

**DECLARATION OF
COVENANTS,
CONDITIONS AND
RESTRICTIONS**

FOR

**EL MIRADOR
SUBDIVISION**

Amended August 2006

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR EL
MIRADOR SUBDIVISION**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is made and entered into as of the 21st day of November, 1988, by El Mirador Associates Limited Partnership, an Illinois Limited Partnership (herein called "Declarant").

RECITALS

A. Declarant is the record owner of that parcel of real property situated in Doña Ana County, New Mexico, described on Exhibit "A" attached hereto and by reference made a part hereof (the "Parcel").

B. Declarant desires to submit and subject the Parcel, together with all buildings, improvements and other permanent fixtures of whatever kind now or hereafter located thereon, and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto (all of which comprise a part of the "Property" as hereinafter defined), to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights contained herein.

C. Declarant desires that the Property be developed in accordance with a master plan and general scheme of development.

D. Declarant deems it desirable to establish covenants, conditions, and restrictions upon the Property and each and every portion thereof, and certain mutually beneficial restrictions and obligations with respect to the property use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and enhancing the quality of life within the Project.

E. It is desirable for the efficient management of the Project to create an owners' association to which should be delegated and assigned the powers of managing, maintaining and administering the common areas within the Project and administering and enforcing these covenants, conditions and restrictions and collecting and disbursing funds pursuant to the assessments and charges hereinafter created and to perform such other acts as are herein provided or which generally benefit its members, the Project and the owners of any interests therein.

F. El Mirador Homeowners Association, Inc., a non-profit corporation, has been, or will be, incorporated under the laws of the State of New Mexico for the purpose of exercising such powers and functions.

G. Declarant may, but is not obligated to, annex real property to the Parcel in addition to the Parcel, and thereby subject such property to the plan of this Declaration, and to bind the owners of any interests therein to the covenants, conditions and restrictions contained in this Declaration, which owners will become Members of the Association (as hereinafter defined) as provided herein.

H. Declarant desires and intends that the owners, mortgagees, beneficiaries and trustees under trust deeds, occupants and all other persons hereinafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interests subject to, the covenants, conditions and restrictions, liens, assessments, easements, privileges and rights hereinafter set forth, all of which are

declared to be in furtherance of a plan to promote and protect the Project.

NOW THEREFORE, Declarant, for the purposes above set forth, declares that the Property shall hereafter be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights hereinafter set forth, all of which shall run with the land and be binding upon the Property and all parties having or acquiring any right, title or interest in or to the Property, or any part thereof, and shall inure to the benefit of each owner thereof, the Association and each Member of the Association.

1. DEFINITIONS

Unless the context clearly requires otherwise, the following terms used in this Declaration are defined as follows. Defined terms appear throughout this Declaration with the initial letter of such term capitalized.

1.1 "**Annexation of Property**" means any additional real property which is annexed to the Parcel, thereby, becoming a part of the Property and subject to this Declaration, in accordance with Section 13, entitled "Annexation of Additional Property".

1.2 "**Articles**" means the Articles of Incorporation of the Association, as such may be amended from time to time, or of any successor thereto.

1.3 "**Assessments**" shall include the following:

1.3.1 "**Regular Assessment**" means the amount which is to be paid by each Owner as a Member of the Association as such Owner's Proportionate Share of the Common Expenses of the Association, as provided in Section 5.3.

1.3.2 "**Special Assessment**" means a charge against a particular Owner of a Lot, directly attributable to such Owner or Lot, to reimburse the Association for costs incurred in bringing the Owner or the Lot into compliance with the provisions of this Declaration, the Articles, Bylaws, Association Rules or Design Review Guidelines, or any other charge designated as a Special Assessment in this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, together with attorney fees and other charges payable by such Member or Owner pursuant to the provision of this Declaration as provided in Section 5.4.

1.3.3 "**Reconstruction Assessment**" means the amount which is to be paid by each Owner representing such Owner's Proportionate Share of the cost to the Association for reconstruction of any portion of the Common Areas, as provided in Section 7.

1.3.4 "**Capital Improvement Assessment**" means the amount which is to be paid by each Owner representing such Owner's Proportionate Share of the cost to the Association for the installation or construction of any capital improvements on any of the Common Areas which the Association may from time to time authorize pursuant to the provisions of Section 5.5.

1.4 "**Association**" means El Mirador Homeowners Association, Inc., a New Mexico non-profit corporation, its successors and assigns.

1.5 "**Association Rules**" means the rules and regulations adopted by the Association pursuant to Section 3.12.

1.6 "**Board**" means the Board of Directors of the Association.

1.7 "Bylaws" means the bylaws of the Association adopted in accordance with the Articles, as such Bylaws may be amended from time to time, or of any successor thereto. Said Bylaws are attached hereto as Exhibit "B" and by this reference, are made a part of this Declaration.

1.8 "Class A Members" means all the Owners who purchase or otherwise acquire a Lot from the Declarant. Class A Members shall have voting rights as provided for in Section 3.3.1

1.9 "Class B Members" means the Declarant with respect to all the Lots the Declarant owns on the date of the recordation of the El Mirador Subdivision. To the extent the Declarant becomes an Owner of any Lots after the recordation date of the El Mirador Subdivision, the Declarant shall be a Class A Member with respect to its ownership of those Lots. Class B Membership shall have voting rights as provided for in Section 3.3.2.

1.10 "Common Areas" means all real property and the improvements or amenities thereon which comprise the Property, other than the Lots, and which may from time to time be owned or leased by the Association expressly for the common use and enjoyment of the Members or Owners. The Common Areas include, but are not limited to, the Golf facilities, the retention pond, other recreational facilities that may be constructed from time to time by the Declarant or the Association and Private Roads. Any real property, and improvements or amenities thereon, which are described as "common areas" in a Supplemental Declaration shall be deemed to be "Common Areas" as that term is defined herein for the common use and enjoyment of the Members or Owners, as may be provided, and shall, for all purposes, be integrated into and deemed to be a part of the Common Areas subject to this Declaration. The Declarant will convey to the Association all of the common areas, upon completion of construction thereof.

1.11 "Common Expenses" means the actual and estimated costs incurred or to be incurred, as the case may be, by the Association in administering, maintaining and operating the Project, including, but not limited to the following:

(a) maintenance, management, operation, repair, improvements and replacement of the Common Areas, including the Private Roads, and all other areas on the Property which are maintained by the Association,

(b) unpaid Assessments;

© maintenance by the Association of areas within the right-of-way of public streets in the vicinity of the Property as provided in this Declaration or pursuant to agreements with the State of New Mexico, County of Doña Ana or such municipality or political subdivisions thereof having authority to enter into such agreements with respect to such public streets and rights-of-way;

(d) costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees;

(e) the cost of utilities, including but not limited to water, electricity, gas, sewer, trash pick-up and disposal which are provided to the Association or the Property and not individually metered or assessed by Lot, landscaping maintenance and other services which generally benefit and enhance the value and desirability of the Property and which are provided by the Association.

(f) the cost of fire, casualty, liability, workmen's compensation and other insurance covering the Common Areas;

- (g) the costs of any other insurance obtained by the Association;
- (h) reasonable reserves for contingencies, replacements and other proper purposes as deemed appropriate by the Association, which reserve fund shall be adequate to meet the cost and expenses of maintenance, repairs and replacement of those Common Areas which must be maintained, repaired, or replaced on a periodic basis;
- (i) the cost of bonding the members of the Board, Design Review Committee, the officers of the Association, any professional managing agent or any other person handling the funds of the Association.
- (j) taxes paid by the Association;
- (k) amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Areas or portions thereof;
- (l) costs incurred by the Design Review Committee;
- (m) cost incurred by committees established by the Board of Directors;
- (n) cost of security guards, and operation of guard gates and/or key gates at entrances to the Property and the Common Areas from the public streets or Private Roads, and any other security systems or services installed or operated or contracted by the Association; and to other expenses incurred by the Association for any reason whatsoever in connection with the Common Area (except reconstruction costs and capital improvements as otherwise provided herein) or the costs of any other item or times designated by, or to be provided or performed by the Association pursuant to this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, or in furtherance of the purposes of the Association or in the discharge of any duties or powers of the Association.

1.12 "**Declarant**" means the aforementioned Declarant, its successors and assigns.

1.13 "**Declaration**" means this instrument, as from time to time amended.

1.14 "**Design Guidelines**" means the rules, regulations, restrictions, architectural standards and design guidelines from time to time adopted by the Design Review Committee pursuant to Section 10.2 Said Design Guidelines are attached hereto as Exhibit "D" and by this reference are made a part hereof.

1.15 "**Design Review Committee**" means the committee provided for in Section 10, entitled "Architectural and Landscape Control".

1.16 "**Family**" means a single family unit related by blood, adoption, marriage or legal custody.

1.17 "**Fiscal Year**" means the fiscal year as defined in the Bylaws.

1.18 "**Golf Facilities**" means all the Property contained in Block 13 of the El Mirador Subdivision including without limitation the putting green golf course and related facilities and amenities to be constructed within the Project, and all appurtenances thereto, including the maintenance and other buildings, vehicles and equipment associated therewith, and any drive, sidewalk, walkway, path or other right-of-way which is part of or associated therewith.

1.19 "**Golf Course**" means the putting green golf course and the areas extending to the border of each green area.

1.20 "Lot" means a subdivided lot which is part of the Property. A "Lot" shall not include any Common Areas. A "lot" includes the residential dwelling unit, garages, structures and other improvements constructed thereon.

1.21 "Member" means every Person who is a Class A or Class B Member in the Association pursuant to Section 3, entitled "Association".

1.22 "Mortgage" means any recorded, filed or otherwise perfected instrument given in good faith and for valuable consideration which is not a fraudulent conveyance under New Mexico law as security for the performance of an obligation, including without limitation a deed of trust, but shall not include any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code as adopted by the State of New Mexico. "Mortgagee" means the holder of a note secured by a Mortgage, including the trustee and beneficiary under any deed or trust. "Mortgagor" means the party executing a Mortgage. "First Mortgage" means a Mortgage which is the first and most senior of all Mortgages upon the same property. "First Mortgagee" means the holder of a First Mortgage.

1.23 "Occupant" means any Person, other than an Owner, in rightful possession of a Lot, whether as a guest, tenant or otherwise.

1.24 "Owner" means the record owner, whether one or more Persons, of fee simple title to any Lot whether or not subject to any Mortgage but excluding those having such interest merely as security for the performance of an obligation. Where any Lot is sold by means of Articles of Agreement for Deed, Installment Contract or other similar arrangement, the contract purchaser, and not the contract seller, shall be the owner.

1.25 "Parcel" means that parcel of real property referred to in the recitals hereof and described in Exhibit "A" hereto.

1.26 "Person" means a natural person, corporation, partnership, trustee or other entity capable of holding title to real property, and their respective heirs, successors and assigns.

1.27 "Plat" means the plat of subdivision of the Parcel as first recorded in the official records of Dona Ana County, New Mexico and as thereafter from time to time amended supplemented, together with all subsequent plats of subdivision for real property annexed to the Parcel.

1.28 "President" means the duly elected or appointed president of the Association.

