or for any torts committed by or on behalf of the Association or for a tort of another Resident, whether such Resident was acting on behalf of the Association or otherwise. Neither the Declarant, the Association, its directors, officers, managers, agents or employees shall be liable for any actual, incidental or consequential damages for failure to inspect any premises, improvements or portion thereof or for failure to repair or maintain the same. The Declarant, the Association or any other person, firm or corporation liable to make such repairs or maintenance shall not be liable for any personal injury or other actual, incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portion thereof.

Section 5. Reserve Funds

The Declarant and the Board may establish (but shall not be obligated to establish) reserve funds which may be maintained and/or accounted for separately from other funds maintained for annual operating expenses and may establish separate, irrevocable trust accounts or any other recognized bookkeeping or tax procedures in order to better demonstrate that the amounts deposited therein are capital contributions and not net or taxable income to the Association.

ARTICLE VII

Insurance; Repair; Restoration; Community Services Arrangements

Section 1. Right to Purchase Insurance

The Association shall have the right and option to purchase, carry and maintain in force insurance covering any or all portions of the Common Properties, any improvements thereon or appurtenance thereto, for the interest of the Association, its Board of Directors, officers, managers, agents and employees, and of all Members of the Association, in such amounts and with such endorsements and coverage as shall be deemed appropriate by the Board and/or as specifically required by the Eligible Mortgagees or Eligible Insurers. Such insurance may include, but need not be limited to:

- (a) Insurance against loss or damage by fire and hazards covered by a standard extended coverage endorsement in an amount which shall be equal to the maximum insurable replacement

value, excluding foundation and excavation costs;

(b) Comprehensive public liability and property damage insurance on a broad form basis, including coverage of personal liability (if any) of the Board, Owners, Residents and Members with respect to the Common Properties;

(c) Fidelity bonds for all officers and employees of the Association having control over the receipt or disbursement of funds; and

(d) Liability insurance regarding the errors and omissions of directors, officers, managers, employees and representatives of the Association.

Section 2. Insurance and Condemnation Proceeds

The Association shall be the exclusive representative of the Members in any proceedings, negotiations, settlements or agreements concerning insurance or condemnation. The Association and the Members may use the net insurance or condemnation proceeds to repair and replace any damage or destruction of property, real or personal, covered by such insurance or condemnation. Any balance from the proceeds of insurance or condemnation paid to the Association, remaining after satisfactory completion of repair and replacement or after the Board has elected to waive the repair, restoration or replacement, shall be retained by the Association as part of a general reserve fund for repair and replacement of the Common Properties.

Section 3. Insufficient Proceeds.

If the insurance or condemnation proceeds are insufficient to repair or replace any loss or damage, the Association may levy a special group assessment as provided for in Article V of this Declaration to cover the deficiency.

ARTICLE VIII

Architectural Review

Section 1. Architectural Review Committee

The Architectural Review Committee (ARC) shall be composed of five (5) members appointed by the Board, each generally familiar with residential and community development design matters and knowledgeable about the concern for a consistent approach to and construction of improvements within the Subdivision. The original members of the ARC shall be Andy J. Winton and Herschel Stringfield. In the event of the death, incapacity or resignation of any member of the ARC, the Board shall have full authority to designate and appoint a successor.

Section 2. ARC Jurisdiction

No building, structure, fence, wall or improvement of any kind or nature shall be erected, placed or altered on any Lot until all plans and specifications have been submitted to and approved in writing by the ARC, or a majority of its members, with the HOA Board oversight, as to:

- (a) quality of workmanship and materials, adequacy of site dimensions, adequacy of structural design, proper facing of main elevation with respect to nearby streets and zero lot-line considerations, in accordance with this Declaration and/or the Design Guidelines and/or bulletins;
- (b) minimum finished floor elevation and proposed footprint of the dwelling;
- (c) conformity and harmony of the external design, color, type and appearance of exterior surfaces and landscaping;
- (d) ponding and drainage solutions;
- (e) the observance of and compliance with applicable setback lines and easement areas and the enhancement of aesthetic views and visual corridors to and from the Common Properties; and
- (f) the other standards set forth within this Declaration (and any amendments hereto) or as may be set forth within the Design Guidelines, bulletins promulgated by the ARC, or matters in which the ARC has been vested with the authority to render a final interpretation and decision, with HOA Board oversight.

The ARC is authorized and empowered to consider and review any and all aspects of construction, location and landscaping, which may, in the reasonable opinion of the ARC, adversely affect the living enjoyment of one or more Owner(s) or Residents or the general value of the Properties. Also, the ARC is permitted to consider technological advances and changes in design and materials and such comparable or alternative techniques, methods or materials may or may not be permitted, in accordance with the reasonable opinion of the ARC.

The following is a general outline of the steps likely to be involved in the review of the plans and specifications:

- (a) submit plans and specifications to the ARC, via management company using the online form for preliminary approval;
- (b) obtain any required building permits required by the governing body.

The ARC may require, as a condition precedent to any approval of the final plans and specifications, that the applicable obtain and produce an appropriate building permit from any governmental authority requiring such a permit, if any. The ARC is also authorized to coordinate with the Governing Body and any applicable municipality in connection with the applicant's observance and compliance of the construction standards set forth in this Declaration, the Design Guidelines, and any bulletins or lot information sheets promulgated thereunder. However, the mere fact that a building permit is issued with respect to a proposed structure does not automatically mean that the ARC is obliged to unconditionally approve the plans and specifications. Similarly, the ARC's approval of any plans and specifications does not mean that all applicable building requirements of the Governing Body.

Each and every owner and applicant shall use their respective best efforts to complete construction of all improvements approved by the ARC and the Governing Body, New Mexico (and any and all other applicable municipalities and governmental agencies) within 90 days after the date the project began (ground breaking).

Section 3. Design Guidelines

The initial Design Guidelines are attached hereto as Exhibit "A". The ARC may, from time to time, publish and promulgate additional or revised Design Guidelines, and such Design Guidelines shall be explanatory and illustrative of the general intent of the proposed development of the Properties and are intended as a guide to assist the ARC in reviewing plans and specifications. The ARC shall have the right, power and authority to establish and prescribe architectural restrictions and guidelines, with HOA Board oversight, pertaining to items and topics such as (but not necessarily limited to):

- (a) site plan showing the "footprint" of the building, location of all existing and proposed improvements, including, but not limited to, structures, patios, driveways, parking areas and structures, fences and walls;
- (b) exterior elevation of all proposed buildings and structures;
- (c) a description and samples of exterior materials, colors, textures and shapes of all buildings and structures;
- (d) landscaping plans, which shall include walkways, fences, walls, details, elevation changes, irrigation and watering systems, vegetation and ground cover (indicating size, spacing and quantity), and the protection and preservation of trees and other existing and introduced vegetation;
- (e) exterior illumination and location;

- (f) smoke detector locations;
- (g) drainage solutions, if applicable;
- (h) such other matters as may be required by the then applicable zoning and building codes of the Governing Body;
- (i) the items described within Section 2 above and any other data or information requested or deemed reasonable necessary by the ARC.

