



MASTER RESTRICTIONS

A DECLARATION OF COVENANTS

CONDITIONS AND RESTRICTIONS

GRANTOR: RANCHO LOMAS, LLC

(As Amended 1.10.05)

(As Amended 6.25.04)

(As Amended 3.17.04)

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ARTICLE I

DEFINITIONS

Unless the context otherwise specifies or requires, the terms defined in this Article shall for the purposes of these Restrictions, have the meanings as defined in this Article. Any terms not defined herein shall have the meaning as defined in the then adopted by the City of Las Cruces Comprehensive Zoning Ordinance.

Section 1.01. Annexation

Annexation may have two meanings.

a) The term "Annexation into the Association" shall mean the addition into the jurisdiction of the Homeowners Association of an area within the Rancho Lomas Subdivision.

b) The term "Annexation into the Rancho Lomas Subdivision" shall mean the addition of an area not described in Exhibit A and annexed into the Rancho Lomas Subdivision and made subject to these Master Restrictions.

Section 1.02. **Association.** The term "Association" shall mean the "Rancho Lomas Owners Association", a non-profit New Mexico corporation, and any predecessor or successor incorporated or unincorporated association, as set forth in the Article entitled "Rancho Lomas Owners Association".

Section 1.03. **Board.**

The term "Board" shall mean the Board of Directors of the Association.

Section 1.04. **Building Envelope & Set Back Requirements**

The term "Building Envelope" shall mean the area the dwelling unit and appurtenant structures, except for driveways shall be built within and in accordance with the Design Guidelines. The term "Setback Requirements" shall mean the site setback requirements as established by the City of Las Cruces Zoning Code from a Lots front, rear and side lot lines. The grantor shall establish building envelopes and where these building envelopes differ from the City of Las Cruces setback requirements shall supercede such City of Las Cruces setback requirements. Building envelopes so established by the grantor shall not, however, violate or in anyway encroach into the City of Las Cruces setback requirements.

Section 1.05. **Common Area.**

The term "Common Area" shall mean any real property owned or controlled by the Association intended for the common use and enjoyment of the Association members. In addition, the Common Area includes for the purposes only of requiring the Association's upkeep and maintenance of such area, any berm, planter area, and green strip within the Subdivision or any drainage or maintenance easement and adjacent to and within any street or public right of way and any designated open space areas.

Section 1.06. **Community Street.**

The term "Community Street" shall mean any area owned by the Association over which there is granted the right of vehicular access to the Owners.

Section 1.07. **Design Guidelines.**

Design Guidelines shall be the Las Alamedas Design Guidelines, which shall be the guidelines for development, construction, housing styles and fencing utilized in the subdivision and interpreted by the Planning Committee.

Section 1.08. **Drainage Areas.**

The term "Drainage Areas" shall mean those areas so designated on the Rancho Lomas Subdivision Plats where water is expected to flow naturally or where the design of the Subdivision creates or directs flow. Said drainage areas may be owned by an owner of property subject to an association easement for maintenance and drainage by the Association or a governmental agency.

Section 1.09. **Grantor.**

The term "Grantor" shall mean Rancho Lomas, LLC a New Mexico Limited Liability Company, and its successors and assigns. Only Rancho Lomas, LLC and its successors or assigns shall have the rights of Grantor under and pursuant to these Declarations. Rancho Lomas, LLC may assign Grantor rights to a successor or assign or may reserve the right of Grantor.

Section 1.10. **Improvements.**

The term "improvements" shall include, but not be limited to, buildings, sheds, utility buildings, animal enclosures, roads, driveways, air conditioners, parking areas, fences, garden walls, retaining walls, stairs, decks, hedges, windbreaks, poles, antennas, signs, utility or communication installations (whether above or underground), retaining structures, waterways, and any structures and excavations of any type whether located on private property or located on Common Area.

Section 1.11. **Lot.**

The term "Lot" shall mean any numbered or lettered Lot shown on any Subdivision plat of property situated, within the subdivision except those areas owned by the Association. "Lot" shall also mean any unit within a Project and the Project Common Area if a parcel separate from the units. Upon the splitting of any Lot or the consolidation of any Lots, "Lot" shall mean each

parcel or unit into which such Lot has been split or the parcel or Unit consisting of the Lots so consolidated, as the case may be.

Section 1.12. **Membership; Member.**

The term "Membership" shall mean the membership in The Association by Owners of Lots and project Units within the Subdivision as set forth in the Article entitled "Rancho Lomas Owners Association". The term "Member" shall mean the person or persons holding such membership.

Section 1.13. **Rancho Lomas Subdivision.**

The term "Rancho Lomas Subdivision" shall mean all the property subject to the Rancho Lomas Master Restrictions and described in Exhibit A at the time of Recording these Master Restrictions. Additional property may be annexed into the "Rancho Lomas Subdivision" pursuant to Section 2.02. Rancho Lomas Subdivision, may from time to time be referred to simply as the "development" or "Rancho Lomas".

Section 1.14. **Mortgage; Mortgagee.** The term "Mortgage" shall mean a deed of trust, an assignment of a leasehold interest for security purposes and the seller's interest under a contract of sale of real property, as well as a mortgage; and the term "Mortgagee" shall mean a beneficiary under or a holder of a deed of trust, an assignee of a leasehold interest assigned for security purposes, or the seller under a contract of sale of real property within the development, as well as a mortgagee.

Section 1.15. **Neighborhood**

The term "Neighborhood" includes any area within the Subdivision consisting of Lots and any Neighborhood Common Area for the exclusive use of such Lots, which has been designated as a Neighborhood pursuant to a declaration filed by Grantor pursuant to the Article entitled "Neighborhoods and Neighborhood Associations."

Section 1.16. **Neighborhood Assessments.**

The term "Neighborhood Assessments" shall mean assessments levied by Neighborhood Associations.

Section 1.17. **Neighborhood Association**

The term "Neighborhood Association" shall mean a non-profit membership corporation, and any predecessor or successor incorporated or unincorporated association as set forth in the Article entitled "Neighborhoods and Neighborhood Associations".

Section 1.18. **Open Spaces.**

The term "Open Spaces" shall mean those areas owned by Grantor, or its successors, or any Owner of property within the development, over which an easement has been granted to the Association, or those areas granted to the City of Las Cruces or other governmental entities, in order to preserve the natural view and open spaces.

Section 1.19. **Neighborhood Common Areas.**

The term "Neighborhood Common Areas" shall mean any real property owned or controlled by a Neighborhood Association and intended for the common use and enjoyment of the members of that Neighborhood Association.

Section 1.20. **Notice.**

The term "Notice" shall mean a notice delivered pursuant to Section 13.10.

Section 1.21. **Operating Fund.**

The term "Operating Fund" shall mean the fund created pursuant to section 8.02 to pay for the operation of the Association functions.

Section 1.22. **Owner.**

The term "Owner" shall mean the person or entity, including Grantor, holding the beneficial ownership of the fee (including the purchaser under a contract of sale of real property within the development) and shall not include persons holding only a security interest or a seller under a contract of sale; provided, however, that for the purposes of the Article entitled "Property Classification and Use", unless the context otherwise requires, "Owner" shall include the family, invitees, licensees, tenants, subtenant and lessees of any Owner.

Section 1.23. **Planning Committee.**

The term "Planning Committee" shall mean the committee created pursuant to the Article entitled "Planning Committee".

Section 1.24. **Planning Committee Rules.**

The term "Planning Committee Rules" shall mean rules adopted by the Planning Committee pursuant to authority given to them by these Restrictions. Different Rules may be adopted for each residential area and each Subdivision may have different Planning Committee Rules consistent with these Master Restrictions.