1.29 "Private Roads" and "Private Streets" are synonymous and mean any street, roadway, drive, sidewalk, walkway, path or other right-of-way within the Project which has not expressly been dedicated to the public use but excluding any such item which is apart of or appurtenant to the Golf Facilities and excluding any such item which is on or upon a Lot.

1.30 "Project" means the master planned development of the Property, as described in the recital hereof, to be called "El Mirador Subdivision".

1.31 "Property" means the Parcel and any additional real property made subject to this Declaration by annexation pursuant to Section 13, entitled "Annexation of Additional Property", together with all buildings, improvements and other permanent fixtures of whatever kind now or hereafter located

thereon and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto.

1.32 "**Proportionate Share**" means that percentage with respect to each of the Lots set forth in Exhibit "C", attached hereto and by this reference made a part hereof. Said percentage shall not be affected by the actual selling price of the Lot.

1.33 "**Record**" or "**Recording**" means an instrument of record in, or the act of recording an instrument with, the office of the County Recorder for Doña Ana County, New Mexico.

1.34 "**Supplemental Declarations**" means a declaration of covenants, conditions and restrictions, or similar instrument, annexing additional real property to the Parcel and subjecting such real property to this Declaration as provided in Section 13, entitled "Annexation of Additional Property".

1.35 "**Turnover Date**" means the date which shall occur the first of the following: (i) conveyance by Declarant of fee simple title to seventy percent (70%) of all Lots; or (ii) December 31, 1995.

2. RIGHTS OF ENJOYMENT

2.1 **Members' Right of Enjoyment.** Every Member shall have a non-exclusive easement for use and enjoyment in and to the Common Areas, which right shall be appurtenant to and shall pass with such Member's membership as herein provided, and shall be subject to all of the easements, covenants, conditions, restrictions and other provisions contained in this Declaration, including, without limitation, the following provisions:

2.1.1 The right of the Association to limit the number of guests of Members and to limit the use of the Common Areas by Persons who are not Members, but who are in possession of a Lot or own a portion of, or less than the entire ownership interest of a Lot.

2.1.2 The right of the Association to establish reasonable rules and regulations pertaining to or restricting the use of the Common Areas by members or other Persons.

2.1.3 The right of the Association to borrow money for the purpose of improving, replacing, restoring or expanding the Common Areas or adding new Common Areas and, in aid thereof, to mortgage the property comprising said new Common Areas, provided that the rights of the lender thereunder shall be subordinated to the rights of the Members.

2.1.4 The rights of the Association to suspend the right of a Member or any person (including without limitation an Owner or a member of the family of a Member or Owner) to use the Common Areas or any designated portion thereof during any time in which any Assessment respecting such member remains unpaid and delinquent, or for a period not to exceed 60 days for any single infraction of the Association Rules or breach of this Declaration, and up to one year for any subsequent violation of the same or similar provision of the Association Rules of this Declaration, provided that any suspension of such right to use the Common Areas, except for failure to pay Assessments, shall be made only by the President, the Board or a duly appointed committee thereof, after notice and hearing given and held in accordance with the Bylaws. Notwithstanding the foregoing, the Association shall not have the right hereunder to suspend any member or Owner's rights to use any portion of the Property or Private Roads necessary for such Member or any owner to gain access to his Lot.

2.1.5 The right of the Association to permit the use of the Golf Facilities for tournament play or other similar special events or for other social purposes by non-Members as determined by the President or the Board.

2.2 **Delegation of Use.** No Member may delegate his right of use and enjoyment of the Common Areas to any Person, except as provided herein. Subject to the condition, covenants and restrictions and other provisions contained in this Declaration and in the Association Rules, a Member may delegate his right of use and enjoyment of the Common Areas to the members of his Family and to his guests.

2.3 **Waiver of Use.** No Member or Owner may exempt himself, and no Member or Owners shall be exempt, from personal liability for Assessments or release any lot owned by him from the liens, charges and other provisions of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, by voluntary waiver of, or suspension or restriction of such Owner or Member's right to, the use and enjoyment of the Common Areas or the abandonment of such Owner or Member's Lot or membership.

3. ASSOCIATION.

3.1 **Purpose of Association.** The Association has been, or will be, incorporated as a non-profit corporation to serve as the governing body for all of the Owners and Members for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the Project, the assessment of expenses, payment of losses, disposition of casualty insurance proceeds, and other matters as provided in this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Owners and Members in accordance with the provisions of this Declaration, the Articles and Bylaws.

3.2 **Membership of the Association.** Every Owner shall be a Member of the Association and such membership shall automatically terminate when he ceases to be an Owner. The Declarant shall be a Member of the Association for so long as it is an Owner. Any attempt to make a prohibited transfer of a membership in the Association is void and will not be recognized by or reflected upon the books and records of the Association. Prior to an Owner leasing the Lot, the Owner shall deliver to the Association a copy of the lease. No lease of any Lot shall become effective until such condition is complied with. Upon the effective date of the lease, the lessor shall cease to be and the lessee shall become a Member of the association. Upon the expiration or other termination of the lease, the lessor or other Owner of the Lot shall become a Member and the lessee shall cease to be a Member.

3.3 **Voting Rights.** The Association shall have two classes of voting Members:

3.3.1 **Class A Members.** Each Class A Member shall be entitled to one vote for each Lot which he owns. When any Class A Membership is held in the name of two or more individuals, or entities, whether fiduciaries, joint tenants in common, tenants in partnership or in any other manner or joint or common ownership such joint owners shall share among them the right to vote which such right shall be exercised as a whole, and not in part, in the manner which they shall jointly determine; and if such joint Owners fail to determine the manner in which their vote should be cast, their vote shall not be counted. When one joint Owner signs a proxy or purports to vote for his co-Owners, such vote shall be counted and bind all such Owners. The provisions of this paragraph shall apply, insofar

as possible, to the execution of proxies, waivers, consents or objections and for the purpose of ascertaining the presence of a quorum.

3.3.2 **Class B Member.** The Class B Member shall be entitled to three votes for each Lot with respect to which it is an Owner.

3.4 **Pledge of Voting Rights.** Notwithstanding the foregoing, in the event that an Owner has granted an irrevocable proxy or otherwise pledged the voting right appurtenant to the Membership with respect to his Lot to a Mortgagee as additional security, only the vote of such Mortgagee will be recognized if a copy of such proxy or other instrument pledging such vote has been filed with the Association. In the event that more than one such instrument has been filed, the Association shall recognize the rights of the first Mortgagee to so file, regardless of the priority of the Mortgages themselves.

3.5 **Transfer of Membership.** Except as provided in Section 3.4 Association shall not be transferred, pledged or alienated in any way; provided however, that Membership shall automatically be transferred to the new Owner (subject to Section 3.2) upon the transfer of the Lot to which it appertains (and then only to such transferee) whether by sale, intestate succession, testamentary disposition, foreclosures of a mortgage or other legal process transferring fee simple title to such Lot.

3.6 **Assignment of Declarant's Voting Rights.** If any lender to whom the Declarant has assigned, or hereafter assigns, as security all or substantially all of its rights under this Declaration, succeeds to the interests of the Declarant by virtue of said assignment the absolute voting rights of the Declarant as provided in Section 3.1.9 shall be terminated thereby, and such lender shall hold the Declarant's memberships and voting rights on the same terms as they were held by the Declarant pursuant hereto.

3.7 **Board of Directors.**

3.7.1 The affairs of the Association shall be conducted by a Board as herein provided and in accordance with the Articles and Bylaws. Except for directors elected by the Declarant, each director shall be a Member or the spouse of a Member. If a director shall cease to meet such qualification during his term, he will thereupon cease to be a director and his place on the Board shall be deemed vacant.

3.7.2 The Declarant shall have the absolute power and right to appoint and remove the members of the Board until the Turnover Date. After the Turnover Date, the Members of the Association shall have the power and right to appoint and remove the members of the Board as provided in the Articles and Bylaws, Members of the Board appointed by Declarant may, but need not, be Members of the Association.

3.8 **Duties and Powers of the President**

3.8.1 To the extent not prohibited by law, or as otherwise herein expressly limited, including without limitation Section 3.8.2, the President of the Association shall be empowered to exercise control over the affairs of the Association and to act on behalf of, and bind, the Association in every instance wherein the Association is required or permitted to take any action. The action of the President shall at all times be subject to the review of the Board.

3.8.2 Notwithstanding anything in Section 3.8.1 to the contrary, the President shall not have the power to borrow any funds on behalf of the Association, make any expenditures on behalf of the Association which are, in the aggregate, more than 5% in excess of the total amount of the Association's annual budget for the year in which such expenditure are to be made, or increase the amount of or levy any Assessments (except as Special Assessment), without the prior approval of the Board.

3.8.3 The President may appoint such assistants as he deems necessary or appropriate. No compensation shall be paid to the President or any assistant except as provided in the Association's budget or as otherwise approved by the Board.

3.8.4 Any right or power herein given or delegated to the President which cannot be exercised by the President, whether by reason of law or otherwise, shall be deemed to be a right or power to be exercised by the Board.

3.9 President's Determination Binding. In the event of any dispute or disagreement between any Owners, Members, or any other Person subject to this Declaration, relating to the Project, or any question or interpretation or application of the provisions of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, the determination thereof by the President shall be final and binding on each and all of such Owners, Members or Persons. The President may, at his election, delegate the resolution of such dispute or disagreement to the Board or a committee appointed by the President.

3.10 Approval of Members. Unless elsewhere otherwise specifically provided in this Declaration, the Articles or Bylaws, any provision of this Declaration, the Articles or Bylaws which requires the vote or written consent of the Members of the Association or any class or classes of membership shall be deemed satisfied by the following:

(a) The vote in person or by proxy of the specified percentage of Members at a meeting duly called and noticed pursuant to the provisions of the Articles or Bylaws dealing with annual or special meetings of the Members.

(b) Written consents to such action signed by all Members of the Association. When any Class A Membership is held in the name of two or more individuals or entities, whether fiduciaries, joint tenants, tenants in common, tenants in partnership or in any other manner or joint or common ownership, such joint owners shall share among them the right to consent, which such right shall be exercised as a whole and not in part, in the manner which they shall jointly determine and if such joint Owners fail to determine whether their consent shall be given, their consent shall not be counted.

3.11 Additional Provisions in Articles and Bylaws. The Articles and Bylaws may contain any provision relating to the conduct of the affairs of the Association and the rights and powers of its directors, officers, employees, agents and members not inconsistent with the law or this Declaration.

3.12 Association Rules. The Board shall be empowered to adopt, amend or repeal such rules and regulations it deems reasonable and appropriate (the "Association Rules") binding upon all Persons subject to this Declaration and governing the use and occupancy of the Common Areas or any other part of the Project. The Association Rules may include the establishment of a system of fines and penalties enforceable as Special Assessments. The Association Rules shall govern such matters in furtherance of the purposes of the Association including, without limitation, the use of the Common

Areas provided however that the Association Rules may not discriminate among Owners and Members except as expressly provided or permitted herein and shall not be inconsistent with this Declaration, the Articles, Bylaws or Design Guidelines. A copy of the Association Rules as they may from time to time be adopted, amended or repealed or a notice setting forth the adoption, amendment or repeal, shall be available at the principal office of the Association to each Owner, Member or other Person reasonably entitled thereto, upon request. In the event of any provisions of this Declaration, or the Articles, Bylaws or Design Guidelines, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles, Bylaws or Design Guidelines to the extent of any such conflict.