PRIOR TO ACQUIRING ANY INTEREST IN A LOT, EACH PROSPECTIVE PURCHASER, TRANSFEREE, MORTGAGEE AND OWNER OF ANY LOT IN THE SUBDIVISION IS STRONGLY ENCOURAGED TO CONTACT THE DECLARANT OR ASSOCIATION OR THE ARC TO OBTAIN AND REVIEW THE MOST RECENT DESIGN GUIDELINES WHICH WILL CONTROL THE DEVELOPMENT, CONSTRUCTION AND USE OF THE LOT.

Section 4. Preliminary and Final Plan Submissions

The ARC is authorized and empowered to and shall consider, review and comment on preliminary plans submitted in duplicate on an informal basis to assist Owners, developers, homebuilders and prospective purchasers of the Lots in complying with these Covenants and to assist in the completion of any feasibility studies undertaken by such person or entitled. (The ARC shall have the right, however, to prescribe reasonable limitations concerning the time, effort and expense likely to be involved in handling such matters on an informal basis). If the preliminary plans and specifications are approved by the ARC, the Owner or the Owner's designated representative will be so advised. If found not to be in compliance with these Covenants, the Owner or the Owner's designated representative will be so advised by letter containing a reasonable statement and explanation of items found not to comply with these Covenants. If the ARC fails to approve or disapprove such plans and specifications within 30 days after the actual date on which the submission is received, approval of the matters submitted shall be presumed. Comments on and approvals of preliminary plans and specifications shall be binding upon the ARC provided that conforming final plans and specifications are submitted within 90 days of such preliminary comments or approvals.

Final plans, specifications and surveys shall be submitted in duplicate to the ARC for approval or disapproval. The ARC is authorized to request the submission of samples of proposed construction materials. At such time as the plans, specifications and surveys meet the approval of the ARC, one complete set of plans, specifications and surveys will be retained by the ARC and the other complete set will be marked "Approved" and returned to the Lot Owner or his designated representative. If found not to be in compliance with these Covenants, one set of plans, specifications and surveys shall be returned marked "Disapproved" accompanied by a reasonable statement and explanation of items found not to comply with these Covenants. Any modification or change to the approved set of plans, specifications and surveys must again be submitted to the ARC for its inspection and approval. The ARC's approval or disapproval, as required herein, shall be in writing. If the ARC fails to approve or disapprove such plans,

specifications and surveys within 30 days after the actual date on which the submission is received, then the ARC approval shall be presumed.

The ARC may from time to time publish and promulgate architectural standards bulletins and/or lot information sheets which shall be fair and reasonable and shall carry forward the spirit of intention of these Covenants. Such bulletins and lot information sheets shall supplement these Covenants and are incorporated herein by reference. EACH OWNER SHALL SEEK AND OBTAIN AND BECOME THOROUGHLY FAMILIAR WITH ANY AND ALL ARCHITECTURAL STANDARDS, BULLETINS AND LOT INFORMATION SHEETS PRIOR TO ACQUISITION OF, AND CONSTRUCTION ON, ANY LOT WITHIN THE SUBDIVISION.

Section 5. General

The following declarations within this Section apply to the ARC. The ARC shall be entitled, at any time and from time to time, to associate or employ a staff and to seek and obtain professional advice and counsel, at the discretion of the HOA Board, (including, but not limited to, architects, attorneys, designers, engineers and landscape technicians) in connection with the performance of its duties with all reasonable costs and expenses related thereto paid for or reimbursed by the Association. The Association may, in turn, reasonably recoup some or all of these expenses from the applicants seeking review and approval of plans and specifications.

The Declarant and/or the Association and/or the ARC may require any Owner to restore such Owner's improvements or alterations to the condition existing prior to the construction thereof (including, without limitation, the demolition and removal of any unapproved improvement) if such improvement or alterations were commenced or constructed in violation of this Article. In addition, the Declarant and/or the Association and/or the ARC may, but has no obligation to do so, cause such restoration, demolition and removal and levy the amount of the cost thereof as a special individual assessment against the Lot upon which such improvements or alterations were commenced or constructed.

Neither Declarant, nor the Association, nor the ARC, nor the Board nor the officers, directors, managers, members, employees and agents of any of them, shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner of property affected by the restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. No approval of plans and specifications and no publication of any Design Guidelines, architectural bulletins or lot information sheets shall be construed as representing or implying that such specifications, guidelines, bulletins or sheets will, if followed, result in properly designed improvements and/or improvements built in a good and workmanlike manner. Every person or entity who submits plans or specifications, and every Owner of each and every Lot, agrees that he will not bring action or suit against Declarant, the Association, the ARC, the Board, or the officers, directors, managers, members, employees and agents of any of them, to recover any such damages and hereby releases, remises and quitclaims all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a

general release does not extend to claims, demands and causes of action not known at the time the release is given.

After reasonable notice to the Owner (and any applicable Resident), any member or agent of the ARC may from time to time at any reasonable hour or hours enter and inspect any property subject to the jurisdiction of the ARC to confirm improvement or maintenance or alteration in compliance with the provisions hereof. No improvement or addition or change or alteration thereof shall be constructed, erected, placed, altered or maintained on any Lot which is in violation of any of the laws or ordinances of the City of Sunland Park, New Mexico, or any other applicable municipal or governmental laws, rules or regulations. However, Declarant, the ARC and their respective officers, directors, managers, agents and employees shall have no obligation to enforce or to report the violation of any such law, ordinance, rule or regulation.

The ARC shall have the power to grant variances, waivers, tolerances or modifications of the standards set forth within the Covenants under circumstances and conditions deemed reasonable, appropriate and prudent by the ARC. Matters of "quality", "adequacy" and "propriety" are to be considered by the ARC generally from an aesthetic standpoint, rather than from an engineering standpoint. Plans and specifications are not reviewed or approved for engineering or structural design or technical quality of materials, and by approving such plans and specifications neither the ARC, nor the members thereof, nor the Association, assume liability or responsibility therefor, nor for any defect in any structure constructed from such plans and specifications.