Section 1.25. **Record or Recorded.**

The term "Record" or "Recorded" shall mean, with respect to any document, that the document shall have been recorded in the real estate records of Dona Ana County, New Mexico.

Section 1.26. **Residential Area.**

The term "Residential Area" shall mean any area specified in the "Subdivision Plat(s)" for residential development and use.

Section 1.27. **Subdivision.**

The term "the Subdivision" shall be defined as a portion of the real property described in Exhibit "A" and located in Rancho Lomas and designated as a Subdivision on a Subdivision Plat plus all annexations of real property as may be made to Rancho Lomas as provided in Article 2 of these Master Restrictions.

Section 1.28. **Plat.**

The term "Plat" shall mean any final Subdivision or parcel map, including final condominium plans.

Section 1.29. **Subdivision Rules.**

The term "Subdivision Rules" shall mean the rules made by the Board pursuant to the authority granted by these Restrictions or the Articles of Incorporation or By-laws of the Association as they are from time to time in effect.

Section 1.30. **The terms Rancho Lomas Community or Rancho Lomas Development.**

The terms "The Rancho Lomas Community" or "Rancho Lomas Development" shall mean all the property subject to or made subject to the Rancho Lomas Master Restrictions.

Section 1.31. **The Rancho Lomas Master Restrictions.**

The terms "The Rancho Lomas Master Restrictions" or "these Restrictions" shall mean, with respect to all property within the development, the limitations, restrictions, covenants and conditions set forth in this Declaration, as such Declaration may from time to time be amended, and with respect to these Restrictions may from time to time be supplemented or modified for the provisions of a declaration, if any, recorded with respect to such annexed property.

ARTICLE 2

PROPERTY SUBJECT TO RESTRICTIONS

Section 2.01. **Initial Development.**

All that certain real property located in the City of Las Cruces, Dona Ana County, described in Exhibit "A" attached hereto and incorporated herein shall constitute the initial Rancho Lomas Community and Development.

Section 2.02. **Rancho Lomas Community: Subsequent Developments.**

Grantor may, pursuant to the following provisions of this Section, from time to time and in its sole discretion and without necessity of any approvals, annex real property owned by Grantor, or other persons or entities with the permission of such other persons, to the Rancho Lomas Community subject to the following:

(a) The annexation of any such property shall become effective when Grantor shall have Recorded the following:

- (1) A declaration, which may consist of more than one document and which shall, among other things, (i) describe the real property which is to be annexed, (ii) set forth or refer to such additional or other limitations, restrictions, covenants and conditions, applicable to such property, (iii) describe any areas to be included within the commercial area, any neighborhood and Common Areas, and (iv) declare that such property is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved, subject to Rancho Lomas Master Restrictions;
- (2) A Subdivision plat with respect to the real property described in said declaration.
- (3) Grantor shall not annex to Rancho Lomas Community any property not described in Exhibit A unless, the same items as in 2.02 (a) (1) and (2) have been recorded.

(b) Upon any annexation becoming effective, the property covered by such annexation shall be within the jurisdiction of the Association and shall become and constitute a part of the Rancho Lomas Community and the Association shall have and shall accept and exercise jurisdiction over such property as a part of the Rancho Lomas Community.

(c) The declaration referred to above may, with respect to all or any part of the Property described by it, provide for any or all of the following, which shall become part of these Restrictions as applicable to such property:

- (1) New land classifications not herein designated, restrictions, covenants and conditions with respect to the use as Grantor deems appropriate *for* the development of such property; and
- (2) With respect to the land classification provided *for* by these Restrictions, such additional or different limitations, restrictions, covenants and conditions with respect to use as Grantor deems appropriate *for* the development of such property; provided, however, that such additional or different limitations, restrictions, covenants and conditions applicable to Common Area lying within such annexed property shall not discriminate between Owners.

ARTICLE 3

PROPERTY CLASSIFICATION AND USE

Section 3.01. Purposes of Land Classification and Use.

The purpose of these limitations and restrictions and the other controls in this Article are to enhance, protect, establish and maintain the character, value, desirability and attractiveness of the real estate within the Subdivision and to insure its proper development as a Subdivision.

Section 3.02. Land Classification

All land within the Subdivision is classified into one of three (3) areas; the Residential Area as defined in section 1.26 herein, the Common Area as defined in section 1.05 herein, and the Landscape Enhancement area. The landscaping within Morningstar Drive and only where Morningstar Drive borders Rancho Lomas is the Landscape Enhancement area.

Section 3.03. Uses and Restrictions Applicable to All Classification Areas.

Each Lot and Project Area in the Residential Areas shall be for the exclusive use and benefit of its Owner, subject however, to all of the following rights, standards, limitations and restrictions.

(a) The Association, or its duly authorized agents, shall have the right at any time, and from time to time, without any liability to the Owner for trespass or otherwise, to enter upon any Lot or Neighborhood Common Area for the purpose (1) of maintaining such Lot as provided for in these Restrictions, (2) of maintaining Project Common Areas, Neighborhood Common Area, and (3) of enforcing all of the Restrictions set forth in the Article applicable to such Lot, Project Area or Neighborhood Common Area.

(b) Improvements and work where regulated and controlled by this Article, whether performed by the Association or any Owner, may be done only in strict compliance with the provisions of this Article and with the provisions of the Planning Committee Rules.

(c) Improvements and development within the Subdivision shall be limited to residences, apartments, roads and parking areas, common areas, recreation facilities or open space

and related uses, all public or quasi-public service and utility facilities related to such uses including but not limited to, sewer, gas, water, electric and communication facilities. In no event shall such lands be used for the purpose of mining, quarrying, or exploring for or removing oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth, or be used in any other way inconsistent with these Restrictions, except as required for development, construction and maintenance.

(d) Each Lot and any and all Improvements from time to time located thereon, including landscaping, shall be maintained by the Owner or Owners thereof in good condition and repair as may be further defined from time to time by the Planning Committee, or the Board, all at such Owner's sole cost and expense.

(e) No noxious or offensive activity shall be carried on within the development or Subdivision. No light shall be emitted from any property which is unreasonably bright or causes unreasonable glare; no sound shall be emitted on any property which is unreasonably loud or annoying; no odor shall be emitted on any property which is noxious or offensive to others; nor shall anything be done or placed thereon which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to other Owners in the enjoyment of their property or in their enjoyment of the Common Area.

(f) No garbage, clippings from trees, shrubs or lawns, trash, ashes or other refuse may be thrown, dumped, or allowed to accumulate within the Subdivision. There shall be no burning of refuse out of doors, except for the burning of natural materials in connection with fire control. Each Owner shall provide suitable receptacles for the collection of refuse. Such receptacle shall be enclosed and screened from public view and protected from disturbance. Solid refuse shall not be placed in any unscreened area for collection more than twenty-four (24) hours prior to the scheduled collection time.

(g) No animals, livestock, horses, insects or poultry of any kind shall be kept, raised or bred, except as specifically set forth hereafter. Domesticated dogs, cats and other household pets may be kept in reasonable numbers consistent with the Las Cruces Animal Control Ordinance providing they are not kept, raised or bred for hobby breeding or commercial purposes. Such household pets must be restrained on a leash or otherwise under the control of any individual when in public areas. Any animal not so restrained or controlled in violation of this subsection may be picked up and impounded by Grantor or the Association or public animal control authority without liability and at the animal owner's expense and may be turned over to

any appropriate pound, animal shelter or animal control officer. The Subdivision Rules may further regulate the number and manner in which animals are kept in the Subdivision.

(h) There shall be no open storage of boats, motor homes, trailers, mobile homes, campers, commercial vehicles over one (1) ton or inoperative vehicles, except in boat or vehicle storage areas designated by Grantor or the Association, if any, for such purposes. There shall be no overhauling or rebuilding of any vehicle or machine in any driveway or street, or in the front of any property, but such activities are not prohibited inside buildings even if visible through doorways and other openings.