3.13 Indemnification. To the fullest extent permitted by law, every director and every officer of the Association and the members of the Design Review Committee and the Declarant shall be indemnified by the Association and every other person serving as an employee or direct agent of the Association, or on behalf of the Association as a member of a committee or otherwise may, in the discretion of the board be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having served in such capacity on behalf of the Association (or in the case of the Declarant without limitation by reason of having appointed, removed or controlled or failed to control members of the Board or the Design Review Committee) or any settlement thereof, whether or not he is a director, officer or member of the Design Review Committee or serving in such other specified capacity at the time such expenses are incurred, provided that the Board shall determine, in good faith, that such officer, director, member of the Design Review Committee or other person, or the Declarant did not act, fail to act, or refuse to act willfully or with gross negligence or fraudulent or criminal intent in the performance of his duties. The foregoing rights or indemnification shall be in addition to and not exclusive of all other rights to which such persons may be entitled at law or otherwise.

3.14 Non-liability of Officials. To the fullest extent permitted by law, neither Declarant, the Board, its officers, the Design Review Committee or any other committees of the Association nor any member thereof, not any directors or officers of the Association, shall be liable to any Member, Owner, Occupant, the Association or any other Person for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective) course of action, act, inaction, omission, error, negligence, or the like made in good faith and which Declarant, the President, the Board, or such committees or persons reasonably believed to be within the scope of their respective duties.

3.15 Easements. In addition to the blanket easements granted in Section 4.1, the Association is authorized and empowered to grant upon, across or under real property owned or controlled by the Association such permits, license, easements and rights-of-way for sewer lines, water lines, underground conduits, storm drains, television cable and other similar public or private utility purpose, roadways or other purposes as may be reasonably necessary and appropriate for the orderly maintenance, preservation and enjoyment of the Common Areas or for the preservation of the health, safety, convenience and welfare of the Owners and Members, provided that any damage to a Lot resulting from such grant shall be repaired by the Association at its expense.

3.16 Accounting. The Association at all times shall keep or cause to be kept true and correct records of account in accordance with generally accepted accounting principles and shall have available for the inspection of all Owners and Members at reasonable times during Regular business hours such books

which shall specify in reasonable detail all expenses incurred and funds accumulated from Assessments or otherwise.

3.1.7 **Records.** The Association shall, upon reasonable written request and during reasonable business hours, make available for inspection by each Owner and Member the books, records and financial statements of the Association together with current copies, as amended from time to time, of this Declaration and the Articles, Bylaws, Association Rules and Design Guidelines. Notwithstanding the foregoing to the contrary, until the Turnover Date, the Association shall not be required to make its books and records available for inspection except as required by law. The Declarant shall be under no obligation to make its own books and records available for inspection by any Owner, member or other person or entity.

3.1.8 **Managing Agent.** All powers, duties and rights of the Association, the President or the Board, as provided by law and herein, may be delegated to a managing agent under a management agreement provided, however, that no such delegation shall relieve the Association of its obligation to perform any such delegated duty. Any agreement for professional management or any other contract providing for services of the Declarant or any other party, shall not exceed a term of three years, which term may be renewed by agreement of the parties thereto for successive one-year periods, and shall further provide for termination by either party with or without cause and without payment of a termination fee upon 90 days written notice.

3.1.9 **Declarant's Control of Association.** Notwithstanding anything in this Declaration to the contrary, the Declarant shall maintain absolute control over the Association, including appointment of the President, the members of the Board, and the members of the Design Review Committee, until Turnover Date, only the Declarant will be entitled to cast any vote with respect to the election of directors to the Board, removal of directors or any other matter requiring the approval of the Members except referenda of the Members with respect to certain provisions of this Declaration as set forth in Section 5.5 and 16.5. The Declarant voluntarily may (but shall not be required to) permit the Members to assume control of the Association at any time. On the Turnover Date, or as soon thereafter as is practical, the Declarant will relinquish control of the Association to the other Members and the Members shall hold their first meeting as provided in the Bylaws.

4. **EASEMENTS**

4.1 **Blanket Easements.** There is hereby created a blanket easement upon, across, over and under the Property for ingress and egress (over roadway), installing, constructing, replacing, repairing, maintaining and operating all utilities, including but not limited to water, sewer, gas, television cable, security systems, and communication lines and systems, and in addition thereto for the use of emergency vehicles of all types. By virtue of the easement, it shall be expressly permissible for the providing utility company to erect (including without limitation underground installation) and maintain the necessary facilities, wires, circuits, conduits, cables, and related appurtenances, facilities and equipment on the Property. Notwithstanding anything to the contrary contained in this Section, no easement shall be created nor shall any sewer, electrical lines, water lines or other facilities for utilities be installed or relocated except as initially created and approved by the Declarant or, subsequent to the Turnover Date, created or approved by the Association. This provision shall in no way affect any other recorded easements on the Property.

4.2 **Use of Common Areas.** Except for the use limitations provided in Section 4.3, each Member shall

have the nonexclusive right to use the Common Areas in common with all other Members as required for the purpose of access and ingress and egress to (and use, occupancy and enjoyment of) any Lot owned by such Owner or member or to the Golf Facilities or other Common Areas available for the use of said Owner or Member. Such right to use the Common Areas for purpose of access and ingress and egress shall subject to the Association Rules, extend to each Owner, member, Occupant and the agents, servants, tenants, family members and invitees of each Owner or Member. Such right to use the Common Areas shall be perpetual and appurtenant to each respective Lot, subject to and governed by the provisions of this Declaration, the Articles, Bylaws and Association Rules and such reasonable limitations and restrictions as may from time to time be contained therein.

4.3 Exclusive Use Rights. Certain areas of the Common Areas may be reserved by the Board for the exclusive control, possession and use of the Owner of a Lot. If such an area serves as access to and from two Lots, the Owners of the two Lots shall have joint control, possession and use of such portion of said area as reasonably serve both Lots. The exclusive use rights created herein are subject to the blanket utility easement, maintenance, and architectural and landscape control provision contained in this Declaration and to such reasonable rules and regulations with respect to possession, control, use and maintenance as the Association may from time to time promulgate. Easements are hereby created in favor of and running with each Lot having such an area for the exclusive control and use of each such area. Each owner, by accepting title to a Lot, and each member shall be deemed to have further ratified the easements and rights to exclusive use created by this Section 4.3.

5. ASSESSMENTS

5.1 Creation of Lien and Personal Obligation. Each Owner, by acceptance of a deed or other conveyance of an interest in a Lot, and by acceptance of his membership, is deemed to covenant and agree to pay to the Association Regular Assessments, Special Assessments, Capital Improvement Assessments, and Reconstruction Assessments, if applicable, such Assessments to be established and collected from time to time as provided in this Declaration. The Assessments, together with interest thereon, late charges, attorneys' fees and court costs, and other costs of collection thereof, as hereinafter provided, shall be continuing lien upon such Owner's Lot (or combined Lots as provided in Section 11.14) against which the Assessments are made. Each Assessment, together with such interest and others costs, shall also be the personal obligation of the Owner to whom such Assessment relates. The personal obligation for delinquent payments shall not pass to an Owner's successor unless expressly assumed by him. The obligation of the Owner of the Lot to which such membership appertains for the payment of Assessments shall be joint and several.

5.2 Purpose of Assessments. The Assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the Owners and Members, to enhance the quality of life within the Project, to preserve the value of the Property, to pay the costs of administration of the Association and all other Common Expenses, or to otherwise further the interests of the Association. Where a Lot has separate gas, electrical, sewer or other similar utilities service, the cost of the same shall be the personal obligation of each Owner. Maintenance of sewer lines serving a single Lot shall be the responsibility of its Owner.

5.3 Regular Assessments.

5.3.1 Except as otherwise specifically provided herein (including without limitation in Section 5.3.4), each Owner shall pay as his Regular Assessment such Owner's Proportionate Share of the

Common Expenses. Except as otherwise specifically provided herein, payment of Regular Assessments shall be in such amounts and at such times as may be provided in the Articles and Bylaws or as determined by the Association.

5.3.2 Not later than 60 days prior to the beginning of each Fiscal Year of the Association, the Association shall make available for review by each Owner at the Association's office during reasonable times, a pro forma operating statement or budget for the upcoming Fiscal Year which shall, among other things, estimate the total Common Expenses to be incurred for such Fiscal Year. Subject to the provision of Section 6.3.4, the Association shall at that time determine the amount of the annual Regular Assessment to be paid by each Owner for the Fiscal Year and notify the Owner thereof. Each Owner shall thereafter pay to the Association his annual Regular Assessment in equal monthly installments. Each such installment shall be due and payable on the date set forth in the written notice sent to Owners.

5.3.3 If at any time during a Fiscal Year, the Association determines that the total Regular Assessments for the current year are, or will become, inadequate to meet all Common Expenses for whatever reason, including Common Expenses, in excess of the estimated Common Expenses used in preparation of the association budget for that year, the President shall then immediately determine the approximate amount of such inadequacy and with the consent of the Board, issue a supplemental estimate for the Common Expenses and determine the revised amount of annual Regular Assessments to be paid by each Owner for the balance of the year, and the date or dates when due. In the event that the estimated total Regular Assessments for any Fiscal Year proves to be excessive in light of the actual Common Expenses, the Association may, at the discretion of the Board, retain such excess as additional working capital or reserves, reduce the amount of the Regular Assessments for the succeeding year, or abate collection of Regular Assessments for such period as it deems appropriate. No reduction or abatement of Regular Assessments because of any such anticipated surplus may diminish the quantity or quality of services upon which the Common Expenses for the year in question are based.

5.3.4 For the first Fiscal Year of the Association during which Regular Assessments are payable, the Regular Assessments for each Owner shall be \$35.00 per month (said monthly installment herein called the "Base Assessment"). Thereafter, the Regular Assessments may be increased annually for each Fiscal Year of the Association, as determined by a majority vote of the Board of Directors and approval by a majority of the Members at an Annual Members Meeting provided that printed notice be given to all Members stating the place, day and hour of meeting and purpose of said meeting.

5.4 Special Assessments. Special Assessment shall be levied by the Association against an Owner and his Lot to reimburse the Association for:

5.4.1 Costs incurred in bringing an Owner and his Lot into compliance with the provisions of this Declaration, or the Articles, Bylaws, Association Rules or Design Guidelines;

5.4.2 Any other charge designated as a Special Assessment in this Declaration, the Articles, Bylaws or Association Rules; and

5.4.3 Fines levied or fixed by the Board under Section 11.8 or as otherwise provided herein.

5.4.4 Attorneys' fees, interest, and other costs or charges provided to be paid as, or which are incurred in connection with, a Special Assessment in accordance with this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines.

In the event the Association undertakes to provide materials or services which benefit individual Owners or Lots and which can be accepted or not by individual Owners, such Owners, in accepting such materials or services agree that the costs thereof shall be a Special Assessment.