ARTICLE IX

Use of Lots in the Subdivision; Protective Covenants

The Subdivision (and each Lot situated therein) shall be constructed, developed, occupied and uses as follows:

Section 1. Residential Lots

All Lots within the Subdivision shall be used, known and described as residential Lots, unless otherwise indicated on the Subdivision plat. Lots shall not be further subdivided, and, except for the powers and privileges herein reserved by the Declarant, the boundaries between Lots shall not be relocated without the prior express written consent of the ARC. No building or structure shall be erected, altered, placed or permitted to remain on any residential Lot other than one (1) single family dwelling and, if any, its customary and usual accessory structures (unless otherwise prohibited herein). No building or structure intended for or adopted to business or commercial purposes shall be erected, placed, permitted or maintained on such premises, or any part hereof, save and except those related to development, construction and sales purposes of a bona-fide homebuilder, the Declarant or the Association. No Owner, Resident or Member shall conduct, transmit, permit or allow any type or kind of home business or home profession or hobby on any Lot or within the Dwelling Unit which would (I) attract automobile, vehicular or pedestrian traffic to the Lot; or (ii) involve lights, sounds, smells, visual effects, pollution and the like which would adversely affect the peace and tranquility of any one or more of the Residents

of the Subdivision. The restrictions on use herein contained shall be cumulative of, and in addition to, such restrictions on usage as may from time to time be applicable under any pursuant to the statutes, rules, regulations and ordinances of the City of Sunland Park, New Mexico or any other governmental authority having jurisdiction over the Subdivision.

Section 2. Restricted Uses

The following activities or uses shall not be permitted on or with respect to any part of the Edgemont Subdivision:

Trailer court, mobile home park, camp grounds, pawn shop, junk yard, scrap metal yard; any form of gambling; mortuary; waste material business; any dumping; storage or sale of junk; storage of toxic waste material; automotive and motorcycle sales or repairs (other than single vehicle sales and repairs of vehicles by Residents conducted inside of Resident's garage or carport); automobile wrecking yard; laundry services; drycleaners; residential treatment center; transitional housing; multi-family housing; animal production; stockyard; the outside boarding of pets (other than the permitted number of pets owned by the occupant of the house) or other animals; keeping of horses, cattle, pigs, sheep, chickens or other barnyard animals; emergency shelter, off premises signage, any activity or use that is not permitted in a single family residential development under applicable governmental ordinances, codes, and regulations then in effect, any activity that constitutes a nuisance under applicable governmental ordinances, codes and regulations or common law.

No portion of the property or any building or other improvement situated on the Edgemont Subdivision shall be used for commercial, industrial or manufacturing purposes. This shall not be interpreted as prohibiting home office uses that are permitted under the applicable governmental ordinances, codes and regulations.

Section 3. Outside Storage or Operations

No outside storage of any kind shall be permitted upon the property except (1) as required during the construction of the Homes and Improvements; (2) enclosed storage (i.e. sheds) approved for installation by homebuyer(s) on his/her/their Lot under the terms of these Covenants. No vehicles of any kind which are inoperative or which the registration has expired shall be parked and stored on the property or streets.

Section 4. Minimum Floor Spaces; Alarms

Each one (1) story dwelling and each one and one-half (1.5) and two (2) story dwelling constructed on any Lot shall contain such minimum square feet of air-conditioned floor area (exclusive of all porches, garages, or breezeways attached to the main dwelling) as may be specified by the Design Guidelines and/or the ARC for the first and/or second storage and/or the total. The Design Guidelines and/or the ARC may require that the construction plans and specifications for each residential dwelling include provisions for the installation and equipment

of fire and burglar alarms, smoke detectors and such other safety and security devices which, from time to time, become technologically feasible for residential use as may be further described and defined by the ARC.

Section 5. Garages; Parking

Each single family residential dwelling erected on any Lot shall provide garage space for a minimum of two (2) conventional automobiles, unless otherwise specifically approved by the ARC. Carports are not allowed under any circumstances.

Each Owner, Resident and Member shall park all vehicles in their garage, on their driveway, or on the street immediately abutting their property.

Each Owner, Resident and Member shall not perform, permit or allow repair or maintenance work to any automobile or other vehicle outside the garage and visible to the abutting street(s).

Under no circumstances or conditions shall any automobile or other vehicle be parked on a non-paved portion of any Lot or in the backyard area of any Lot.

Section 6. Setback Requirements

Setback requirements are described within the Design Guidelines. The ARC may establish additional setback lines (for fences, walls and for buildings) from the front property line of each Lot at varying distances; the mixtures of various front setbacks may satisfy requirements of the governing body and reflect architectural style and design. In order to allow flexibility for: (1) implementation of state-of-the-art construction designs and (2) any consolidation of two (2) or more Lots to accommodate the construction of a lesser number of dwellings thereon, the ARC shall also have the authority to develop and refine near and side yard setback requirements. Within the setback areas for each Lot and subject to the construction or installation of any other items otherwise permitted, a non-exclusive surface easement and right-of-way is reserved for the Association in order to properly facilitate and carry out its duties and responsibilities under this Declaration.

Section 7. Height Limitations; Elevations

No building or structure on any Lot shall exceed the height limit specified by the Design Guidelines or the ARC. In order to create a desired architectural appearance and mix of one (1) and (2) story structure heights the ARC may prescribe inter-related height and setback requirements. The ARC shall have the power and authority to further develop and refine guidelines and interpretations concerning the height concepts and limitations envisioned herein.

Section 8. Fences; Signs

No fence, wall or hedge (which serves as a barrier) and no taller than six (6) feet shall be erected, placed or altered on any Lot nearer to any street than the minimum building setback line as established by the Design Guidelines or the ARC. All exterior mechanical or service equipment must be enclosed within fences, walls or landscaping so as not to be visible from the immediate residential street. No fence, wall or hedge shall be erected, placed or altered on any residential Lot without the approval of the ARC. No sign or signs shall be displayed to the public view on any resident Lot except:

(a) any builder, during the applicable initial construction and sales period, may utilize one professional sign (of not more than 16 square foot in size) per Lot for advertising and sales purposes;

(b) thereafter, a designed "For Sale" or "For Lease" sign (of not more than 6 square feet in size) may be utilized by the Owner of a respective residential Lot for the applicable sale or lease situation; and

(c) development related signs owned or erected by the Declarant shall be permitted.

The Declarant and/or the ARC shall have the right and privilege to develop and implement uniform signage specifications and requirements applicable throughout the Subdivision.

Section 9. Easements; Utilities

Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded subdivision plat. Utility service may be installed along or near the front and/or side and/or rear Lot lines and each Owner shall have the task and responsibility of determining the specific location of all such utilities. Except as may be otherwise permitted by the ARC (e.g. fencing, flatwork, landscaping, etc.), no Owner shall erect, construct or permit any obstructions or permanent improvements of any type or kind to exist within any easement area, nor shall anything be done or permitted within an easement area which would restrict or adversely affect drainage. Electrical (and possibly other utility) easements are likely to be located at or near or along the rear lot line(s) and each Lot Owner assumes full, complete and exclusive liability or responsibility for all cost and expense related to damage, repair, relocation and restoration of such improvements or fence. Except as to special street lighting or other aerial facilities which may be required by the City of Sunland Park or which may be required by the franchise of any utility company or which may be installed by the Declarant pursuant to its development plan, no aerial utility facilities of any type (except meters, risers, service pedestals and other surface installations necessary to maintain or operate appropriate underground facilities) shall be erected or installed on the Subdivision whether upon individual Lots, easements, streets or rights-of-way of any type, either by the utility company or any other person or entity, including, but not limited to, any person owning or acquiring any part of the Subdivision, and all utility service facilities (including, but not limited to, water, sewer, gas, electricity and telephone) shall be buried underground unless otherwise required by a public utility. All utility meters, equipment, air conditioning compressors and similar items must be visually screened and located in areas designated by the ARC (unless the roof). The Declarant

shall have the right to install non-traditional phone and television service equipment on any Common Property within the Subdivision. The Association or the ARC shall have the right and privilege to designate the underground location of any CATV related cable. Pursuant to the requirements of utility companies providing service to the Properties, the following provisions and covenants are to run with the land within the Subdivision with the same force and effect as all other Covenants herein and as if such provisions and covenants had originally been recited within each deed to each Lot executed and delivered by Declarant:

“(a) Electric service of the type known as 120/240 volt, single phase, 3 wire, 60 cycle, alternating current has been made available to the Lot hereby conveyed by means of underground facilities, at a cost in excess of the cost of service provided by the usual and standard overhead facilities, and each Owner acknowledges for himself, his heirs, executors, administrators, successors and assigns, that electric service of any character other than that hereinabove described will not be available except at added cost to such Owner and in accordance with the rules and regulations for electric service of the subject electric utility company; and

(b) Since electric service is to be furnished to each of the Lots solely by underground facilities, each Owner agrees for himself, his heirs, executors, administrators, successors and assigns, that he will, at his own expense, install and maintain the necessary underground facilities to connect the Owner’s installation with the service wires of the subject electric utility company and security system at the point of delivery of electric energy.”

Each owner shall assume full and complete responsibility for all costs and expenses arising out of or related to the repair, replacement or restoration of any utility equipment damaged or destroyed as a result of the negligence or mischief of any Resident or Owner. Each Owner agrees to provide, at the sole cost and expense of each Owner, such land and equipment and apparatus as are necessary and appropriate to install and maintain additional lighting and security related measures which becomes technologically provident in the future.

Section 10. Temporary Structures and Vehicles / Loading/Unloading

No temporary structure of any kind shall be erected or placed upon any Lot without the express written consent of the ARC. Temporary structures shall include, but not be limited to, any garage, servant’s house or other improvement erected more than 120 days prior to the completion of the main portion of the single-family dwelling. However, upon receiving the prior, express written approval of the ARC, Declarant or any bona-fide homebuilder may maintain temporary sales or construction offices provided such sales or construction offices are removed within 60 days after completion of sales or construction as the case may be.

Any truck (over 3/4 ton and excluding conventional pickups), bus, boat, boat trailer, trailer, mobile home, golf cart, recreational vehicle, campmobile, camper and any vehicle other than a conventional automobile shall, if brought within the Subdivision by or on behalf of any Owner, Resident or Member, be stored, placed or parked within the enclosed garage on the Owner’s Lot and screened from view from the street and any adjoining Lot, provided the screening material is no taller than 6 feet. All screening materials shall be approved by the ARC prior to any installation of screen. The ARC shall have the right to establish rules related to

loading and unloading of any above mentioned vehicles. The time allowed to load /unload is ten (10) days.

Storage sheds or any other similar appurtenance, such as play structures (not allowed in the front yard of any residence) if they can be seen from a public street, must conform to the harmony and exterior design of the dwelling in terms of workmanship, exterior surface, paint or stain colors and roofing material. All other sheds, including temporary sheds and plastic or metal sheds or storage bins, must be located on the Lot in such a manner where they cannot be seen from a public street. Sheds may not exceed 8 feet in elevation nor contain more than 120 square feet without permission from the ARC. Special considerations will be addressed in related bulletins.

Section 11. Site Maintenance, Garbage and Trash Collection

Property owners are responsible for keeping their Lots free of rubbish on a daily basis. Property owners will not be allowed to store any excavation of soil on streets or adjacent sites.

All loose garbage and trash shall be kept in plastic bags and placed in a trash container. Each Owner, Resident and Member shall observe and comply with any and all regulations or requirements promulgated by the Association, or the governing body, or any private garbage collection service in connection with the storage and removal of trash and garbage, particularly where the collection point is in front of the residential Dwelling Units.

In keeping with good curb appeal mentality, all garbage containers shall be kept on the side of the Residents' house except on collection days. Trash containers can be set out the night before collection day and must be put away no later than the evening of the collection day. No residential Lot or any portion of the Common Property or any public right-of-way area, shall be used or maintained as a dumping ground for rubbish, trash or garbage. No Owner, Resident or Member shall dump grass clippings, landscape debris, garbage or trash of any kind on another Lot. Each Owner is responsible for the appearance and condition of such Owner's Lot. If more than 15 calendar days after prior written notice an Owner shall fail to: (1) control weeds, grass and/or other unsightly growth; (2) remove trash, rubble, building and construction debris; or (3) exercise reasonable care or conduct to prevent or remedy an unclean, untidy or unsightly condition, then Declarant or the Association shall have the authority and right to go onto said Lot for the purpose of mowing and cleaning said Lot and shall have the authority and right to assess and collect from the Owner of said Lot a reasonable charge for mowing or cleaning said Lot on such respective occasion of such mowing or cleaning. The assessments, together with such interest thereon and costs of collection thereof, shall be a charge on the land and shall be a continuing Payment and Performance Lien upon each Lot against which each such assessment is made. Each such assessment, together with interest thereon and the cost of collection thereof, shall also be the continuing personal obligation of the person who was the Owner of such Lot at the time when the assessment occurred.

Maintenance Standards

The exterior of any building, improvements, appurtenances and landscaping on the

Property shall be maintained in a safe, clean and attractive condition at all time. If the Owner of any portion of the Property is failing in this duty and responsibility, the ARC or Declarant shall give notice to said Owner at the address indicated in the real property records of Dona Ana County who shall, within 15 calendar days of receipt of such notice, undertake the maintenance required for a safe, clean and attractive condition and diligently complete such maintenance within a reasonable period of time. Should such Owner fail this obligation, the ARC or Declarant shall have the right and power, but not the obligation, to cause such maintenance to be performed at such Owner's cost. Such Owner shall reimburse the ARC or Declarant for the reasonable cost incurred to perform such maintenance plus interest at the lesser of 15% per annum to the maximum rate allowed to be charged by law from the date the cost was incurred until reimbursed by such Owner. Such Owner shall reimburse the appropriate party within 30 days after receipt of a request for reimbursement.

Section 12. Offensive Activities

No noxious or offensive activity or pollution emitting sight/sound/smell, as determined by the ARC, shall be conducted or permitted on any portion of the Properties. No direct sales activities such as (excluding, however, activities of the Declarant and homebuilders and community activities specifically approved by the Board) patio sales, garage or yard sales, flea markets, bazaars, sample sales, or similar activities shall be conducted more than quarterly on any Lot within the Subdivision, unless it is part of a community-wide event authorized by the Board of Directors.