(i) Except for temporary lines used during construction all utility lines, including, but not limited to, electrical, gas, telephone, cable television and other communications shall be underground, except for access ports and above ground transformers.

(j) No chemicals or petroleum products, to include but not limited to sterilants, shall be placed or allowed to drain into storm drains, arroyos, drainage areas or street gutters. This paragraph shall not prevent the application in normal quantities of customary insect, animal or plant control substances, fertilizers and plant foods and paints or protective compounds on Lots and Improvements within the Subdivision even if run off from the property could carry these substances into the storm drain system.

(k) No unlicensed vehicles shall be operated on community or Public streets.

(l) In the event any Owner fails to remove debris or unsightly material within ten (10) days after written notice, the Grantor or the Association may remove said debris or unsightly material and charge the cost of removal, including a reasonable overhead charge, against the Owner together with interest and such penalty assessment shall become a lien against the property in accordance with Article 8.

(m) No trailer, tent, shack, garage or other out buildings shall be used as a residence, temporarily or permanently.

(n) In the event that any structure is destroyed, wholly or partially by fire or any casualty, such structure shall be rebuilt or repaired to conform to this Declaration or shall be removed from the Lot within six (6) months from loss.

(o) Subject to review and change by resolution of the Planning Committee, no signs that are visible from neighboring Lots, Common Areas, or streets shall be erected or maintained upon any Lot except:

- (1) Such signs as may be required or reasonably necessary by legal proceedings.
- (2) During the time of construction of any structure or other improvement, one (1) job identification sign having a maximum face area of sixteen (16) square feet per sign for each single family dwelling unless otherwise approved by the Planning Committee; and
- (3) Not more than one "For sale" or "For rent" sign having a maximum face area of four (4) square feet unless otherwise approved by the Planning Committee.

(p) Grantor shall not be subject to the sign restrictions in as long as Grantor remains the Owner of any property within the Ranchos Lomas Development, which exemption is not subject to review and change by the Planning Committee.

(q) The exterior of all buildings on all Lots shall be finished within twelve (12) months of start of construction according to plans approved by the Planning Committee.

(r) Natural vegetation is to be left undisturbed, where practical, on all Lots, except for access to property, clearing of building sites, or as required to comply with established fire codes.

(s) Any heating or air conditioning equipment visible from the street or front of the house or another Lot shall be thoroughly screened with a material similar to the main structure. Solar heating equipment will be considered for approval based on the merit of its design and the manner in which it is constructed so as not to detract from other homes in the development. Roof mounted equipment will be difficult to conceal. However, if the color and structure is done in good taste this type of installation can be considered for approval.

Section 3.04. Uses and Restrictions Applicable to Lots and project Areas Within the Residential Area.

The following additional standards, limitations and restrictions are applicable to the Residential Area and to the; construction, reconstruction, alteration and refinishing of any and all

Improvements from time to time existing or to be built on any Lot. This section does not apply to Common Areas and Neighborhood Common Areas.

(a) No Lot shall be used for any purpose other than residential use and shall not be used in whole or part for any commercial, manufacturing, mercantile or other non-residential purposes and no residence shall be used as a boarding house, except this paragraph shall not be construed to prevent the rental or lease of residences by their respective Owners.

(b) No more than one (1) residence shall be constructed on any Lot designed for single-family residential purposes. Provided, however, Owner of any Lot may, with the written approval of the Planning Committee, build living quarters for domestic workers or family members. Unless otherwise approved by the planning committee, livable heated space as per ANSI (American National Standards Institute) shall be no less than 2200sf on all lots in excess of 21780sf. Unless otherwise approved by the planning committee, livable heated space as per ANSI shall be no less than 1600sf on all lots which are 21779sf or less. All dwelling units shall have at least a two (2)-car garage.

(c) All improvements shall be constructed within building envelopes established by the grantor. The Planning Committee may permit a variance from such lines upon a determination that such a variance is necessary to facilitate the use of the Lot involved and that it does not unreasonably impair use, value or aesthetic appeal of any Common Area or other Lot. Any variance so granted by the Planning Committee shall not violate or in any way encroach into the setback requirements established by the Las Cruces City Zoning Code.

(d) Landscaping of open areas on all Lots shall remain natural and may be enhanced with "Southwestern" style landscaping as approved by the planning committee. No yards visible from the street shall be covered with grass, rock, or gravel unless it is the original undisturbed natural condition of the vegetation or is specifically approved by the Planning Committee.

(e) Any approved detached shed or building must be painted to blend with other structures located on the same Lot, unless approved by the Planning Committee, and may be no more than one (1) story in height. The right to construct any such structure and the design or other requirements for such structures shall be set by Planning Committee resolution.

(f) Public agencies, Grantor or its designee or the Association shall have the right to enter upon all drainage easements for construction and maintenance of drainage facilities.

(g) During maintenance or other operations affecting drainage areas, not conducted by the City of Las Cruces, any damage caused by said operation will require that the Rancho Lomas Home Owners Association be responsible for all repairs directly or indirectly related to said operation.

Section 3.05. Common Area and Neighborhood Common Area: Uses; Restrictions.

The use of Common Area shall be reserved equally to all Owners of property within the Residential Area, and the use of Neighborhood Common Area shall be similarly reserved equally to all Owners of Property within the Neighborhood, subject, however, to the following limitations and restrictions:

(a) The use of Common Area shall be subject to these Master Restrictions and Rules and Neighborhood Common Areas shall similarly be subject to the rules of the Neighborhood Association to which it belongs.

(b) The use of Common Area and Neighborhood Common Area shall be subject to (i) such easements as may have been offered for dedication or dedicated to public use on a Subdivision Plat, (ii) such easements, licenses and rights of use as may have been reserved at the time of the conveyance of the area by Grantor to the Association, or to the Neighborhood Association, (iii) such easement or other interests as may from time to time be taken under power of eminent domain, (iv) such other easements as may from time to time be granted or conveyed by the Association or Neighborhood Association pursuant to its powers pursuant to these Restrictions, (v) and the maintenance of entry facilities and signs.

(c) Except to the extent otherwise permitted pursuant to the easements, licenses and rights of use referred to above, the use of Common Areas, and Neighborhood Common Areas shall be limited to recreational uses and the maintenance of entry features, signs and such other reasonable uses as the Board may determine by resolution to be for the common interest of the Owners.

Section 3.06. **Owners Duty to Maintain Property Subject to Open Spaces.**

The Association may elect to maintain the Open Spaces reserved on individual lots and subject to an Open Space Easement. The Association must, however, elect as a policy to maintain all such open space easements or none. The Owners of Lots subject to Open Space Easements shall be responsible for the maintenance of those areas, if the Association has not elected to take responsibility.

Section 3.07. **Lots: Construction and Alteration of Improvements: Approval of Plans.** The right of an Owner to construct, reconstruct, refinish, alter or maintain any Improvement upon, under or above any Lot excepting Common Areas and Neighborhood Common Areas or to make any change in the natural or existing surface drainage thereof, or to install any utility line (wire or conduit) thereon or there over, shall be subject to all of the following limitations and conditions of this section.

(a) Except to the extent permitted by subsection (c) below, any construction or reconstruction of Improvements, or the recoloring, refinishing or alteration of any part of the exterior of, any Improvement upon any Lot is absolutely prohibited until and unless the Owner thereof first obtains the approval of the Planning Committee and otherwise complies with all of the provisions of this section. The Association may on thirty (30) days written notice to the Owner thereof remove or cause to be removed or brought into conformity with these Restrictions, any Improvements constructed, reconstructed, refinished, altered or maintained in violation of this section, or require and compel the Owner thereof to do so, and the Owner thereof shall reimburse the Association for all expenses incurred in connection therewith. Any construction, reconstruction, refinish, alteration of any improvement on a lot shall be in the Building Envelope. In addition, height restrictions may also be applicable where the views of neighbors are concerned, all in accordance with designated standards, or as may be determined by the Planning Committee.