5.5 Capital Improvement Assessments. In addition to the Regular Assessments, the Association may levy in any Fiscal Year after the Turnover Date, a Capital Improvement Assessment applicable to that Fiscal Year only, for the purpose of defraying, in whole or in part, any action or undertaking on behalf of the Association in connection with, or the cost of, any construction or replacement of a described capital improvement upon the Common Areas, including the necessary fixtures and personal property related thereto, to the extent the same is not covered by the provisions affecting Reconstruction Assessments in Section 7 entitled "Damage and Destruction of Common Areas." Without the affirmative vote of more than 50% of the Class A Members, the Association shall not impose a Capital Improvement Assessment in an amount which in any one year exceeds five percent (5%) of the estimated annual Common Expenses. Any reserves collected by the Association for the future maintenance and repair of the Common Areas, or any portion thereof, shall not be included in determining the foregoing limitation on any annual Capital Improvement Assessment. All amounts collected as Capital Improvements Assessments may only be used for capital improvements and shall be deposited by the Association in a separate bank account to be held in trust for such purposes. Said funds shall not be commingled with any other funds of the Association and shall be deemed a contribution to the capital account of the Association by the Owners.

5.6 Exempt Property. All properties dedicated to and accepted by, or otherwise owned or acquired by, a public authority shall be exempt from the Assessments created herein, from and after the date of such acceptance or acquisition.

5.7 Date of Commencement of Regular Assessments. The Regular Assessments shall commence as to each particular Owner on the first day of the month following the later of (a) the date of the certification to the Association by Declarant's architect that the Golf Facilities have been substantially completed; or (b) the date of conveyance to the Owner of the Lot to which the Regular Membership appertains.

5.8 Time and Manner of Payment: Late Charges and Interest. Assessments shall be due and payable by the Owner in such manner and at such times as the Association shall designate. If not paid within ten days after its due date, each such Assessment shall have added to it a late charge equal to 10% of the amount delinquent. The Association may, in its discretion and without waiving the imposition of a late charge in any other instance, waive the late charge in any particular instance. A delinquent Owner shall also be liable for attorneys' fees and other related costs incurred by the Association as a result of such delinquency, and if any suit, action or arbitration proceeding is brought to collect any such Assessment or charge, then there shall be added to the amount thereof costs of suit and reasonable attorneys' fees to be fixed by the court and included in any judgement or award rendered thereon.

5.9 No Offset. All Assessments shall be payable in the amount specified in the Assessment or notice of Assessment and no offsets against such amount shall be permitted by any reason, including, without

limitation, a claim that (a) the Association, the Board, the President or the Declarant is not properly exercising its duties and powers as provided in this Declaration; (b) Assessments for any period exceed Common Expenses; or (c) a Member has made, and elects to make, no use of the Common Areas.

5.10 Homestead Waiver. Each Owner, to the extent permitted by law, hereby waives, to the extent any liens created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, the benefit of any homestead or exemption laws of the State of New Mexico now in effect, or in effect from time to time hereafter.

5.11 Reserves. The reserves included in the Common Expenses which are collected as part of the Regular Assessments shall be deposited by the Association in a separate bank account to be held in trust of the purpose for which they are collected and are to be segregated from any other funds of the Association, except to the extent that the Association's regularly employed accountant deems it desirable to do otherwise on the basis of standard accounting principles in similar contexts or the laws, tax or otherwise, of the State of New Mexico or the United States relating to non-profit corporations or homeowner's associations. Such reserves shall be deemed a contribution to the capital account of the Association by the Owners. This responsibility of the Board (whether while controlled by the Declarant or the Members) shall be only to provide for such reserves as the Board in good faith deems reasonable, and neither the Declarant, the Board nor any member thereof shall have any liability to any Owner to the Association if such reserves prove to be inadequate.

5.12 Subordination of Lien. Any lien which arises against a Lot by reason of the failure or refusal of an Owner to make timely payment of any Assessment shall be subordinate to the lien of a prior recorded First Mortgage on the Lot, acquired in good faith and for value, except for the amount of the unpaid Assessment which accrues from and after the date on which a First Mortgage comes into possession of or acquires title to the Lot, whichever occurs first (together with any interest, costs, reasonable attorneys' fees and any late charges related thereto), and if any lien for unpaid Assessments prior to the date the First Mortgagee comes into possession of or acquires title to the Lot has not been extinguished by the process by which such First Mortgagee came into possession of or acquired title to the Lot, such First Mortgagee shall not be liable for unpaid Assessments arising prior to the aforesaid date and upon written request to the Association by such First Mortgagee, such lien shall be released in writing by the Association. Any unpaid Assessments which are extinguished pursuant to the foregoing sentence shall continue to be in the personal obligation of the delinquent Owner and may also be re-allocated by the Association among all Owners as part of the Common Expenses.

5.13 Certificate of Payment. Any person acquiring an interest in any Lot shall be entitled to a certificate from the Association setting forth the amount of due but unpaid Assessments relating to such Lot, if any, and such person shall not be liable for, nor shall any lien attach to the Lot in excess of, the amount set forth in the certificate, except for Assessments which occur or become due after the date thereof and any interest, costs, attorneys' fees and any late charges related to such Assessments. Nothing herein shall be construed as requiring that the Association take any action required hereunder in any particular instance, but the failure of the Association to take such action at any time shall not constitute a waiver of the right to take such action at a later time or in a different instance.

5.14 Enforcement of Lien. The lien provided for in this Section 5 may be foreclosed by the Association in any manner provided or permitted for the foreclosure of realty mortgages or deeds of trust in the State of New Mexico. All of the provisions of this Section 5 relating to the enforcement of the lien provided for herein (including without limitation the subordination provision in Section 5.12 or

the provisions of this Section 5.14) shall apply with equal force in each other instance provided for in the Declaration, the Association Rules or Design Guidelines wherein, it is stated that payment of a particular Assessment, charge or other sum shall be secured by the lien provided for in this Section 5. Nothing herein shall be construed as requiring that the Association take any action required hereunder in any particular instance, and the failure of the Association to take such action at any time shall not constitute a waiver of the right to take action at a later time or in a different instance.

5.15 Pledge of Assessment Rights as Security. The Association shall have the power to pledge the right to exercise its Assessment powers and rights provided for in this Declaration as security for any obligation of the Association; provided, however that any such pledge shall require the prior affirmative vote or written consent of a majority of all Class A Members. The Association's power to pledge its Assessment powers shall include, but not be limited to, the ability to make an assignment of Assessments which are then payable to, or which will become payable to, the Association; which assignment may then be presently effective but shall allow said Assessment to continue to be paid to the Association and used by the Association as set forth in this Declaration, unless and until the Association shall default on its obligation secured by said assignment.

5.16 Exemption of Unsold Lots. Notwithstanding anything in this Section 5, to the contrary, prior to the Turnover Date, no Regular Assessment shall be levied upon, or payable with respect to, any Lot owned by the Declarant, or an affiliate of the Declarant or any partner (or such partner's successors, heirs or devisees) in the Declarant to whom the Lot has been distributed by the Declarant (as distinguished from having been purchased by the partner), or by Declarant for any of the aforesaid persons, until such Lot has been conveyed by the Declarant (or said affiliate or partner) to a non-affiliated purchaser thereof or Declarant leases such Lot.

6. INSURANCE

6.1 Authority to Purchase. The Association shall purchase and maintain certain insurance upon the Common Areas including but not limited to the insurance described in Section 6.3. Such policies, and endorsements thereon, or copies thereof shall be deposited with the Association. The Association shall advise the Owners of the coverage of said policies in order to permit the Owners to determine which particular items are included within the coverage so that the Owners may insure themselves as they see fit if certain items are not insured by the Association.

6.2 Owner's Responsibility. It shall be each Owner's responsibility to provide for himself insurance on his own Lot, his additions and improvements thereto, furnishings and personal property therein, his personal property stored elsewhere within the Project, his personal liability to the extent not covered by the public liability insurance obtained by the Association and such other insurance which is not carried by the Association as the Owner desires. No Owner shall maintain any insurance, whether on his Lot or otherwise, which would limit or reduce the insurance proceeds payable under the casualty insurance maintained by the Association in the event of damage to the improvements or fixtures on the Common Areas.

6.3 Coverage. The Association shall maintain and pay for policies of insurance as follows:

6.3.1 A multi-peril type policy covering all of the Common Areas providing, as a minimum, fire and extended coverage, and all other coverage in kinds and amounts customarily acquired or required for projects similar in construction, location and use, including, without limitation, perils normally

covered by an "all risk" policy, in an amount determined by the Association.

6.3.2 A policy of comprehensive public liability insurance covering all of the Common Areas in an amount determined by the Association but not less than \$1,000,000.00 per occurrence, for personal injury or death and/or property damage. The scope of such coverage shall include all other coverage in the kinds and amounts customarily acquired or required for projects similar in construction, location, and use, including, without limitation, liability for nonowned and hired automobiles, liability for property of other, liability arising in connection with the operation, maintenance or use of the Common Areas, liability assumed by contract or contractual liability, and liability arising out of any employment contracts of the Association.

6.3.3 A workmen's compensation policy, if necessary to meet the requirements of law.

6.3.4 Such other insurance, and in amounts, as the Association shall determine from time to time to be desirable, including, without limitation, a policy of "directors and officers" liability insurance. And fidelity bond coverage against dishonest acts on the part of directors, officers, managers, trustees, agents, employees or volunteers responsible for handling funds belonging to or administered by the Association.

6.4 **Required Provisions.** The insurance policies purchased by the Association shall, to the extent reasonable and available, contain the following provisions:

6.4.1 The coverage afforded by such policies shall not be brought into contribution or proration with any insurance which may be purchased by any Owner, member or First Mortgagee.

6.4.2 The conduct of any one or more Owners or members shall not constitute grounds for avoiding liability on any such policies.

6.4.3 There shall be no subrogation with respect to the Association, its agents or employees, the Declarant, its partners, agents or employees. Owners, Members, or members of their household or families and employees, and each Mortgagee of all or any part of the Property or of any Lot, or the policy(ies) should name said persons as additional insureds; and, each policy must contain a waiver of any defenses based on co-insurance or on invalidity arising from the acts of the insured.

6.4.4 A "severability of interest" endorsement shall be obtained which shall preclude the insurer from denying the claim of an Owner or Member because of the conduct or negligent acts of the Association and its agents or other Owners or Members.

6.4.5 Any "no other insurance" clause shall exclude insurance purchased by Owners, Members or Mortgagees.

6.4.6 Coverage must not be prejudiced by (a) any act or neglect of Owners or Members when such act or neglect is not within the control of the Association or (b) any failure of the Association to comply with any warranty or condition regarding any portion of the Project over which the Association has no control.

6.4.7 Coverage may not be canceled or substantially modified without at least 30 days' (or such lesser period as the Association may reasonably deem appropriate) prior written notice to the

Association.

6.4.8 Any policy of property insurance which gives the carrier the right to elect to restore damage in lieu of a cash settlement must provide that such election is not exercisable without the prior written approval of the Association, or when in conflict with the insurance trust provisions contained herein, or any requirement of law.

6.4.9 Any insurance trust agreement entered into by the Association shall be recognized.

6.4.10 Each hazard insurance policy shall be written by a hazard insurance carrier such has a financial rating as designated in Best's Key Rating Guide of B+ or better, or if such rating service be discontinued, an equivalent rating by a successor thereto or a similar such rating service. Each insurance carrier must be specifically licensed or authorized by law to transact business within the State of New Mexico. In the event that a satisfactory policy cannot be attained from a carrier licensed or authorized to transact business in New Mexico, a policy may be written on a surplus line basis, if such policy complies with the laws of the State of New Mexico.