Pets

Any noise or odor emitted by and any discharge or waste from any animal (including without limitation dogs and cats) which can be seen, heard or smelled outside the perimeter of the subject Owner's (or Resident's or Member's) Lot shall be deemed noxious and offensive and is therefore prohibited. No animals, livestock or poultry of any kind shall be raised, bred or kept on any residential Lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for commercial purposes and they are not noxious, offensive, vicious or dangerous. Any outside pen, cage, kennel, shelter, concrete pet pad, run, track or other building, structure or device directly or indirectly related to animals which can be seen, heard or smelled by anyone other than the subject Lot Owner must be approved by the ARC in its sole and absolute discretion. Each and every dog, cat or other household pet, if not kept and confined within an enclosed non-visible portion of the Owner's, Resident's, or Member's Lot, must be leashed and accompanied by its corresponding Owner, Resident or Member, particularly when traveling beyond the perimeter of the Owner's, Resident's or Member's Lot, and such Owner, Resident or Member shall promptly clean and remove the discharge and waste of any pet.

Section 13. Landscaping, Maintenance

Construction of each and every residential dwelling within the Properties shall include the installation and placement of appropriate landscaping. Xeriscaping is encouraged through the use of drought tolerant, low water use trees, shrubs and other vegetation and minimizing of turfed

areas through use of gravels, crushed rock and other non-water demanding ground covers. Each Owner, Resident or Member of any Lot shall jointly and severally have the duty and responsibility, at their sole cost and expense, to keep and maintain the Lot, and all improvements therein and thereon, in a well maintained, safe, clean and attractive condition at all times. Such maintenance shall include (without limitation):

- the proper seeding, consistent water and mowing of all lawns;
- the pruning and cutting of all trees and shrubbery;
- prompt removal of all litter, trash, refuse and waste; watering of landscape;
- keeping exterior lighting and mechanical facilities in working order;
- keeping lawn and garden areas alive, free of weeds and attractive;
- keeping driveways in good repair and condition promptly;
- repairing any exterior damage;
- complying with all governmental health and police requirements;

all in a manner and with such frequency as is consistent with aesthetics, safety and good property management. The Association, and its agents, during normal business hours, shall have the right, after 15 calendar days' written notice to the Owner of any Lot involved, setting forth the specific violation or breach of this Covenant and the action required to be taken, and if at the end of such time, reasonable steps to accomplish such action have not been taken by the Owner, to enter onto the subject premises (without any liability whatsoever for damages for wrongful entry, trespass or otherwise to any person or entity) and to take the action(s) specified in the notice to remedy or abate said violation(s) or breach(es). The cost of such remedy or abatement will be paid to the Association upon demand and if not paid within 30 days thereof, shall become a lien upon the Lot affected. The Association, or its agent, shall further have the right (upon like notice and conditions) to trim or prune, at the expense of the Owner, any hedge, tree or any other planting that, in the written opinion of the Association, by reason of its location on the Lot, or the height or the manner in which it is permitted to grow, is detrimental to the adjoining Lots, is dangerous or is unattractive in appearance. The lien provided under this Section will constitute a lien retained against such property with the same force and effect as the Payment and Performance Lien for assessment set forth in these Covenants.

Section 14. Exterior Surfaces

All roofs shall be constructed of slate, tile, metal, composition, built-up roof or other materials approved by the ARC taking into account harmony, conformity, color, appearance, quality and similar considerations. The Exterior surface of all residential dwellings shall be constructed of stucco, brick, stone, glass or other materials approved by the ARC. The ARC is specifically authorized to require a continuous, uniform surface with respect to all improvements which directly face perimeter common green area or adjoin any Greenway Frontage. Installation of all types of exterior items and surfaces such as external ornamentation, outdoor illumination, exterior paint or stain, flag poles, fountains, solar panels, and any other items, including exterior paints and stains (southwestern and subdued earth tone colors shall be used) in keeping with the theme of the existing neighborhood, must be approved by the ARC.

Section 15. Yard Maintenance; Sprinkler System

The Association will have primary responsibility for maintenance (generally limited to mowing, trimming and edging only) of Common Properties only. The Association is **NOT** responsible for yard maintenance of Owner's Lots.

Construction of each and every residential dwelling within the Properties shall include the installation and placement of appropriate landscaping. Each Lot Owner shall use reasonable efforts to keep, preserve and maintain the landscaping in a healthy and attractive condition.

Section 16. Exterior Front Yard Ornamentation

All non-holiday front yard ornamentation such as statuettes, signs, figurines, decorations, etc. shall not detract from the overall uniform appearance of the neighborhood. Holiday front yard decorations and house lighting are permissible but must not be placed earlier than 30 days prior to the specific holiday and should be removed no later than 30 days after the specific holiday.

Section 17. Other Front Yard; Basketball Goal Posts and Other Items

Permanently installed goal posts or other items identified in the bulletin are not permitted. Moveable basketball goal posts, when not in use, must be moved from the front of the property to an area where the item cannot be seen from the front of the property. Permanently installed basketball goal posts must be removed one (1) year as of the date of this revision, or upon the transfer of property ownership to another party.

ARTICLE X

Easements

Section 1. Utility Easements

Non-exclusive easements for installation, maintenance, repair and removal of utilities and drainage facilities over, under and across an area not less than two feet (2') nor more than five foot (5') wide perimeter of each Lot are reserved by Declarant for itself, the Association, and all utility and CATV companies and their respective successors and assigns, serving the Subdivision and no improvement or structure shall be constructed or placed thereon without the express prior written consent of the ARC. Full rights of ingress and egress shall be had by Declarant, the Association, and all utility and CATV companies serving the Subdivision, and their respective successors and assigns, at all times over the Subdivision for the installation, operation, maintenance, repair or removal of any utility together with the right to remove any obstruction (excluding, however, any driveway, fence or other improvement or structure which has been theretofore specifically approved by the ARC) that may be placed in such easement that would constitute interference with the use of such easement, or with the use, maintenance, operation or installation of such utility.

Section 2. Sign Easements

The Association shall have the right, privilege, duty and responsibility to reasonably maintain and care for any and all signs, monuments, landscaping and the like installed or placed on Common Properties.

Section 3. Ingress, Egress and Maintenance by the Association

Full rights of ingress and egress shall be had by the Association at all times over and upon the setback and sign easement areas applicable for each Lot for the carrying out by the Association of its functions, duties and obligations hereunder; provided, however, that any such entry by the Association upon any Lot shall be made with as little inconvenience to the Owner as practical, and any damage caused thereby shall be repaired by the Association at the expense of the Association's maintenance fund.