(b) Any Owner proposing to construct or reconstruct Improvements, or to recolor, refinish or alter any part of the exterior of any Improvement or to perform any work, which requires the prior approval of the Planning Committee, shall apply to the Planning Committee for approval. The Owner shall make application by submitting to the Planning Committee for approval in duplicate such plans and specifications for the proposed work as the Planning Committee may from time to time request, including, when deemed appropriate by the Planning Committee, the following: (i) floor plans; (ii) colors and samples of exterior materials and colors;

(iii) specifications; (iv) building plan or plans; (v) wall sections; (vi) exterior elevations; (vii) roof plan; (viii) landscaping plans; (ix) graphics and exterior furnishings; (x) the Owner's proposed construction schedule, (xi) drainage reports, and (xii) plot plan.

(c) The Planning Committee shall approve the plans, drawings and specifications submitted to it only if the following conditions shall have been satisfied:

(1) The Owner has submitted the materials required by the Planning Committee;

(2) The Planning Committee finds that the proposed Improvement conforms to these Restrictions. All such approvals shall be in writing and may be conditioned upon the submission by the Owner, and the resolutions of the Planning Committee, of such additional plans and specifications as the Planning Committee shall deem appropriate for the purpose of insuring that the construction of the proposed improvement shall be in accordance with the approved plans. Applications made in accordance with this section which have been neither approved, rejected, or additional information requested within thirty (30)-days from the date of submission thereof to the Planning Committee shall be deemed approved. One set of plans as finally approved and bearing the endorsement of the Planning Committee shall be returned to the Owner for his permanent records.

(d) Upon receipt of the approval from the Planning Committee, the Owner shall, as soon as possible, satisfy all conditions of that approval and diligently proceed with the commencement and completion of all construction, reconstruction, refinishing and alternations pursuant to the approved plans within one (1) year from the date of such approval or within such longer time as the Planning Committee may grant on the application of such Owner. If the Owner shall fail to comply with this paragraph, any approval given shall be deemed revoked and the Improvement may be treated as having been constructed in violation of this section unless upon the written request of the Owner made to the Planning Committee prior to the expiration of said one (1) year or longer period granted by the Planning Committee and upon a finding by the Planning Committee that there has been a good faith start of construction by Owner or that there has been no change in circumstances, the time for such commencement is extended shall be given as a matter of course when delays in completion of construction are caused by strikes,

unavailability of materials, fire, storms, acts of God or similar events not within the control of the particular Owner.

(e) Nothing herein shall be construed to place a burden or duty upon the Planning Committee to discover through inspection or examination of plans or specifications any defect in design for safety, and the purpose of the inspection is entirely to insure that the property is built to further the purposes of these Restrictive Covenants and to maintain the quality and appearance of the development. Approval of plans and specifications is not to be construed as a determination that the plans and specifications comply with governmental regulations or authority.

Section 3.08. Common Area and Neighborhood Common Area: Construction and Alteration of Improvements.

Except to the extent otherwise permitted pursuant to easements, licenses and rights to use, no Improvement, or other work which in any way alters Common Area or Neighborhood Common Area from its existing state on the date it was conveyed by Grantor to the Association or Neighborhood Association, or otherwise acquired shall be made or done except upon compliance with the provisions of this section. As this section relates to Neighborhood Common Area the term "Common Area" shall also include "Neighborhood Common Area" and the term "Association" shall also include Neighborhood Association.

(a) Subject to Grantor's reserved rights pursuant to the Article entitled "Rights of Grantor", no person other than Grantor or the Association, with the permission of Grantor during the first three (3) years following conveyance of Common Area by Grantor to the Association, shall construct, reconstruct, refinish, alter or maintain any Improvement upon, or shall make or create any excavation or fill upon, or shall change the natural or existing draining of, or shall destroy or remove any tree, shrub, or other vegetation upon Common Area, except as necessary for proper maintenance and replacement of such trees, plants and vegetation.

(b) If the Association or Grantor proposes to construct, reconstruct or alter the exterior of any Improvement located or to be located upon Common Area, or do any act that could result in any change in the topography thereof, the Association shall first obtain the Planning Committee's approval pursuant to the procedures, requirements and provisions as provided for Improvement of Lots. The Planning Committee shall approve the plans and specifications submitted to it pursuant to this paragraph only if it finds that such Improvement (i) is reasonably necessary for any utility installation serving any property within the Subdivision, (ii) is desirable in order to provide or improve access to or to enhance the use and enjoyment of

Common Area, (iii) is desirable to protect, support or preserve any property within the Subdivision, or (iv) is desirable for the construction of a recreational facility, and (v) is necessary or desirable because of a change of use of the property within the Subdivision.

ARTICLE 4

PLANNING COMMITTEE

Section 4.01. Planning Committee: Organization: Power of Appointment and Removal of Members.

There shall be a Planning Committee called Rancho Lomas Association Planning Committee, organized as follows:

(a) The Planning Committee shall consist of not less than three (3) and no more than five (5) members. Each of such persons shall hold his office until such time as he has been removed or his successor has been appointed, as set forth herein.

(b) Except as provided in paragraph (c) below, the right from time to time to determine the number of members of the Planning Committee and to appoint and remove all members of the Planning Committee shall be, and hereby is, reserved to and vested solely in Grantor.

(c) The right from time to time to determine the number of members of the Planning Committee and to appoint and remove members of the Planning Committee shall be reserved to and vested in the Association's Board of Directors (i) if Grantor fails to exercise its rights hereunder or records a declaration waiving such rights, or (ii) from and after any time persons other than the Grantor own ninety percent (90%) or more of the Lots within the Residential Area, unless Grantor's percentage Ownership subsequently becomes more than ten percent (10%) of the Lots within the Residential Area by reason of the annexation of additional property to the Subdivision.

(d) When the Grantor no longer has a right to appoint and remove members from the Planning Committee, then the Association Board of Directors shall be vested with such right.

(e) Any member of the Planning Committee may at any time resign from the Planning Committee upon written notice delivered to Grantor or to the Association, whichever then has the right to appoint and remove members.

Section 4.02. **Planning Committee: Duties.**

It shall be the duty of the Planning Committee to consider and act upon such proposals or plans from time to time submitted to it pursuant to these Restrictions, to adopt Planning Committee rules and after construction is complete, to assure continuing compliance and to perform such other duties from time to time delegated to it by or pursuant to these Restrictions.

Section 4.03. **Planning Committee: Meetings; Action; Compensation and Expenses.**

The Planning Committee shall meet from time to time as necessary to perform its duties properly hereunder. The vote or written consent of the majority of members shall constitute an act by the Planning Committee unless the unanimous decision of its members is otherwise required. The Planning Committee shall keep and maintain a record of all action from time to time taken by the Planning Committee at such meetings or otherwise. Unless authorized by the Grantor during the period Grantor retains the power to appoint, or the Association thereafter, the members of the Planning Committee shall not receive any compensation from the Association for services rendered.

Section 4.04. **Planning Committee Rules.**

The Planning Committee shall have the exclusive power to adopt, amend and repeal, from time to time and by unanimous vote, rules and regulations, to be known as "Planning Committee Rules", which interpret, implement or supplement the provisions of these Restrictions and the Design Guidelines and which shall include any regulations made pursuant to the authority granted to the Rancho Lomas Owners Association. A copy of the Planning Committee Rules, as they may from time to time be adopted, amended or repealed, certified by any member of the Planning Committee, shall be maintained with the corporate records of the Association and shall be available for inspection by members.