6.4.11 Policies shall not be utilized where, under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against the Owners, Members or the Association or loss payments are contingent upon action by the carrier's board of directors, policyholders, or members.

6.5 **Non-Liability of Association/Board/Officers.** Notwithstanding the duty of the Association to obtain insurance coverage as stated herein, neither the Association nor any Board member nor the officers of the Association nor the Declarant shall be liable to any Owner, member, Mortgagee or other Person if any risks or hazards are not covered by insurance or if the amount of insurance is not adequate, and it shall be the responsibility of each Owner to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for such additional insurance coverage and protection as the Owner may desire.

6.6 **Premiums.** Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that the amount of increase over any annual or other premium occasioned by the use, misuse, occupancy or abandonment of a Lot or its appurtenances, or the Common Areas, by an Owner, shall be assessed against that particular Owner.

6.7 **Insurance Claims.** The Association is hereby irrevocably appointed and authorized, subject to the provisions contained herein, to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The President of the Association has full and complete power to act for the Association in this regard and may, at his discretion, appoint an authorized representative, or enter into an insurance trust agreement wherein the trustee shall have authority to negotiate losses under any policy purchased by the Association.

6.8. **Benefit.** Except as otherwise provided herein, all insurance policies purchased by the Association shall be for the benefit of, and any proceeds of insurance received by the Association or any insurance trustee shall be held or disposed of in trust for, the Association, the Declarant, the Owners or the Members, as their interests may appear.

7. DAMAGE AND DESTRUCTION OF COMMON AREAS.

7.1. Duty of Association. In the event of partial or total destruction of the Common Areas, or any improvements thereon, it shall be the duty of the Association to restore and repair the same as promptly as practical pursuant to this Section 7. The proceeds of any casualty insurance maintained pursuant to this Declaration shall be used for such purpose, subject to the prior rights of Mortgagees whose interest may be protected by said policies.

7.2. Automatic Reconstruction. In the event that the amount available from the proceeds of any insurance policies for such restoration and repair, together with any uncommitted or unreserved capital of the Association shall be at least 25% of the estimated cost of restoration and repair, a Reconstruction Assessment against each Owner in its Proportionate Share, may be levied by the Association to provide the necessary funds for such Reconstruction in excess of the amount of the funds available for such purpose. The Association shall thereupon cause the damaged or destroyed Common Areas to be restored to substantially the condition the Common Areas were in prior to the destruction or damage.

7.3. Vote of Members. In the event that the amount available from the proceeds of any insurance policies for such restoration and repair, together with any uncommitted or unreserved capital of the Association, shall be less than 25% of the estimated cost of restoration and repair, the Common Areas shall be replaced or restored unless two-thirds of the Members, at a special meeting held for such purpose, disapprove of such replacement or restoration. If the Owners do not disapprove the proposed replacement or restoration, the Association shall levy a Reconstruction Assessment against each Owner in its Proportionate Share, and cause the damaged or destroyed Common Areas to be restored as closely as practical to its former condition prior to the destruction or damage. If the Owners disapprove of the repair or restoration of the damaged or destroyed improvements on the Common Areas as provided above, the Common Areas so damaged or destroyed shall be cleared and landscaped for such common use as shall be determined by the Association and the costs thereof shall be paid with the insurance proceeds.

7.4. Excess Insurance Proceeds. In the event any excess insurance proceeds remain after any reconstruction by the Association pursuant to this Section, the Association, in its sole discretion, may retain such sum in the general funds of the Association or may distribute all or a portion of such excess to the Owners in their Proportionate Shares, subject to the prior rights of Mortgagees whose interests may be protected by the insurance policies carried by the Association. The rights of an Owner or the Mortgagee of a Lot as to such distribution shall be governed by the provisions of the Mortgage encumbering such lot.

7.5. Use of Reconstruction Assessments. All amounts collected as Reconstruction Assessments shall only be used for the purposes set forth in this Section 7 and shall be deposited by the Association in a separate bank account to be held in trust for such purposes. Such funds shall not be commingled with any other funds of the Association and shall be deemed a contribution to the capital account of the Association by the Members. Any Reconstruction Assessment shall be secured by the lien provided for in Section 5.

7.6. Contract for Reconstruction. In the event the Association undertakes the repair and restoration of the Common Areas, the Association shall contract with a licensed contractor or contractors who may be required to post a suitable performance or completion bond. The contract with such

contractor or contractors shall provide for the payment of a specified sum for completion of the work described therein and shall provide for periodic disbursements of funds, which shall be subject to the prior presentation of an architect's, or similar, certificate containing such provisions as may be appropriate in the circumstances and deemed suitable by the Association.

7.7. **Insurance Proceeds Trust.** Upon receipt by the Association of any insurance proceeds, the Association may cause the insurance proceeds to be paid directly to a bank, saving and loan association, or trust company located in Doña Ana County, New Mexico, as designated by the Association as trustee (the "Insurance Trustee"). Such funds shall be received, held and administered by the Insurance Trustee subject to a trust agreement consistent with the provisions of the Declaration and which shall be entered into between the Insurance Trustee and the Association. Disbursements to contractors performing any repair or Reconstruction upon the Property shall be made periodically as the work progresses in a manner consistent with procedures then followed by prudent lending institutions in Doña Ana County, New Mexico.

8. **EMINENT DOMAIN.**

8.1. **Definition of Taking.** The term "taking" as used in this Section 8 shall mean condemnation by eminent domain or sale under threat of condemnation of all or any portion of the Common Areas.

8.2. **Representation in Condemnation Proceedings.** In the event of a threatened taking of all or any portion of the Common Areas, the Owners hereby appoint the Association through such persons as the Board may delegate to represent all of the Owners in connection therewith. The Association shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action.

8.3. **Award for Common Areas.** Any awards received by the Association on account of the taking of Common Areas shall be paid to the Association. The Association may, in its sole discretion, retain any award in the general funds of the Association or distribute all or any portion thereof to the Owners. The rights of an Owner and the Mortgagee of his Lot as to any distribution shall be governed by the provisions of the Mortgage encumbering such Lot.

9. **MAINTENANCE, REPAIRS AND REPLACEMENTS.**

9.1. **Owners Responsibility.** Each Owner shall furnish and be responsible for, at his own expense, of all of the maintenance, repairs and replacements within his own Lot.

9.2 **Maintenance of Common Areas.** Except as otherwise provided herein, maintenance, repairs and replacements of the Common Areas shall be furnished by the Association as part of the Common Expenses, subject to the Bylaws and Association Rules. The Association shall maintain all landscape areas in accordance with the maintenance program provided by the Declaration to maintain all common area landscaping in a first class condition with plantings including all lawn and greens areas in a healthy, vigorously growing condition. All areas shall be kept reasonably weed-free, and diseased or otherwise unhealthy plants shall be promptly removed and replaced.

Professional services of a university horti-culturalist, a landscape architect, or both shall be retained by the Association. Such person(s) shall make a written report at least twice a year giving

advice about the condition of the common area landscaping. Such report shall, as a minimum report on, make recommendations for irrigation, pest and disease control, fertilization and removal or additions of plantings. Such person(s) shall make recommendations for adjustments in the maintenance program. If, due to the act or neglect of an Owner of the invitee, guest or other authorized visitor of an Owner, or an Occupant of such Owner's Lot, damage shall be caused to the Common Areas or to a Lot or Lots owned by others, or maintenance, repairs or replacement shall be required which would otherwise be a Common Expense, then such Owner shall pay for the damage and for such maintenance, repairs and replacements as may be determined necessary or appropriate by the Association, to the extent not covered by the Association's insurance. Such obligation shall be a Special Assessment secured by the lien provide for in Section 5.

9.3. **Right of Access.** An authorized representative of the Association, and all contractors, repairmen or other agents employed or engaged by the Association, shall be entitled to reasonable access to each of the lots as may be required in connection with maintenance, repairs or replacements of or to the Common Areas of any equipment, facilities or fixtures affecting or serving other Lots and the Common Areas, or to perform any of the Association's duties or responsibilities hereunder.

10. **ARCHITECTURAL AND LANDSCAPE CONTROL.**

10.1. **Appointment of Design Review Committee.** The Association shall have a Design Review Committee consisting of not less than three nor more than five persons, as specified from time to time in the Design Guidelines by resolution of the Board. The Declarant shall initially appoint the members of the Design Review Committee. The Declarant shall retain the right to appoint, augment or replace all member of the Design Review Committee until the Turnover Date. Thereafter, members of the Design Review Committee shall be appointed by the Board. Persons appointed to the Design Review Committee, other than those persons appointed by Declarant must be Members or satisfy such other requirements as may be set forth in the Design Guidelines. The Declarant voluntarily may (but shall not be required to) permit the Members to appoint one or more members of the Design Review Committee at any time.

10.2. **Design Guidelines.** The Design Review Committee shall establish reasonable procedural rules, regulations, restrictions, architectural standards and design guidelines (the "Design Guidelines"), which the Design Review Committee may, from time to time in its sole discretion, amend, repeal, or augment. The Design Guidelines are hereby incorporated herein and shall be deemed to be a part of this Declaration and shall be binding on all Owners, Members or other Persons as if expressly set forth herein. A copy of the current Design Guidelines shall at all times be a part of the Association's records. The Design Guidelines may include, among other things, those restrictions and limitations set forth below:

10.2.1 Time limitation for the completion, within specified periods after approval, of the improvements for which approval is required pursuant to the Design Guidelines.

10.2.2 Designation of a "building envelope" within a Lot, thereby establishing the maximum developable area of the Lot.

10.2.3 Conformity of completed improvements to plans and specifications approved by the Design Review Committee; provided however, as to purchasers and encumbrancers in good faith and for value, unless notice of noncompletion or nonconformance identifying the violating Lot and

specifying the reason for the notice, executed by the Design Review Committee, shall be recorded with the County Recorder of Doña Ana County, New Mexico, and given to the Owner of such Lot within one year of the expiration of the time limitation described in Section 10.2.1 above, or, if later, within one year following completion of the improvement, or unless legal proceedings shall have been instituted to enforce compliance or completion within said one-year period, the completed improvements shall be deemed to be in compliance with plans and specifications approved by the Design Review Committee and in compliance with the architectural standards of the Association and this Declaration, but only with respect to purchasers and encumbrancers in good faith and for value.

10.2.4 Such other limitations and restrictions as the Board or Design Review Committee in its reasonable discretion shall adopt, including, without limitation, the regulation of all landscaping (including without limitation absolute prohibition of certain types of landscaping, trees and plants), construction, reconstruction, exterior addition, change or alteration to or maintenance of any building, structure, wall or fence, including without limitation, the nature, kind, shape, height, materials, exterior color, surface texture, and location of any such improvement.

10.3 General Provisions.

10.3.1 The Design Review Committee may assess reasonable fees in connection with its review of plans and specifications.

10.3.2 The Design Review Committee may delegate its plan review responsibilities, except final review and approval as may be required by the Design Guidelines, to one or more of its members or architectural consultants retained by the Design Committee. Upon such delegation, the approval or disapproval of plans and specifications by such member or consultants shall be equivalent to approval or disapproval by the entire Design Review Committee.