ARTICLE XI

Registration

Section 1. Registration with the Association

In order that the Declarant and the Association can properly acquaint every Lot purchaser and every Owner, Resident and Member with these Covenants and the day-to-day matters within the Association's jurisdiction, each and every Owner, Resident and Member shall have an affirmative duty and obligation to originally provide, and thereafter revise and update, within 15 calendar days after a material change has occurred, various items of information to the Association including the full name and address and the business address, occupation and telephone numbers of each Owner, Resident and Member. In the event any Owner, Resident or Member fails, neglect or refused to so provide, revise and update such information, then the Association may, but is not required to, use whatever means it deems reasonable and appropriate to obtain such information and the offending Owner, Resident or Member shall become automatically, jointly and severally, liable to promptly reimburse the Association for all reasonable costs and expenses incurred in so doing.

Section 2. Special Assessments on Transfer

In connection with each and every transfer(s), including, without limitation, voluntary and involuntary transfers, assignments, deeds, leases for more than five (5) years, gifts, testamentary requests, intestate transfers, muniment of title, or other instrument or by operation of law which causes or effects a transfer of a significant estate or fee simple title, but excluding the exceptions discussed below, of record ownership title to any Lot, the Board shall have the right to collect a special transfer assessment in an amount equal to one (1) month of the then existing regular assessment applicable to such Lot, which sum shall be earmarked by the Board for deposit(s) to one or more of the then existing Association reserve funds. Such sum shall be non-refundable and shall not be regarded as a prepayment of or credit against any portion of the regular Annual Assessment.

Notwithstanding the foregoing, the following transfers are exempted and excluded from applicability and coverage of the special transfer assessment:

- (a) transfer from the Declarant to any homebuilder;
- (b) foreclosure by any Eligible Mortgagee and/or Eligible Insurer;
- (c) transfer to, from or by the Association;
- (d) transfers by any Owner to his/her spouse or any other member of such Owner's immediate family;
- (e) transfers between or among existing Owners (regardless whether such Owners are spousal, family or otherwise) of the same Lot;
- (f) any transfer in which the assessment envisioned by Section 10 of Article XII is being collected;
- (g) transfer by Declarant of all Lots remaining in the Subdivision to a single purchaser in a single transaction.

The Board of Directors is authorized from time to time and at any time to develop and implement such procedures, forms and collection mechanisms as it deems reasonable and appropriate to administer and collect this transfer assessment.

ARTICLE XII

Rights of Certain Mortgagees and Mortgage Insurers

The provisions within this Article are for the primary benefit of:

- (a) the owners and holders of Institutional Mortgages which are required to satisfy the applicable requirements of FHA, VA, FNMA, FLMC and other similar governmental, quasi-governmental and nationally recognized public and/or private sources of end financing (such mortgagees sometimes collectively referred to herein as "Eligible Mortgagees" and their mortgages referred to as "Eligible Mortgages"); and
- (b) the insurers, guarantors, participants and subsidizers of the Eligible Mortgages, sometimes collectively referred to herein as the "Eligible Insurers".

To the extent applicable, necessary or proper, the provisions of this Article XII apply not only to this Declaration, but also to the Articles of Incorporation and By-Laws of the Association. This Article is supplemental to, and not in substitution of, any other provisions of this Declaration, the Articles of Incorporation and By-Laws, but in the event of ambiguity or conflict, this Article shall control.

Section 1. Notices of Action

An Eligible Mortgagee or Eligible Insurer who provides written request to the Association (such request to state the name and address of such holder, insurer or guarantor and a reasonable description of the Dwelling Unit covered by the Eligible Mortgage) will be entitled to receive timely written notice of:

- (a) any proposed termination of the Association;
- (b) any condemnation loss or any casualty loss which affects a material portion of the Subdivision or which materially affects any Dwelling Unit on which there is an Eligible Mortgage held, insured or guaranteed by such Eligible Mortgagee or Eligible Insurer, as applicable;
- (c) any delinquency in the payment of assessments or charges owed by an Owner of a Dwelling Unit subject to the Eligible Mortgage of such Eligible Mortgagee or Eligible Insurer, where such delinquency has continued for a period of 60 days;
- (d) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; or
- (e) any proposed action which would require the consent of the Eligible Mortgagee as required hereinbelow.

Section 2. Joinder to Documents

In addition to the provisions set forth within Article XIII, Eligible Mortgagees who have requested the Association to notify them concerning any proposed action that requires the consent of a specified percentage of Eligible Mortgagees also have the right to join in the decision making about certain amendments to this Declaration. Amendments of a material nature (as defined below) must be agreed to by: (1) at least 67% of the Dwelling Unit Owners; and (2) the Declarant (during the Development Period) or the Board of Directors of the Association (after conclusion of the Development Period); and (3) Eligible Mortgagees representing at least 51% of the Dwelling Units that are subject to Eligible Mortgages. A substantive change to any of the following are defined as material for purposes of this provision:

- voting rights;
- assessments, assessment liens, or subordination of assessment liens;
- reserves for maintenance, repair and replacement of Common Properties;
- responsibility for maintenance and repairs;
- boundaries of any Lot covered by an Eligible Mortgage;
- convertibility of Dwelling Units into Common Properties or vice versa;
- imposition of any restrictions on a Dwelling Unit Owner's right to sell or transfer his or her Dwelling Unit;
- restoration or repair (after a hazard damage or partial condemnation) in a manner other than that specified herein;

- any action to terminate the legal status of the Subdivision after substantial destruction or condemnation occurs; or
- any provisions that expressly benefit Eligible Mortgagees or Eligible Insurers.

Additions or amendments such as the correction of a technical error or the clarification of a statement shall not be considered or construed as being "material".

If and when the Dwelling Unit Owners are considering termination of the coverage of this Declaration over the Subdivision for reasons other than substantial destruction or condemnation, the Eligible Mortgagees representing at least 67% of the mortgaged Dwelling Units in the Subdivision must agree.

Section 3. Special FHLMC Provision

So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the other Sections of this Article. Unless 2/3rds of the Eligible Mortgagees or Owners give their consent, and subject to the condition that any proposed action of the Association purportedly covered by the following requirements must be material and adverse, the Association shall not:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Properties which the Association owns, directly or indirectly (but the granting of easements for public utilities or for other public purposes consistent with the intended use of the Development shall not be deemed a transfer);

(b) change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;

(c) by act or omission charge, waive or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Dwelling Units and of the Common Properties;

(d) assign any future income of the Association, including the right to receive assessments;

(e) fail to maintain fire and extended coverage insurance on assets owned by the Association, as required by this Declaration; or

(f) Use hazard insurance proceeds for any Common Properties' losses for other than the repair, replacement or reconstruction of such properties.

The provisions of this Section 3 shall not be construed to reduce the percentage vote that must be obtained from Eligible Mortgagees or Owners when a larger percentage vote is otherwise required for any of the actions described in this Section.

Eligible Mortgagees may, jointly and singly, pay taxes or other charges which are in

default and which may or have become a charge against the Common Properties and may pay overdue premiums on casualty insurance policies, or secure new casualty insurance coverage upon the lapse of a policy, for the Common Properties and Eligible Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

Section 4. Approval of Amendments

The failure of an Eligible Mortgagee or Eligible Insurer to respond within 30 days to any written request of the Association for approval of an addition or amendment shall constitute an implied written approval of the addition or amendments.