Section 4.05. **Non-Waiver.**

The approval by the Planning Committee of any plans, drawings or specifications for any work done or proposed, or in connection with any other matter requiring the approval of the Planning Committee under these Restrictions, shall not be deemed to constitute a waiver of any right to withhold approval as to any similar plan, drawing, specification or matter whenever subsequently or additionally submitted for approval.

Section 4.06. **Liability.**

Neither the Grantor, the Board, the Planning Committee nor any member thereof shall be liable to any Owner for any damage, loss or prejudice suffered or claimed on account of:

- (a) The approval 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 execution and recording of an estoppel certificate whether or not the facts therein are correct provided, however, that the officer executing the certificate, with the actual knowledge possessed by him, has acted in good faith.

Without in any way limiting the generality of the foregoing, the Board, the Committee, or any member thereof, may, but is not required to, consult with or hear any Owner with respect to any plans, drawings, or specifications, or any other proposal submitted to it.

Section 4.07. **Planning Committee Relationship to Governmental Planning Requirements.**

The Planning Committee shall not intentionally approve any use that does not comply with any prevailing governmental requirements at the time. However, should it so approve such a use, such approval shall not in any way relieve the Owner of complying with the governmental requirement, nor shall the Planning Committee be liable for the Owner's reliance upon said approval. Should any governmental agency approve a variance or use that is below the standards of, or is inconsistent with the standards of Rancho Lomas and the Planning Committee Rules, that action will not require the Planning Committee to approve such use. The Planning

Committee approvals may therefore require a higher standard than governmental requirements, but the Planning Committee cannot reduce a standard required by governmental requirements.

ARTICLE 5

PROVISIONS RELATING TO ZERO LOT LINE HOUSES

Section 5.01. **Application**

If any single family dwellings are constructed on Lots in the Residential Area in such a manner that parts of two (2) or more of such dwellings each on its own Lot share a common wall or roof or other common parts, or if a structural part of the dwelling is on or abuts the Lot line, the Lots containing such dwellings and any Lots sharing the Lot line on which the structural part of any such dwelling is on or abuts shall be subject to the provisions of this Article.

Section 5.02. **Obligation of Owners.**

Where such dwellings share common parts, it is the obligation of each such Owner to keep his structure in good condition and repair and to repair or replace any damage to the common elements of both dwellings caused by his negligence or willful act. Each Owner shall cooperate in the repair and replacement of common elements not caused by the negligence or willful acts of one of the Owners and shall pay one-half (1/2) the cost of such repairs or replacement.

Section 5.03. **Easement for Repair and Maintenance.**

Each such Owner has an easement to enter onto the adjoining property of the other at reasonable times for the purpose of construction maintenance, repair and reconstruction of his dwelling and utilities provided that the property of the other Owner is returned to the condition in which it was found and that there is no undue delay in the completion of the work.

Section 5.04. **Easement for Roof Overlap.**

Each Owner has an easement to maintain any roof and eave overhang over the adjoining property not exceeding three (3) feet and for drainage and run off from such roof.

Section 5.05. **Design and Color.**

Where such dwellings share common parts, no Owner shall change the design of this dwelling as it affects the common elements or the exterior colors of his dwelling without the consent of the other Owner. The color of any such units shall at all times be uniform unless otherwise approved by the Planning Committee.

Section 5.06. **Planning Committee as Arbitrator.**

If a dispute arises between any such Owners as to the need for any repairs or renovation of the common elements, the color or design of the dwellings or the liability for the cost of any such repairs or renovation, or entry onto adjoining property any such Owner may submit the matter to the Planning Committee, who after a hearing with at least fifteen (15) days written notice to all parties can render a decision on such disputes binding on all such Owners.

ARTICLE 6

Streets. Easements. Reservations and Rights of Way

Section 6.01. **Nature of Reservations.**

Easements, reservations and rights of way shall be reserved on and across Lots and Common Areas for the erection, construction and maintenance of:

(a) Wires and conduits for the transmission of electricity, lighting, telephone, television and other purposes, pipes and mains for water, waste water, gas and heating, and for other utilities and services as their necessary and proper attachments.

(b) Public and private sewers, storm drains and land drains and storm water run off from the Common Areas and the Lots

(c) Driveways, Pedestrian paths and walkways.

(d) Waterways, arroyos, parkways and berms.

(e) Any other method of conducting or performing any public or quasi-public utility function or use on or beneath the surface of the ground.

(f) Ingress and egress to and from any Lot for development and/or construction purposes.

Section 6.02. **How Reservations are Made.**

Such easements, reservations, and rights of way are as designated on the Subdivision plat, and additional easements, reservations and rights of way may be reserved by the Grantor, and may be granted by the Association.

Section 6.03. **Consent of Planning Committee.**

No building or other structure of any kind shall be built, erected or maintained upon any such easement, reservation or right of way, without the express consent of the Planning Committee, and such easements, reservations and right of way shall, at all times, be open and accessible to public and quasi-public utilities, and to Grantor, all of whom shall have the right of ingress and egress thereto and there from, and the right and privilege of doing whatever may be necessary in, under and upon said locations for the carrying out of any of the purposes for which said easements, reservations and rights of way are hereby reserved, or may hereafter be reserved.

Section 6.04. **Extinguishing Such Reservations.**

The Association, or Grantor with the consent of the Association, shall have the right at any time to extinguish such easements, excepting ingress and egress easements which shall be deemed appurtenant to the Lots and cannot be vacated or changed so to materially interfere with access to and from the Lot by Owners of the Lot(s), and rights of way, provided that the consent of the holder or owner of any such easement or right of way has been obtained.

Section 6.05. **Clearing Reserved Area.**

Grantor, or the Association, or a user of the easement with the permission of Grantor or the Association, shall have the right at any time to cut or remove any trees or branches from such easements, reservations and rights of way as may be reasonably necessary for their use.

ARTICLE 7
THE RANCHO LOMAS OWNERS' ASSOCIATION

Section 7.01. **Organization.**

- (a) The Association shall be organized as a non-profit membership corporation charged with the duties and empowered with the rights herein set forth; its affairs shall be governed by these Restrictions and to the extent not inconsistent herewith its Articles of Incorporation and By-laws.
- (b) In the event that the Association as a corporate entity is not formed or after formation loses its corporate powers or is dissolved, a non-profit, unincorporated association shall forthwith and without further action or notice be formed and succeed to all the rights and obligations of the Association hereunder until a qualified non-profit corporation is formed. Said unincorporated association shall be known as the Rancho Lomas Owners' Association and said Articles of Incorporation and By- Laws shall govern by these Restrictions and, to the extent not inconsistent its affairs therewith, respectively, as if they were created for the purpose of governing the affairs of an unincorporated association.
- (c) The Board of Directors of the Association shall be elected at an annual or special meeting not later than six (6) months from the sale by Grantor of the first Lot subject to these Restrictions. The initial Board of Directors shall serve until the first annual meeting of members at which time Directors shall be elected or appointed as provided in the By Laws.

Section 7.02. **Membership.**

(a) Each Owner by virtue of being an Owner (except for the Association) and for so long as he is an Owner, shall be a member of the Association, or a member of the preceding or succeeding unincorporated association taking its place, except that an Owner shall not be a member by virtue of owning Common Areas, Neighborhood Common Areas, property owned by government or public bodies or dedicated to public use, or exempted from assessment. Any person or entity holding an interest in a lot as security for the payment of debt or performance of an obligation shall not be a member.

(b) The rights, duties, privileges and obligations of an Owner as a member of the Association or its preceding or succeeding unincorporated association shall be those set forth - in, and shall be exercised and imposed in accordance with, the provisions of these Restrictions and the Association's Articles and By-Laws.