10.3.3 The address of the Design Review Committee shall be the address established for giving notice to the Association, unless otherwise specified in the Design Guidelines. Such address shall be the place for the submittal of plans and specifications and the place where the current Design Guidelines shall be kept.

10.3.4 The establishment of the Design Review Committee and the procedures herein for architectural approval shall not be construed as changing any rights or restrictions upon Owners to maintain or repair their Lots as may otherwise be specified in this Declarant, the Bylaws or Association Rules.

10.3.5 The Design Review Committee shall approve or disapprove any plans and specification submitted to it in accordance with the Design Guidelines within such period as may be specified in the Design Guidelines.

10.4 Approval and Conformity of Plans. No building, fence, wall or other structure or improvement of whatever type shall be commenced, erected or maintained upon the Property, nor shall there be any addition to or change to the exterior of any residence or other structure or improvement upon a Lot or the landscaping, grading or drainage thereof, including, without limitation, the painting (other than painting with the same color of paint as previously existed; provided such color had been approved by the Design Review Committee) of exterior walls, patio covers and fences, except in compliance with plans and specifications therefor which have been submitted to and approved by the Design Review

Committee in accordance with the Design Guidelines as to harmony of external design and location in relation to surrounding structures and topography.

10.5 Non-Liability for Approval of Plans. Plans and specifications shall be approved by the Design Review Committee as to style, exterior design, appearance and location, and are not approved for engineering design or compliance with zoning and building ordinances, and by approving such plans and specifications neither the Design Review Committee, the members thereof, the Association, any Member, its officers, the Board nor the Declarant assumes any liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications. Neither the Design Review Committee, any member thereof, the Association, the Board, its Officers, or Declarant shall be liable to any Owner or other Person for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings, and specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications (c) the development or manner of development of any property within the Project, or (d) the execution and filing of an estoppel certificate pursuant to the Design Guidelines, whether or not the facts, therein are correct; provided, however that such action was taken in good faith. Approval of plans and specifications by the Design Review Committee is not, and shall not be deemed to be, a representation or warranty that said plans or specifications comply with applicable governmental ordinances or regulations including, but not limited to, zoning ordinances and building codes, nor any representation or warranty as to safety, quality or fitness for purpose.

10.6 Inspection and Recording of Approval. Any member or authorized consultant or representative of the Design Review Committee, or any authorized officer, director, employee or agent of the Association, may at any reasonable time enter, without being deemed guilty of trespass, upon any Lot after reasonable notice as provided herein to the Owner in order to inspect improvements constructed or being constructed on such Lot to ascertain that such improvements have been or are being built in compliance with the Design Guidelines and this Declaration. The Design Review Committee shall cause such an inspection to be undertaken within 30 days of a request therefor from any Owner as to his Lot, and if such inspection reveals that the improvements, located on such Lot have been completed in compliance with this Section 10 and the Design Guidelines as to the improvements described in such recorded notice, but as to such improvements only.

10.7 Reconstruction of Common Areas. The Reconstruction by the Association or Declarant after destruction by casualty or otherwise of any Common Areas which is accomplished in substantial compliance with "as built" plans for such Common Areas shall not require compliance with the provisions of this Section 10 or the Design Guidelines.

10.8 Additional powers of the Board. The Board may promulgate as a part of the Design Guidelines such additional architectural and landscape standards, rules and regulations as it deems to be appropriate and are not in conflict with this Declaration. **WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCE, THE BOARD MAY FIX A FINE OF UP TO \$100,000 FOR FAILURE TO OBTAIN REQUIRED APPROVAL FROM THE DESIGN REVIEW COMMITTEE.**

11. USE AND OCCUPANCY RESTRICTIONS.

11.1 Residential Use. Each Lot may be used only for residential purposes and none other. No business or commercial building may be erected on any Lot and no business or commercial enterprise

or other non-residential use may be conducted on any part thereof. No temporary buildings, structures or trailers may be erected, placed or maintained on any Lot except as expressly permitted by, and in compliance with, the Design Guidelines. Nothing herein contained shall be deemed to limit the Declarant's rights as set forth in Section 14.

11.2 Violation of Law or Insurance. No Owner or Member shall permit anything to be done or kept in his Lot or in or upon any Common Areas which will result in the cancellation of insurance thereon or which would be in violation of any law.

11.3 Signs. No sign of any kind shall be displayed to the public view or from any Lot or any Common Areas without the approval of the Association or the Design Review Committee, except: (a) such signs as may be used by Declarant in connection with the development and sale of Lots in the Project; (b) such signs as may be required by legal proceedings, or the prohibition of which is precluded by law; or (c) such signs as may be required for traffic control and regulation of Common Areas. No "For Sale" or "For Rent" sign may be posted on any Lot; provided, however, an Owner may, in accordance with applicable provisions of the Association Rules, be permitted to post one "For Sale" or "For Rent" notice in a form approved by the Board in a location specified for that purpose by the Board.

11.4 Animals. No animals, including horses or other domestic farm animals, fowl or poisonous reptiles of any kind may be kept, bred or maintained in or upon any Lot or in or upon any Common Area, except a reasonable number of commonly accepted household pets in accordance with the Association Rules. No animal shall be kept, bred or raised within the Project for commercial purposes. In no event shall any domestic pet be allowed to run free away from its owner's lot without a leash, or so as to create a nuisance. All such domestic pets must be registered with the Association and those animals designated by the Association shall be properly immunized and proof thereof shall be presented with said registration. No pet, regardless whether restrained by a leash, shall be allowed on the Golf Course; however, such pets shall be permitted on the paths and walkways of the Golf Facilities, subject to the Association Rules.

11.5 Nuisances. No Owner shall permit or suffer anything to be done or kept about or within his Lot, or on or about the Property, which will obstruct or interfere with the rights of other Owners, Occupants or Persons authorized to use and enjoy the Common Areas, or annoy them by unreasonable noises or otherwise, nor will he commit or permit any nuisance or commit or suffer any illegal act to be committed therein. Each Owner or Member shall comply with the Association Rules, the requirements of all health authorities and other governmental authorities having jurisdiction over the Property.

11.6 Boats and Motor Vehicles. Except as specifically permitted by the Association Rules, (a) no boats, trailers, buses, motor homes, campers or other vehicles shall be parked or stored in or upon the Common Areas or upon a Lot except within an enclosed garage as permitted by the Design Guidelines; (b) no vehicle shall be repaired or rebuilt in any Lot or upon the Common Areas; and (c) nothing shall be parked on the Private Streets except in such parking areas as may be designated by the Association. The Association may remove, or cause to be removed, any unauthorized vehicle at the expense of the owner thereof in any manner consistent with the law.

11.7 Lights. No spotlights, flood lights or other high intensity lighting shall be placed or utilized upon any Lot, which in any manner will allow light to be directed or reflected on the Common Areas, or any part thereof, or any other Lot, except as may be expressly permitted by the Association Rules or the Design Guidelines.

11.8 **Antennas.** No radio, television or other antennas of any kind or nature, or device for the reception or transmission of television, radio, microwave or other similar signals, shall be placed or maintained upon any Lot except as may be permitted by the Association Rules or in accordance with the Design Guidelines.

11.9 **Garbage.** No garbage or trash shall be kept, maintained or contained in any Lot so as to be visible from another Lot or the Common Areas. No incinerators shall be kept or maintained in any Lot. No refuse pile, garbage or unsightly objects shall be allowed to be placed, accumulated or suffered to remain anywhere on a Lot.

11.10 **Mining.** No portion of the Property shall be used in any manner to explore for or remove any oil or other hydrocarbons or minerals of any kind or earth substance of any kind.

11.11 **Safe Condition.** Without limiting any other provision in this Section, each Owner shall maintain and keep his Lot at all times in a safe, sound and sanitary condition and repair and shall correct any conditions or refrain from any activity which might interfere with the reasonable enjoyment by other Owners of their respective Lots or the Common Areas.

11.12 **Fires.** Other than barbecues, in properly constructed barbecue pits or grills, and firepits in compliance with the Association Rules and the Design Guidelines, or as otherwise expressly permitted in the Association Rules, no open fires shall be permitted on the Lots nor shall any other similar activity or condition be permitted which would tend to increase the insurance rates for the Common Areas, or for other Owners.

11.13 **Clothes Drying Area.** No portion of any Lot shall be used as a drying or hanging area for laundry of any kind, it being the intention hereof that all such facilities shall be provided within the buildings to be constructed on each Lot.

11.14 **No Further Subdivision; Compounds.** No Lot shall be replatted, divided or subdivided. A Person may own more than one Lot, but may not combine contiguous Lots into a single homesite without the prior approval of the Design Review Committee. The Owners of contiguous Lots may not construct common recreational facilities on such Lots.

11.15 **No Obstruction to Drainage.** No Owner shall erect, construct, maintain, permit or allow any fence or other improvement or other obstruction which would interrupt the normal drainage of the land nor shall any Owner erect, construct, maintain, permit nor allow any fence or other improvement or other obstruction within any area designated on a Plat, or other binding document, as a "drainage easement", except that, with the prior consent of the Design Review Committee, and any governing local municipal authority, if any, non-permanent structures, including fences, may be erected in those areas which contain only underground closed conduit storm drainage facilities.

11.16 **Entrance Gates.** Subject to the easements created in Section 4, the Association shall from time to time determine who may have access through the entrance gates to the Project onto the Private Roads. The Declarant reserves the unrestricted right of entry and use of such roads for its successors in interest as to the Property and for its employees, agents invitees, licensees, and guests. The Association may make reasonable rules relating to the right of entry through the entrance gates, but may not place an absolute restriction on entry by Owners, their tenants and guests or to other authorized uses of the Golf Facilities. Prospective purchasers of homes or lots, other than those

invited by Declarant, may enter under the conditions and time limitation established by the Board in the Association Rules. The Declarant reserves the right to install any security system or services, which the Declarant deems appropriate, at the entrances to the Property and the Common Areas. Any entrance gate may be abandoned, or its hours of manned operation reduced to less than 24 hours per day, at the discretion of the Association.

11.17 Rental of Lots. An Owner who leases his Lot to any Person shall be responsible for assuring compliance by his lessee with all of the provisions of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, all as amended and supplemented from time to time, and shall deliver to the Association a copy of the lease. No lease of any Lot shall become effective until such condition is complied with. Each lease shall contain a provision subjecting the lessee thereof to the provisions and restrictions of this Declaration, the Articles, Bylaws, Association Rules and Design Guidelines, but each lessee shall be subject to the provisions and restriction of this Declaration, the Articles, Bylaws, Association Rules and Design Guidelines, notwithstanding the failure of a lease to contain such a provision.

11.18 Incorporation of Municipality or Master Association. THIS SECTION DELETED IN ITS ENTIRETY BY A DULY EXECUTED AMENDMENT TO THE DECLARATION ON AUGUST OF 2006. (Please refer to page 36.)