Section 5. Inspection of Books

The Association shall have current copies of the Declaration, Articles of Incorporation, By-Laws, rules and regulations, books, records and financial statements available for inspection by Dwelling Unit Owners and by Eligible Mortgagees and Eligible Insurers during normal business hours or under other reasonable circumstances.

Section 6. Financial Statements

The Association shall provide any Eligible Mortgagee or Eligible Insurer which submits a written request with a copy of an annual financial statement within 90 days following the end of each fiscal year of the Association.

Section 7. Enforcement

The provisions of this Article are for the benefit of Eligible Mortgagees and Eligible Insurers and their successors and may be enforced by any of them by any available means, at law, or in equity.

Section 8. Attendance at Meetings

Any authorized representative(s) of an Eligible Mortgagee or Eligible Insurer may attend and address any meeting of the Association which an Owner may attend.

Section 9. Annexation

With respect to any annexation of additional lands to the scheme of this Declaration, the following additional provisions shall apply:

- (a) the legal method of expansion shall be generally in accordance with Article II herein;
- (b) the potential annexable property is legally within a one-quarter mile radius of the Subdivision;
- (c) the time limit within which any expansion will take place in the Development Period;

(d) prescribing assessments and/or granting voting rights to the annexed properties shall be generally in accordance with Articles III and V herein;

(e) all improvements intended for future phases will be consistent with the initial improvements in terms of quality of construction; and

(f) the annexation document(s) that will be recorded will likely be a Declaration similar to this document.

ARTICLE XIII

General Provisions

Section 1. Power of Attorney

Each and every Owner, Resident or Member hereby makes, constitutes and appoints Declarant his/her true and lawful attorney-in-fact, coupled with an interest and irrevocable, for him/her and in his/her name, place and stead and for his/her use and benefit, to do the following:

(a) to exercise, do or perform any act, right, power, duty or obligation whatsoever in connection with, arising out of, or relating to any matter whatsoever involving this Declaration and the Properties;

(b) to sign, execute, acknowledge, deliver and record any and all instruments which modify, amend, change, enlarge, contract or abandon the terms within this Declaration, or any part hereof, with such clause(s), recital(s), covenant(s), agreement(s) and restriction(s) as Declarant shall deem necessary, proper and expedient under the circumstances and conditions as may be then existing; and

(c) to sign, execute, acknowledge, deliver and record any and all instruments which modify, amend, change, enlarge, contract or abandon the subdivision plat(s) of the Properties, or any part thereof, with any easements and rights-of-way to be therein contained as the Declarant shall deem necessary, proper and expedient under the conditions as may then be existing.

The rights, powers and authority of said attorney-in-fact to exercise any and all of the rights and powers herein granted shall commence and be in full force upon recordation of this Declaration in the Dona Ana County Clerk's Office and shall remain in full force and effect thereafter until conclusion of the Development Period.

Section 2. Duration

The Covenants of this Declaration shall run with and bind the land subject to this Declaration, and shall inure to the benefit of and be enforceable by the Association and/or the Owner and Resident of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for an original 50 year term expiring on the 50th anniversary of the date of recordation of this Declaration, after which time these Covenants shall be automatically

extended for successive periods of 10 years unless an instrument is signed by the Owners of at least 51% of all Lots within this Subdivision and all the Subdivisions and recorded in the Deed Records of Dona Ana County, New Mexico, which contains and sets forth an agreement to abolish these Covenants; provided, however, no such agreement (where approved by less than 75% of the Owners of all Lots within this Subdivision and all of the Subdivisions) to abolish shall be effective unless made and recorded one (1) year in advance of the effective date of such abolishment.

Section 3. Amendments

The Covenants set forth herein are expressly subject to change, modification and/or deletion by means of amendment at any time and from time to time as provided herein. Notwithstanding Section 3 of this Article, these Covenants may be amended and/or changed in part as follows:

(a) during the Development Period, and in response to any governmental or quasi-governmental suggestion, guideline, checklist, requisite or requirement, particularly with respect to those entities or agencies directly or indirectly involved in, or having an impact on, mortgage financing, mortgage insurance and/or reinsurance, the Declarant shall have the complete and unfettered right and privilege to amend, change, revise, modify or delete portions of these Covenants, and each and every Owner, Resident and Member specifically and affirmatively authorized and empowers the Declarant, utilizing the attorney-in-fact status set forth in Section 1 above, to undertake, complete and consummate any and all such amendments, changes, revisions, modifications or deletions as Declarant (in its sole and absolute discretion) shall deem reasonable and appropriate;

(b) during the Development Period, the Declarant may otherwise amend or change these Covenants by exercising its powers under Article XIII, Section 1 hereinabove or with the direct consent of at least 51% of the Owners of Lots within the Subdivision; and

(c) from and after conclusion of the Development Period, these Covenants may be amended or changed upon the express written consent of the Board and at least 51% of the Owners of Lots within the Subdivision.

Any and all amendments shall be recorded in the Office of the County Clerk of Dona Ana County, New Mexico.

Section 4. Enforcement

Each Owner of each Lot shall be deemed and held responsible and liable for the acts, conduct and omission of each and every Resident, Member, guest and invitee affiliated with such Lot, and such liability and responsibility of each Owner shall be joint and several with their Resident(s), Member(s) guests and invitees. The Payment and Performance Lien shall extend to, cover and secure the proper payment and performance by each and every Resident, Member, guest and invitee affiliated with each Owner. Each Owner may, upon appropriate application to and approval by the Association, impose greater or additional restraints and restrictions on the

"good standing" qualifications of the Residents and Members of such Owner's Lot. Unless otherwise prohibited or modified by law, all personal injuries and property damage proximately caused by the conduct of their children (under the age of 18 years) within the Properties. Enforcement of these Covenants may be initiated by any proceeding at law or in equity against any person or persons violating or attempting to violate them, whether the relief sought is an injunction or recovery of damages, or both, or enforcement of any lien created by these Covenants; but failure by the Association or any Owner to enforce any Covenant herein contained shall in no event be deemed a waiver of the right to do so thereafter. Dona Ana County, New Mexico is specifically authorized (but not obligated) to enforce these Covenants. With respect to any litigation hereunder, the prevailing party shall be entitled to recover all costs and expenses, including reasonable attorney fees, from the non-prevailing party.

Section 5. Validity

Violations of or failure to comply with these Covenants shall not affect the validity of any mortgage, bona-fide lien or other similar security instrument which may then be existing on any Lot. Invalidation of any one or more of these Covenants, or any portions thereof, by a judgment or court order shall not affect any of the other provisions or covenants herein contained, which shall remain in full force and effect. In the event any portion of these Covenants conflicts with mandatory provisions of any ordinance or regulation promulgated by the Governing Body or any applicable municipality (including, without limitation, the Zoning Ordinance) then such municipal requirement shall control.