(c) In the event of the failure to incorporate the Association on the dissolution of the Association and formation of an unincorporated association, each member of the unincorporated association shall have an equal, underlying beneficial interest in all of the Association's property transferred to or for the account or benefit of said unincorporated association in direct proportion to the number of votes allocated to the Lots owned by such member; provided, however, that there shall be no judicial partition of such property, or any part thereof, nor shall any such member or other person acquiring any interest in said property, or any part thereof, seek any such judicial partition.

Section 7.03. Classes of Membership. The Association shall have two (2)

Classes of Membership, Class I, and Class II.

(a) Class I. All Members, except the Grantor, shall be Class I members and shall be entitled to votes as follows:

- (1) Ownership of a Lot zoned or designated for a single family dwelling, whether unimproved, or improved-one (1) vote.
- (2) Ownership of an unimproved Lot designated for a; duplex, triplex or fourplex-one (1) vote. Ownership of an existing; duplex, triplex or fourplex-one (1) vote for each separate dwelling unit.
- (3) When more than one person holds an interest in any Lot or Unit, all such persons shall be Members. The vote for such Lot or unit(s) shall be exercised as Owners determine, however, in no event shall such multiple Owners vote more votes than they are entitled by the Lots or Units owned.

(b) Class II. The Grantor shall be the only Class II member and shall be entitled to three votes for each Lot or unit(s) owned by Grantor prior to the initial conveyance of such Lot

or unit(s) by Grantor (the assignment or conveyance of all of Grantor's interest in the Project shall not be such an initial conveyance). The Class II membership of Grantor shall terminate upon the sale of the last Lot owned by it, which has been or is subject to annexation into Rancho Lomas.

Section 7.04. **Membership Voting Rights.** Each Member shall be entitled to the votes for each Lot or unit owned by such Owner as set out in Section 7.03 on all matters properly submitted for vote to the membership of the Association. The right to vote may not be severed or separated from any Lot, and any sale, transfer or conveyance of the beneficial interest of the fee of any Lot to a new Owner shall operate to transfer the appurtenant vote without the requirement of any express reference thereto. Voting by members may be by written proxy.

Any provision of these Restrictions requiring a vote by Owners shall be satisfied if the required number of Owners gives their written consent. In any election held pursuant to the requirements of these Restrictions, ballots may be transmitted to Owners in the manner provided for the giving of notice by these Restrictions. If at any time the Members other than Grantor do not have a sufficient percentage of voting power to elect at least one (1) director to the Board through the accumulation of all their votes, Grantor at the annual election of the Board or at any other election of the entire Board shall be allowed to vote for no more than one (1) less than the total number of director positions on the Board.

Section 7.05. **Rights of Members to Use Common Areas.** Members, members of their families, or their guests or renters who actually reside within the Subdivision have a right to use the Common Areas on a non-exclusive basis subject to the Subdivision Rules.

Section 7.06. **Duties and obligations of the Association.** The Association shall have the obligation and duties, subject to these Restrictions to do and perform each and every of the following for the benefit of the Owners and for the maintenance and improvement of the Subdivision.

(a) The Association shall accept as part of the Subdivision all property annexed to the Subdivision and shall accept all Owners and members of the Association.

(b) The Association shall accept from Grantor the fee or leasehold estate in all Common Areas from time to time transferred to it, subject to the reservations of all easements, licenses and rights to use, and the rights of Grantor.

(c) Immediately prior to any dissolution or incapacity of the Association as a corporate entity the Association shall transfer its estate in Common Areas to an independent corporate trustee to hold Common Areas in trust for the benefit of the unincorporated association formed pursuant to this Article and for the benefit of the Owners. If for any reason this is not done, it shall immediately be done by the succeeding unincorporated association and such conveyance may be compelled by an Owner.

(d) The Association shall maintain, or provide for the maintenance of the Landscape Enhancement Area, Common Area, and all Improvements thereon including, without limitation, recreational facilities, in good order and repair.

(e) The Association may enter upon and maintain, or provide for the maintenance of any Lot, Association Common Area, Neighborhood Common Area or improvements located on easements or by licenses, which is not maintained by the Owner, or Neighborhood Association or Project Committee thereof in accordance with the requirements of these Restrictions, at the expense of any such Owner, or Neighborhood Association upon thirty (30)-days written notice to such Owner.

(f) To the extent not assessed to or paid by the Owners, the Association shall pay all real property taxes and assessments levied upon Common Area.

(g) The Association shall obtain and maintain in force such policies of insurance, as shall be deemed necessary or desirable by the Board.

(h) Each policy of fire and extended coverage insurance and all other policies of insurance obtained by the Association whether or not required to be obtained pursuant to the provisions of these Restrictions, shall expressly waive any and all rights of subrogation against Grantor, its representatives and employees, the Association and any Owner. The policy or policies referred to above shall name the Grantor, Association, their representatives, members and employees, and the Owners as insured, and such policy or policies shall protect each of the insured, as if each were separately insured under separate policies; provided, however, that such policy or policies shall not require the insurer or insurers thereof to pay any amount in excess of the maximum limits stated therein. Each year the Association shall review the policy or policies carried pursuant to this paragraph, and shall take such action as may be necessary to assure that the amount of insurance adequately covers the risks of loss against which such policy or policies

insure, to the extent coverage is available.

(i) The Association shall from time to time make, establish, promulgate, amend and repeal the Subdivision Rules.

(j) The Association shall take such action, whether or not expressly authorized by these Restrictions, as may reasonably be necessary to enforce or carry out the restrictions, limitations, covenants and conditions of these Restrictions and the Subdivision Rules.

Section 7.07. **Powers and Authority of the Association.** The Association shall have all of the powers set forth in its Articles of Incorporation, together with its general powers as a non-profit corporation, subject only to the limitations upon the exercise of such powers as are expressly set forth in its Articles of Incorporation, its By-Laws and in these Restrictions, to do any and all lawful things which may be authorized, required or permitted to be done by the Association under and by virtue of these Restrictions and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association or for the peace, health, comfort, safety and general welfare of the Members. Without in any way limiting the generality of the foregoing the Association shall have the following powers and authority:

(a) In fulfilling any of its obligations or duties under these Restrictions, including, without limitations, operation or administration of Common Area, the Association shall have the power and authority:

- (1) To contract and pay for, or otherwise provide for, the maintenance, restoration and repair of the Common Area and all improvements of whatever kind and for whatever purpose, located upon Common Area and procure all necessary utility and other services therefore;
- (2) To obtain, maintain and pay for such insurance policies or bonds, as the Association shall deem to be appropriate for the protection or benefit of this Subdivision, the Association, the members of the Board or Owners;
- (3) To incur indebtedness; however any indebtedness and the terms thereof which would require for payment or amortization thereof, an increase in dues over the level for the previous year plus allowed

increases, such indebtedness must be approved by the Class I members by the same procedures for increasing dues and have the written approval of the Class II member.

- (4) To contract and pay for, or otherwise provide for, the services of architects, engineers, attorneys and certified public accountants, and such other professional and non-professional services as the Association deems necessary;
- (5) To contract and pay for, or otherwise provide for, such materials, supplies, furniture, equipment and labor as and to the extent the Association deems necessary;
- (6) To pay and to discharge any and all liens from time to time placed or imposed upon any Common Area, on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration;
- (7) To purchase, lease or contract for the use of land and Improvements for recreational or other purposes to the extent the Association deems necessary. However, the purchase or construction of any capital asset or Improvements must have the approval of the Class I members and the written consent of the Class II member if the item is not an approved budget item or if it is not an item for which there has been established and funded a sinking fund for the item purchased or constructed.
- (8) To convey Association property with the requisite approval of the Association.
- (9) To contract and pay for security service.
- (10) To provide for the maintenance, repair and clearing of waterways and Open Spaces within the development, whether required for the proper drainage of natural flow of water, whether said waterways are located on private property, common property or Association property, and

whether or not the Association has an easement therefore. Nothing herein is intended to require the Association to provide such service.