11.19 Golf Carts. The Association Rules may prohibit the use of golf carts and similar vehicles on the Private Roads.

11.20 Enforcement. The Association or its authorized agents may enter any Lot in which a violation of these restrictions exists and may correct such violation at the expense of the Owner of such Lot. Such expenses, and such fines as may be imposed pursuant to the Bylaws, Association Rules or Design Guidelines, shall be a Special Assessment secured by a lien upon such Lot enforceable in accordance with the provisions of Section 5 hereof. All remedies described in Section 15 hereof and to all other rights and remedies available at law or equity shall be available in the event of any breach by any Owner, Member, Occupant or other Person of any provision of this Section 11.

11.21 Modification. The Board shall have the right, but not the obligation, to modify or waive the foregoing restrictions or otherwise restrict and regulate the use and occupancy of the Property and the Lots by reasonable rules and regulations of general application adopted the Board from time to time which shall be incorporated into the Association Rules.

12. RIGHTS OF FIRST MORTGAGEES.

12.1 General Provisions. Notwithstanding and prevailing over any other provisions of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, the provisions of this Section 12 shall apply to and benefit each holder of a First Mortgage upon a Lot.

12.2 Liability for Assessments. A First Mortgagee who comes into possession or becomes record Owner of a mortgaged Lot by virtue of foreclosure of the Mortgage, or through any equivalent

proceedings, such as but not limited to the taking of a deed or assignment in lieu of foreclosure or acquiring title at a trustee's sale. Will not be liable for such Lot's unpaid dues, charges or Assessments which may accrue prior to the time such First Mortgagee or third-party purchaser comes into possession of such Lot or becomes record Owner of the Lot, whichever occurs first, and shall acquire title free and clear of any lien authorized by or arising out of the provisions of this Declaration which secures the payment of any dues, charges or Assessments against the Lot foreclosed shall be deemed to be a Common Expense charged proratably against all of the Members. Nevertheless, in the event the Owner or Member against whom the original Assessment was made is the purchaser or redemptioner, the lien shall continue in effect and may be enforced by the Association, or by the Board, for the respective Lot's Assessment that was due prior to the final conclusions of any such foreclosure or equivalent proceedings. Further, any such unpaid Assessment shall continue to exist as the personal obligation of the defaulting Owner of the respective Lot to the Association, and the Board may use reasonable efforts to collect the same from said Owner even after he is no longer a Member of the Association or the Owner of the Lot.

12.3 No Personal Liability. A First Mortgagee shall not in any case or manner be personally liable for the payment of any Assessment or charge, nor for the observance or performance of any covenant, restriction, or rule and regulation of the Association, or any provision of the Articles or Bylaws, or any management agreement, except for those matters which are enforceable by injunctive or other equitable actions, not requiring the payment of money, except as specifically provided in this Section 12.

12.4 Enforcement After Foreclosure Sale. An action to abate the breach of any of these covenants, conditions, restrictions, and reservations may be brought against the purchaser of a Lot who has acquired title through foreclosure of a Mortgage (or through any equivalent proceedings) and against a Mortgagee obtaining title by means of a deed in lieu of foreclosure, and the successors in interest to said purchasers and Mortgagees, even though the breach existed prior to the time said purchasers or Mortgagees acquired an interest in such Lot.

12.5 Exercise of Owner's Rights. During the pendency of any proceedings to foreclose a First Mortgage (including any period of redemption) or from the time a trustee under a first deed of trust has given notice of sale pursuant to power of sale conferred under a deed of trust and pursuant to law, the First Mortgagee, or a receiver appointed in any such action, may but need not exercise any or all of the rights and privileges of the Owner in default including, but not limited to, the right to vote as a Member of the Association in the place and stead of the defaulting Owner.

12.6 Subject to Declaration. At such time as the First Mortgagee shall come into possession of or become record Owner of a Lot, the First Mortgagee shall be subject to all of the terms and conditions of this Declaration including, but not limited to, the obligation to pay all assessments and charges accruing thereafter, in the same manner as any other Owner.

13. ANNEXATION OF ADDITIONAL PROPERTY.

Additional real property may be annexed to and become subject to this Declaration as hereinafter set forth in this Section 13.

13.1 Annexation Property. During the period commencing on the date hereof and ending on the Turnover Date, the Declarant shall have the right, without consent of the Association, to bring within

the operation of this Declaration any real property which is contiguous to the Parcel, if acquired by the Declarant prior to the Turnover Date. The Declarant may elect to develop or not to develop all or any part of such additional real property, to annex such real property to the Parcel in increments of any size whatsoever, or to develop more than one such increment at any given time and in any give order. Moreover, the Declarant reserves the right to subject all or any portion of such property to the plan of this Declaration or one or more separate declarations of covenants, conditions and restrictions which subjects said property to the jurisdiction and powers of a homeowner association or other entity with powers and obligation similar to the Association and which is not subject to the provisions of this Declaration. Although Declarant shall have the ability to annex additional property as provided in this Section 13, Declarant shall not be so obligated, and no property shall become subject to this Declaration unless and until a Supplemental Declaration shall have been recorded as herein provided.

13.2 Supplemental Declarations. A Supplemental Declaration shall be a writing in recordable form which annexed additional real property (the "Annexation Property") to the Parcel and subjects same to the plan of this Declaration and which incorporates by reference all of the covenants, conditions, restrictions, easements and other provisions of this Declaration and shall contain such other provisions as are set forth in this Declaration relating to Supplemental Declarations. Supplemental Declarations may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the Annexation Property and as are not inconsistent with the plan of this Declaration. In no event, however, shall any such Supplemental Declaration revoke, modify or add to the covenants established by this Declaration with respect to the Property already subject to this Declaration.

13.3 Annexation Without Approval of Association. The Annexation Property may be annexed to and become subject to this Declaration and subject to the jurisdiction of the Association without the approval, assent or vote of the Association or its Members, provided that a Supplemental Declaration covering the Annexation Property shall be recorded by Declarant. The recordation of said Supplemental Declaration shall constitute and effectuate the annexation of the Annexation Property described therein, making said real property subject to this Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter said Annexation Property shall be part of the Property for all intents and purposes of this Declaration and all of the Owners of Lots in the Annexation Property shall automatically be Owners and Members in accordance with Section 3.

14. EXEMPTION OF DECLARANT FROM RESTRICTIONS.

Notwithstanding anything contained in this Declaration, or in the Association Rules, to the contrary, none of the restrictions contained in this Declaration shall be construed or deemed to limit or prohibit any act of Declarant, its employees, agents and subcontractors, invitees or parties designated by it in connection with the construction, completion, sale or leasing of the Lots, Common Areas or the Property, including without limitation, the use of the Common Areas by any of the foregoing.

15. REMEDIES.

15.1 General Provisions. In the event of any default by any Owner, Member, Occupant or other Person under the provisions of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, the Association, or its successors or assigns, or its agents, or the Declarant, shall have each and all of the rights and remedies which may be provided for in this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, or which may be available at law or equity, and may prosecute

any action or other proceedings against such defaulting Owner, Member, Occupant or other persons for an injunction, either affirmative or negative, or for enforcement or foreclosure of the lien herein provided and the appointment of a receiver for the Lot, or to damages, or specific performance, or for judgment for payment of money and collection thereof, or the right to take possession of the Lot and to rent the Lot and apply the rents received to payment of unpaid Assessments and interest accrued thereon, and to sell the same as hereinafter in this Section 15.1 provided, or for any combination of remedies or for any other relief, all without regard to the value of the Lot or the solvency of such Owner or Member. The proceeds of any such rental or sale shall first be paid to discharge court costs, other litigation costs, including without limitation reasonable attorney's fees, and all other expenses of the proceeding and sale, and all such items shall be taxed against the defaulting Owner in a final judgment. Any balance of proceeds after satisfaction of such charges and any unpaid Assessments hereunder of any liens shall be paid to the Owner. Upon the confirmation of the sale, the purchaser thereupon shall be entitled to a deed to the Lot and to immediate possession of the Lot and may apply to the court for a writ of restitution for the purpose of acquiring such possession, and it shall be a condition of any such sale, and the judgment shall so provide that the purchaser shall take the interest in the property sold subject to this Declaration.

15.2 Expenses of Enforcement. All expenses of the Association or the Declarant, or other Person granted rights of enforcement hereunder, in connection with any action or proceeding described or permitted by this Section 15, including court costs and reasonable attorney's fees and other fees and expenses, and all damages, liquidated or otherwise, shall be charged to and assessed against such defaulting Owner or other Person and shall be a Special Assessment against such Owner or other Person and the Association shall have a lien as provided in Section 5 therefor.

15.3 Right to Cure. In the event of any default by any Owner or other Person, the Association and the Declarant and the manager or managing agent of the Association, if so authorized by the President, shall have the authority to correct such default and to do whatever may be necessary for such purpose and all expenses in connection therewith shall be charged to and assessed against such defaulting Owner or other Person as a Special Assessment, which shall constitute a lien against the defaulting Owner's Lot as provided in Section 5. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Association or the Declarant.

15.4 Legal Action. In addition to any other remedies available under this Section 15, or any Owner (either by his conduct or by the conduct of any Occupant of his Lot or family member, guest, invitee or agent) shall violate any of the provisions of this Declaration, or the Articles, Bylaws, Association Rules or Design Guidelines, as then in effect, then the Association, the Declarant, or any affected or aggrieved Owner, shall have the powers to file an action against the defaulting Owner for a judgment or injunction against the Owner or such other Person requiring the defaulting Owner or other Person to comply with the provisions of the Declaration, or the Articles, Bylaws, Association Rules or Design Guidelines, and granting other appropriate relief, including money damages.

15.5 Effect of Mortgage. Anything to the contrary herein notwithstanding, any breach of any of the covenants, restrictions, reservations, conditions and servitudes provided for in this Declaration, or any right of re-entry by reason thereof, shall not defeat or adversely affect the lien of any Mortgage upon any Lot but, except as herein specifically provide, each and all of said covenants, restrictions, conditions and servitudes shall be binding upon and effective against any lessee or Owner of a Lot whose title thereto is acquired by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

15.6 Limitation on the Declarant's Liability. Notwithstanding anything to the contrary herein, it is expressly agreed that neither the Declarant (including without limitation any assignee of the interest of the Declarant hereunder) nor any partner of Declarant (or of any such assignee) shall have any personal liability to the Association, or to any Owner or other Person, arising under, in connection with, or resulting from (including without limitation resulting from action or failure to act with respect to) this Declaration except, in the case of the Declarant (or its assignee) to the extent of its interest in the Property, and, in the case of a partner of the Declarant (or of any such assignee), his interest in the Declarant (or such assignee), and in the event of a judgment against the Declarant (or any partner or assignee thereof), no execution or other action shall be sought or brought thereon against any other assets, nor be a lien upon such other assets, of the judgment debtor.

16. **AMENDMENT.**

16.1 Amendment to Declaration. Amendments to this Declaration shall be made by an instrument in writing entitled "Amendment to Declaration" which sets forth the entire amendment. Except as otherwise specifically provided for in this Declaration, any proposed amendment must be approved by a majority of the Board prior to its adoption by the Members. After having been so approved, amendments may be adopted at a meeting of the Members upon the approval thereof of two-thirds of all of the Class A Members or without any meeting if all Members have been duly notified and if two-thirds of all of the Class A Members consent in writing to such amendment. In all events, the amendment when adopted shall bear the signature of the President of the Association and shall be attested by the Secretary, who shall state whether the amendment was properly adopted, and shall be acknowledged by them as officers of the Association. Amendments once properly adopted shall be effective upon recording of the Amendment to Declaration in the same governmental offices where this Declaration shall have been recorded and in such other governmental offices as shall be required by law.