Section 6. Proposals of Declarant

The proposals of the Declarant, as set forth in various provisions hereinabove, are mere proposals and expressions of the existing good faith intentions and plans of the Declarant and shall not be deemed or construed as promises, solicitations, inducements, contractual commitments or material representations by the Declarant upon which any person or entity can or should rely. Nothing contained in or inferable from this Declaration shall ever be deemed to impose upon any other land owned or to be owned by the Declarant, or any related entity, any covenants, restrictions, easements, liens or to create any servitudes, negative reciprocal easements or other interests in any such land in favor of any person or entity other than the Declarant. Declarant has no control over the development of land parcels adjoining the Properties and Declarant makes no representations of any kind or character concerning those parcels. Each prospective Owner should make his/her own investigation concerning those parcels, and what impact, if any, same may have on the ownership, use and enjoyment of the Properties.

Section 7. Service Mark

Declarant is the exclusive owner, proprietor and/or claimant of a service mark for Edgement Subdivision (referred to as the "Service Mark"). Unless and until a written license agreement has been sought and obtained from the Declarant (and in this connection, Declarant may withhold consent in its sole and absolute discretion), no person or entity may at any time and/or for any reason whatsoever use, depict, draw, demonstrate, reproduce, infringe, copy or

resemble, directly or indirectly, the Service Mark.

Section 8. Headings

The headings contained in this Declaration are for reference purposes only and shall no in any way affect the meaning or interpretation of this Declaration. Words of any gender used herein shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa, unless the context requires otherwise. Examples, illustrations, scenarios and hypothetical situations mentioned herein shall not constitute an exclusive, exhaustive or limiting list of what can or cannot be done.

Section 9. Notices to Residents, Members and Owners

Any notice required to be given to any Resident, Member or Owner under the provisions of this Declaration shall be deemed to have been properly delivered when: (1) deposited in the United States Mail, postage prepaid, addressed to the last known address of the person who appears as the Resident, Member or Owner on the records of the Association at the time of such mailing; or when (2) delivered by hand or by messenger to the last known address of such person within the Properties; or when (3) posted on the Association's bulletin board for at least 30 consecutive calendar days.

Section 10. Notices to Mortgagees

The holder(s) of a mortgage may be furnished with written notification from the Association of any default by the respective mortgage/Member/Owner in the performance of such mortgagor's/Member's/Owner's obligation(s) as established by this Declaration, provided that the Association has been theretofore furnished, in writing, with the correct name and address of such mortgage holder(s) and a request to receive such notification and a reasonable supply of self-addressed, stamped envelopes.

Section 11. Disputes

Matters of dispute or disagreement between Owners, Residents or Members with respect to interpretation or application of the provisions (excluding Article VIII architectural matters and issues concerning "substantial completion") of this Declaration or the Association's By-Laws, shall be determined by the Board of Directors. Matters pertaining to Article VIII architectural matters and issues concerning "substantial completion" shall be determined by the ARC. These respective determinations (absent arbitrary and capricious conduct or gross negligence) shall be final and binding upon all Owners, Residents and Members.

Section 12. Municipal Right of Entry

In the event the Common Properties, ponds and other properties required to be maintained by the Association become neglected, unsightly or in general need of maintenance, the City of Sunland Park, or its agents, upon proper notice to the Association, may, but shall not have the obligation to, enter the property and effect said required maintenance. The City may

require reimbursement of any expenses related to performing the maintenance or repairs. The City shall also have the right to enter the property in the event of any emergency.

WITNESS the hand of an authorized representative of Declarant on the acknowledgment date noted below.

DECLARANT:

McNUTT PROPERTIES, L.L.C.

By: *Andy J. Winton*
Andy J. Winton, Manager

Address:

6300 Escondido
El Paso, TX 79912

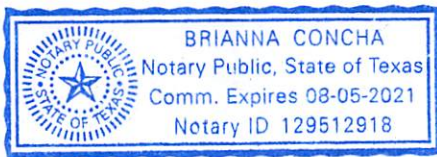
Exhibits:

A - Design Guidelines

THE STATE OF TEXAS
COUNTY OF EL PASO

This instrument was acknowledged before me by the said Andy J. Winton, Manager of McNutt Properties, L.L.C., a New Mexico limited liability company, on behalf of said company, on the 15 day of January, 2017-2018

Brianna Concha
Notary Public in and for said county and state



After recording return to:

McNutt Properties, LLC
c/o Andy J. Winton
6300 Escondido
El Paso, TX 79912

Exhibit "A"
Design Guidelines

1. Dwelling Quality and Size

- a. All dwellings must be of a permanent nature constructed on-site, affixed to a permanent foundation, and no modular home, trailer house or mobile home shall be set upon any Lot within said Subdivision.
- b. No,manufactured homes and no mobile homes may be placed on the Edgemont Subdivision without the prior written consent, except for construction and sales offices during the construction period and sales period, as applicable. All temporary structures used for construction or sales must be approved with regard to location and appearance, and must be removed promptly upon completion of construction or sales, as applicable. All dwellings must be of workmanlike quality using new materials of the same or better quality than those which can be produced on the date these Covenants are recorded and shall be completely finished before occupancy.
- c. Completion must occur within nine (9) months of issuance of a building permit.
- d. Once the dwelling is complete, the landscaping shall be completed in ninety (90) days or less. The quantity of grass shall be in compliance with the then current water conserving requirements of the Governing Body.
- e. Each residence structure shall contain not less than 1,700 square feet of livable space, excluding garages, basements, unconditioned storage areas and covered porches.
- f. No house shall contain more than two (2) stories above ground.
- g. The roof height shall not exceed thirty-four (34) feet from the finish grade of the platted elevation as shown on the approved grading plan, to the top of the highest ridgeline of the roof.
- h. Exterior materials of any dwelling shall be brick, stucco, rock, stone or glass; no exterior wood siding shall be permitted.
- i. Exterior color shall be approved by the ARC; in general, southwestern and subdued earth tone colors shall be used in keeping with the theme of the existing neighborhood.
- j. The dwelling shall, in general, be in a Southwestern style, which includes what is generally described as Southwestern, and would also include what is generally described as Mediterranean, California, Territorial, Spanish Mission, Pueblo and Contemporary Southwestern.

2. Setback Requirements

In addition to setback requirements of ordinances of the City of Sunland Park, it is required that all structures on each Lot shall be set back at least 20 feet in the front (between the Lot and the front street to which the front of the building is deemed primarily to face); 15 feet in the back (opposite the front street to which the building faces; 10 feet on any side street (if the building is on a corner); and 5 feet on the side (next to an adjacent lot). Lots 1-38, Block J may, subject to the City of Sunland Park, have a 15 foot front setback provided the garage face is setback 20 feet from the front property line.