(11) To enforce these Master Restrictions and Planning Committee Rules and decisions.

(12) The Association shall have the power and authority, if it deems appropriate, and if it can be purchased, to own the water distribution system within the development, to operate it, or lease it, or maintain it in order to assure that there is a water distribution system that is adequate to supply Rancho Lomas.

(b) With respect to its estate in Common Area, the Association shall have the power and authority from time to time to grant and convey easements or rights of way, in, on, over and under any Common Area, for the purpose of constructing, erecting, operating and maintaining utility lines and facilities and other lines and facilities for the benefit of the Subdivision or Owners.

(c) The Association may employ the services of a professional manager or managers to manage the affairs of the Association and any part of its Common Area, and, to the extent not inconsistent with the laws of the State of New Mexico and upon such conditions as are otherwise deemed advisable by the Association, the Association may delegate to the manager any of its powers under these Restrictions. Any contract with such a professional manager shall be considered a service contract and subject to the provisions of these Restrictions relating to such contracts.

(d) The Association shall have the right from time to time to pay, compromise or contest any and all taxes and assessments levied against all or part of Common Area or upon any personal property belonging to the Association.

(e) The Association shall have the power and authority from time to time, in its own name, and on its own behalf or on - behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of these Restrictions and to enforce, by mandatory injunction or otherwise, all of the provisions of these Restrictions and shall not be required to post bond to support such actions.

(f) The Association may bill with its own assessments the regular assessments of Neighborhood Associations charging such associations for the actual cost of such services and may administer the affairs of such Associations, including maintenance of Common Areas, assessments, collection of delinquent assessments and enforcement of restrictions, keeping of

membership books, purchase of insurance, payment of taxes, administration of corporate affairs and to enter into service or other contracts for such services, and subject to the power of the governing board of any such association to set assessments, set cost limits on service and other contracts, set limits of insurance coverage and exercise other powers granted to such governing board by these Restrictions. The Association while administering the affairs of such associations may enforce the obligations of such associations by suit or otherwise in the name of any such association or in the association's name.

Section 7.08. Subdivision Rules.

(a) The Association may, from time to time and subject to the provisions of these Restrictions, adopt, amend and repeal rules and regulations, to be known as the "Subdivision Rules" governing:

- (1) The use of Common Area and recreational facilities; provided members and the purchaser or tenant of any Lot or unit who is granted a Member use in place and stead of such Member shall be treated on a non-discriminatory basis and shall not be deprived of use except for suspension of their rights set out in (2) below, subject to regulations as to time and method of use, including allocations of time for specific groups using such facilities for classes or competition, reasonable restrictions based on age, and rules necessary or convenient for safety.

- (2) The suspension of the voting rights and the use of Common Area and facilities of a Member, and all persons using such Members privileges by the Board for violation of the project restrictions, the Association's Articles and By-Laws, or the Subdivision Rules, such suspension to be limited to a period of ninety (90) days after curing any violation; and similar suspension of voting rights and use for the failure to pay assessments extending for the entire period of non-payment. An opportunity for hearing will be given any member who privileges are so suspended prior to the effective date of the suspension in accordance with the Association By-Laws. The Association shall not have the power or right to deny member's access to their Lots over the Community streets.

(3) Penalties, including monetary fines and assessments, and other enforcement rights of the Association for breach of the Subdivision Rules or Planning Committee Rules to include the power to lien.

(b) The Subdivision Rules may without limitation and to the extent deemed necessary by the Association regulate the use of the Common Areas subject to the rights of Members set forth in Paragraph (a) (1) above, and Grantor's rights, which shall not be limited, and which rules may entirely exclude use of such areas to invitees of members and others not having rights to use on a non-discriminatory basis.

(c) A copy of the Subdivision Rules, as they may from time to time be adopted, amended or repealed, shall be mailed to each member and posted but the failure to properly mail and post shall not invalidate the Subdivision Rules or prevent their enforcement. The Subdivision Rules shall have the same force and effect as if they were set forth in and were a part of these Restrictions.

Section 7.09. **Liability of Members of Board.** No member of the Board shall be personally liable to any Owner, Neighborhood Association, Project Committee, or to any other person, including Grantor, for any error or omission of the Association, its representatives and employees, the Planning Committee, or the manager; provided, however, that such Member has, with the actual knowledge possessed by him, acted in good faith.

ARTICLE 8

Funds. Assessments and Delinquency

Section 8.01. **Creation of Lien and Personal Obligation for Assessments.**

Grantor for each Lot in a Subdivision owned by it and each owner of any Lot within Rancho Lomas, as may from time to time be added to by annexation, hereby agrees to pay, by the acceptance of a deed or contract of sale therefore, whether or not so expressed in any such deed or contract or other conveyance is deemed to agree to pay the Association: (1) maintenance assessments; (2) special assessments; (3) penalty assessments; (4) assessments for capital improvements; (4) all other fees or other moneys due to the Association from such Owner. The maintenance assessment, special assessment and assessment for capital improvements, plus interest, late charges, costs and attorney's fees, shall be a charge against the land and shall be a

continuing lien upon the Lot against which each such assessment is made, and shall also be the personal obligation of the Owner or Owners of such property on the assessment date. The ability to lien is also granted to the City of Las Cruces in the event the city finds it necessary to provide maintenance within the common areas consistent with promoting the health, safety and welfare of the residents of Las Cruces.

Section 8.02. Maintenance Assessment.

(a) Within thirty (30) days prior to the commencement of each calendar year, the first day of which shall be the assessment date, the Association shall estimate the costs and expenses to be incurred by the Association during the coming calendar year in performing its functions pursuant to these Restrictions (including a reasonable provision for contingencies and replacements), except those functions which relate to the purchase or development of capital improvements which must be approved by the Members and shall subtract from such estimate an amount equal to other projected revenues and surplus balances not needed for reserves and contingencies. The sum or net estimate so determined shall be assessed to all Owners, not exempt, in shares proportionate to their voting rights as a maintenance assessment.

(b) If at any time and from time to time during any fiscal year the maintenance assessment proves or appears likely to prove inadequate for any reason, including nonpayment of any Owner's share thereof, the Association may levy a further assessment in the amount of such actual or estimated inadequacy, which shall be assessed to Owners divided as provided in this Section.

The maintenance assessment shall not be increased by more than the increase reflected by the Consumer Price Index, all times, as published by the Bureau of Labor statistics of the Department of Labor, or other comparable index in the event the Consumer Price Index ceases to be published, without the approval of two thirds (2/3) of the Class I members, and the consent of two thirds (2/3) of the Class II members, but the percentage increase shall be cumulative and any amount not used in one year may be used in later years. For purposes of implementing this paragraph, January 1, 2003, shall be the base index rate for determining any increases.

Section 8.03. Special Assessments for Capital Improvements and Indebtedness.

The Association may also levy in any fiscal year an assessment for paying or returning in whole or in part the cost of acquisition, construction, reconstruction, repair or replacement of a described capital improvement to the Common Area or retiring an indebtedness

of the Association in an amount in excess of \$10,000.00 in any year, provided the consent of two thirds (2/3) of the members has been obtained which shall be assessed to Owners as provided for in maintenance assessments.