16.2 Effect of Amendment. It is specifically covenanted and agreed that any amendment to this Declaration properly adopted will be completely effective to amend any and all of the covenants, conditions and restrictions contained herein which may be affected an any or all clauses of the Declaration or the Plat, unless otherwise specifically provided in the Section being amended or the amendment itself.

16.3 Amendment of Plat. Except as otherwise provided herein, the Plat may be amended by revised versions or revised portions thereof referred to and described as to effect in an amendment to this Declaration adopted as provided herein. Copies of any such proposed amendment to the Plat shall be made available for the examination of every Owner at the offices of the Association during reasonable times. Such amendment to the Plat shall be effective, once properly adopted, upon recordation in the appropriate governmental offices in conjunction with the Declaration amendment.

16.4 Required Approvals. Notwithstanding the provisions of the foregoing sections of this Section 16:

(a) If this Declaration or any applicable provision of law requires the consent or agreement of all Members and/or all lienholders and all trustees and all beneficiaries under trust deeds, or a specified percentage thereof, for any action specified in this Declaration, then any instrument changing, modifying or rescinding any provision of this Declaration with respect to such action shall be signed by all Owners and/or all the Members and/or lienholders and trustees and/or beneficiaries under trust deeds, or the specified percentage thereof, as required by this Declaration or by said law.

(b) Until the turnover date, neither this Declaration nor the Plat may be amended by the Members without the written consent of the Declarant, which may be withheld for any reason, or for no reason.

© The following provisions of this Declaration may not be amended without the consent of the Declarant: Section 3.13, 3.14, 5.6, 14, 15.5 and 16.5

16.5 Declarant's Right to Amend. Notwithstanding any other provision of this Section 16, until December 31, 1995, the Declarant reserves the right to amend this Declaration without the approval of the Board or the Members, provided, however, that no such amendment shall have the effect of changing the plat of an Owner's Lot without the consent of the Owner, and provided, further, that after the conveyance of the first Lot to an Owner, the Declarant may not amend the following provisions of this Declaration without the approval of the Class A Members as provided in Section 16.1: Sections 3.2, 3.3.1, 5.3.4, and the second sentence of 5.5.

17. GENERAL PROVISIONS.

17.1 Notices. Notices provided for in this Declaration, or the Bylaws or Association Rules, shall be in writing and shall be addressed to the Association at the following address: El Mirador Homeowners Association, Inc., PO Box 1014, Santa Teresa, New Mexico, 88008. The Association may designate a different address or addresses for notice by giving written notice of such change of address to all Owners at such time. All notices to Owners shall be to their respective Lots or the last address shown on the records of the Association. Any Owners may designate a different address or addresses for notices to him by giving written notice of his change of address to the Association. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail, return receipt requested, or when delivered in person with written acknowledgment of the receipt thereof.

17.2 Captions and Exhibits: Construction. Captions given to various Sections herein, and the Table of Contents for this Declaration, are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof. The various exhibits referred to herein are incorporated as though fully set forth where such reference is made. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Property as hereinabove set forth.

17.3 Severability. If any provision of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, or any section, clause, sentence, phrase or word, or the application thereof in any circumstances, is held invalid, the validity of the remainder of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances, shall not be affected thereby, and the remainder of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines shall be construed as if such invalid part were never included therein.

17.4 Rule Against Perpetuities. If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities then such provisions shall continue until 21 years after the death of the survivor of the now living descendants of President of the United States, Ronald Reagan.

17.5 Mortgage of Lots. Each Owner shall have the right, subject to the provisions hereof, to make

for his respective Lot. No Owner shall have the right or authority to make or create or cause to be made or created any Mortgage, or other lien or security interest, on or affecting the Property of any part thereof, except only to the extent of his Lot.

17.6 Power of Attorney. Whenever the Association is granted rights, privileges or duties in this Declaration, the President shall have the authority to act for the Association, unless such right and power is herein expressly reserved to the Board. Further, unless otherwise specifically restricted by the provisions of this Declaration, whenever the Association is empowered to take any action or do any act, including but not limited to action or acts in connection with the Common Areas or sale thereof, which may at any time be deemed to require the act of an Owner or Member, the Owners and Members and each of them hereby constitute and appoint the Association as their attorney-in-fact, as may be appropriate, for the purposes of taking such action or doing such acts including but not limited to executing, acknowledging and delivering any instruments or documents necessary, appropriate or helpful for such purposes. It is acknowledged that this power of attorney is irrevocable and coupled with an interest and by becoming a Member of the Association or by the acceptance of a deed for a Lot or by signing a contract for purchase of a Lot or by succeeding in any, other manner to the ownership of a Lot, or any interest therein or a Membership in the Association, each Owner shall be deemed and construed to have ratified and expressly granted the above power of attorney.

18. RIGHTS AND OBLIGATIONS.

Each grantee of Declarant, by the acceptance of a deed of conveyance, or each purchaser under any contract for such deed of conveyance, or each purchaser under any agreement of sale, or each Person acquiring a Membership in the Association, and the heirs, successors and assigns of the foregoing Persons, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and equitable servitudes, and shall bind any Person having at any time any interest or estate in said land, and shall inure to the benefit of any such Person in like manner as through the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance, purchase contract or instrument evidencing or creating such interest.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed.

EL MIRADOR ASSOCIATES LIMITED PARTNERSHIP,

An Illinois Limited Partnership

By: /s/ Herbert J. Louis

Herbert J. Louis

Its General Partner

Subscribed and sworn to before me this 21st day of November, 1988.

/s/ Barbara J. Vigil

Notary Public

My commission expires June 24, 1991

IN WITNESS THEREOF, Association has caused Section 5.3 Regular Assessments, Subsection 5.3.4 and all references to, of this Declaration to be duly amended.

EL MIRADOR HOMEOWNER'S ASSOCIATION, INC.

David Chávez, Jr.
David Chávez, Jr., President

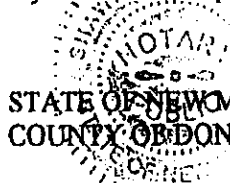
Anne Smith
Anne Smith, Secretary

STATE OF NEW MEXICO)
COUNTY OF DONA ANA)

The foregoing instrument was acknowledged before me this 23 day of February, 2005 by David Chávez, Jr., President of El Mirador Homeowners Association, Inc., for an on behalf of said nonprofit corporation.

Shawna C. Gonzales
Notary Public

My commission expires 04-05-07

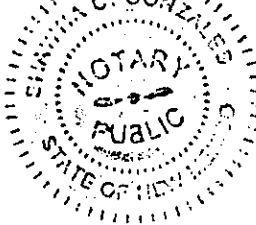


STATE OF NEW MEXICO)
COUNTY OF DONA ANA)

The foregoing instrument was acknowledged before me this 24 day of February, 2005 by Anne Smith, Secretary of El Mirador Homeowners Association, Inc., for an on behalf of said nonprofit corporation.

Shawna C. Gonzales
Notary Public

My commission expires 04-05-07



IN WITNESS THEREOF, Association has caused **Section 11.18 Incorporation of Municipality or Master Association** and all references to, of this Declaration to be duly amended as per **Section 16 Amendment**.

EL MIRADOR HOMEOWNER'S ASSOCIATION INC.

[Signature]
Billy B. Cannedy, President

[Signature]
Traci Presley, Secretary

STATE OF NEW MEXICO)
COUNTY OF DONA ANA)

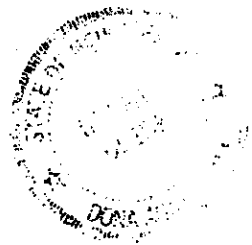
The foregoing instrument was acknowledged before me this 15 day of August, 2006 by Billy B. Cannedy, President of El Mirador Homeowner's Association, Inc., for and on behalf of said nonprofit corporation.

[Signature]
Notary Public
My commission expires 9/23/06

STATE OF NEW MEXICO)
COUNTY OF DONA ANA)

The foregoing instrument was acknowledged before me this 16 day of August, 2006 by Traci Presley, Secretary of El Mirador Homeowner's Association, Inc., for and on behalf of said nonprofit corporation.

[Signature]
Notary Public
My commission expires 9/23/06



State of New Mexico
County of Dona Ana, ss
RECEPTION NO. 24826
I hereby certify that this instrument was filed for recording and duly recorded on AUG 24 2006 at 3:38 o'clock PM of the Records of said County.
Mita Torres, County Clerk
[Signature] DEPUTY

EXHIBIT A

Legal Description

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Commencing at a found brass cap (USGLO 4 mile corner) lying on the westerly boundary line of the Santa Teresa Grant, whence USCGS triangulation station "Strauss" bears North 58 deg. 50'30" West. A distance of 33,633.36 feet, said point being the TRUE POINT OF BEGINNINGS of this description:

Thence, North 27 deg 14'14" West, along said boundary line, a distance of 447.18 feet to a point lying on the easterly right-of-way line of Parkview Drive:

Thence, along said right-of-way line the following courses:

North 14 deg 06'38" East, a distance of 503.34 feet to a point for a curve;

820.42 feet along the arc of a curve to the right, having a radius of 5654.58 feet, a central angle of 08 deg 18'47" and a chord which bears North 18 deg 16'01" East, a distance of 819.70 feet;

North 22 deg 25'25" East, a distance of 238.62 feet to a point lying on the southerly right-of-way of North Country Club Drive;

Thence, South 67 deg 34'35" East, along said right-of-way line, a distance of 868.00 feet to a point lying on the westerly boundary line of Santa Teresa Subdivision Unit 9;

Thence, along said boundary line the following courses:

South 22 deg 25'25" West, a distance of 126.50 feet;

North 67 deg 34'35" West, a distance of 51.35 feet;

South 22 deg 25'25" West, a distance of 50.00 feet;

South 28 deg 18'56" West, a distance of 75.40 feet;

South 31 deg 57'37" West, a distance of 76.05 feet;

South 36 deg 11'33" West, a distance of 102.96 feet;

Thence, South 20 deg 46'40" West, a distance of 140.16 feet to a point lying on the southerly boundary of Santa Teresa Subdivision Unit 9;

Thence South 67 deg 34'35" East, along said boundary line, a distance of 470.34 feet to a point for a curve lying on the westerly right-of-way line of Trevino Road;

Thence, along said right-of-way line the following courses: 22.31 feet along the arc of a curve to the right, having a radius of 1080.92 feet, a central angle of 01 deg 10'57" and a chord which bears South 49 deg 32'43" West, a distance of 22.31 feet;

South 50 deg 08'12" West, a distance of 1440.52 feet to a point for curve;

47.19 feet along the arc of a curve to the right having a radius of 1095.92 feet, a central angle of 02 deg 28'01" and a chord which bears South 51 deg 22'13" West, a distance of 47.18 feet to a point lying on the westerly boundary line of the Santa Teresa Grant;

Thence North 27 deg 25'26" West, along said boundary line, a distance of 91.87 feet to the TRUE POINT OF BEGINNING of this description.

Said parcel of land contains 33.829 acres (1,473,596 sq. ft.) of land more or less.