Section 8.04 Uniform Rates. The Owners Association Fee shall be \$50.00 for owners who close on lots after March 11th, 2004, in the Rancho Lomas Subdivision. Property owners who closed on lots prior to March 11th, 2004 shall pay \$25.00 per month thru and including the payment due on December 1st, 2004; the subsequent payments to the owners association at that time shall be \$50.00 for every property owner in the Rancho Lomas Community.”

Section 8.05. Special Assessment. This Association shall levy a special assessment against any Owner as a result of whose acts, or the acts of his tenant, family or invitees, or failure or refusal to act in accordance of these Restrictions, or the Subdivision Rules, causes moneys to be expended from the operating fund by the Association in performing its functions. Such assessment shall be in the amount so expended, and shall be due and payable to the Association when levied and notice given. A special assessment may also be levied against any such Owner to collect any fee or charge levied pursuant to the authority of these Restrictions, due to the Association from such Owner or Owners and not paid within thirty (30) days.

Section 8.06. Penalty Assessments. Penalty assessments may be imposed for violation of the Subdivision Rules, pursuant to the procedures established from time to time by the Board. Such assessments shall be those punitive in nature and may be imposed without regard to whether or not monies have been expended by the Association as a result of such violation. Notice of the intent of the Board of Directors to impose such assessments, provisions for hearing and appeal shall be established by resolution of the Board.

Section 8.07. Notice of Assessment. The Association shall give each Owner assessed thirty (30)-days written notice of such assessments, the date of the assessment, the due date or dates giving the amount of such assessment and if applicable, an itemization of the various assessments being made.

Section 8.08. **Date of Commencement of Regular Assessments.**

The assessments provided for in this Article shall commence as to Lots conveyed by the Grantor on the first day of the first month following the sale or transfer of a lot from the Grantor to a new owner. As to later annexed Lots, on the first day of the 12th calendar month following the recordation of the declaration annexing such Lots into the Association. However, such lots, which are thereafter conveyed by Grantor, shall commence paying assessments on the first day of the first month following the conveyance of said lot by the Grantor.

Section 8.09. **Certificate of Payment.** The Association shall, upon demand, furnish to any owner liable for assessments, a certificate in writing signed by an officer or managing agent of the Association, setting forth whether the regular and special assessments on a specified Lot have been paid, and the amount of the delinquency, if any. The Board for the issuance of these certificates may make a reasonable charge. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8.10. **Exempt Property.** The following property subject to these Restrictions shall be exempt from the maintenance and capital improvement and indebtedness assessments; (a) Common Areas and (b) Neighborhood Common Areas.

Section 8.11. **Delinquency.** Any assessment provided for in this Article, which is not paid within fifteen (15) days after its due date, the Association may, at its election, require the owner to pay a "late charge" in a sum to be determined by the Association, but not to exceed \$20.00 or ten percent (10%) of the amount due assessment whichever is greater regardless of the number of individual assessments due. If any such assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate determined by the Board, and the Association may, at its option, bring an action at law against the Owner or Owners personally obligated to pay the same, or upon compliance with the notice provisions set forth in section 8.12, to foreclose the lien provided for in section 8.01 and there shall be added to the amount of such assessment the late charge, the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest at the rate provided herein and a reasonable attorneys' fee, together with the costs of action. Each Owner vests in Association or its assigns,

the right and power to bring all actions at law or lien foreclosure against such Owner or other Owners for the collection of such delinquent assessments.

Section 8.12. **Notice of Lien.** No action shall be brought to foreclose an assessment lien, (however, no notice shall be required to perfect the lien for the assessment) as herein provided less than thirty (30) days after the date a notice of claim of lien is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of said lot at the address of the Owner as registered in the Association Office. Said notice of claim must recite a good and sufficient legal description of any such Lot, the record owner or reputed owner thereof, the amount claimed (which shall include the interest charges and late charges), and the name and address of the Association.

Section 8.13. **Foreclosure Sale.** Any sale after foreclosure shall be conducted in accordance with the laws governing foreclosure sales in the State of New Mexico. The Association, through its attorneys and duly authorized agents, shall have the power to bid on the Lot at the foreclosure sale, and to acquire and hold, lease, mortgage and convey the same and may bid the amount of the foreclosure decree in lieu of cash.

Section 8.14. **Curing of Default.** Upon the timely curing of any default for which a notice of claim of lien was sent by the Association, the Association shall, upon request, provide a certificate of payment as provided under Section 8.08.

Section 8.15. **Cumulative Remedies.** The assessment lien and the rights to foreclosure and sale hereunder shall be in addition to and not in substitution for any other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

ARTICLE 9

Neighborhood Association

Section 9.01. **Organization and Membership.** The organization and membership of a Neighborhood Association shall be as set out for Rancho Lomas Owner's Association in Article 7 and for that purpose section 7.01 through 7.05 are incorporated herein with the following changes and modifications of terms.

(a) The terms "Association" and "The Rancho Lomas Owners' Association" shall refer to the Neighborhood Association.

(b) The terms "Owner" or "Owners" shall refer to Owners within the Neighborhood as set out in the declaration establishing it.

(c) The term "Common Area" shall refer to the Neighborhood Common Area.

(d) The term "Subdivision" shall refer to the Neighborhood.

Section 9.02. **Duties and Obligations.** A Neighborhood Association shall have the obligation and duties subject to these Restrictions to perform as set out for Rancho Lomas Owners' Association in Section 7.06, which is incorporated herein with the following changes and modifications:

(a) The changes and modifications of terms set out in Section 9.01(a) through (d).

(b) The deletion of Paragraphs (e) and (i).

(c) The Neighborhood Association may with the same authority and on the same basis as the Association promulgates, amend and repeal Subdivision Rules governing the use of its Neighborhood Common Areas.

Section 9.03. **Powers and Authority.**

The powers and authority of a Neighborhood Association are as set out for The Rancho Lomas Owners' Association in Section 7.07 through 7.09 with the following changes and modifications.

(a) The changes and modifications in terms as set out in Section 9.01 (a) through (d).

(b) The deletion of Section 7.07 (f).

Section 9.04. **Funds. Assessments and Delinquency.** Neighborhood

Associations shall have the funds, assessments and rights of enforcement set for The Rancho Lomas Owners' Association in Article 8, which is incorporated herein, with the changes and modifications in terms set out in section 9.01 (a) through (d).

ARTICLE 10

Protection of Security Interests

Section 10.01. **Application of Assessments to Mortgagees.**

The liens created under these Restrictions upon any Lot shall be subject and subordinate to, and shall not affect the rights of a first mortgagee under any recorded first mortgage upon a Lot made in good faith and for value, but shall be enforceable as a second mortgage on the property. After foreclosure sale by a First Mortgagee or the date the mortgagee obtains possession of the property, whichever is later, the lot or unit so acquired shall become exempt from liability for payment of assessments and shall remain except for so long as it remains unoccupied. Occupancy of the unit by any person shall again make such unit and the Owner(s) thereof liable for payment of assessments regardless of whether or not the unit is subsequently vacated, unless due to another foreclosure action.

Section 10.02. **No Amendment Affect Mortgagees.**

No amendment to these Restrictions shall adversely affect the rights of any Mortgagee who does not join in the execution thereof; as to mortgages recorded prior to the date such amendment is recorded.

Section 10.03. **Limitation of Enforcement Against Mortgagee.**

No violation of these Restrictions or enforcement of these Restrictions shall defeat or render invalid the lien of any first mortgagee when such Mortgage is made in good faith and for value against the property but these Restrictions shall be effective against any person whose title to property within the Subdivision is acquired by foreclosure, voluntary conveyance or otherwise.

Section 10.04. **Application of Project Restrictions.**

Except as provided in this Article or specifically provided elsewhere in the Project restrictions, all Mortgages and Mortgagees are bound by the provisions of these Restrictions.

ARTICLE 11

Rights of Grantor

Section 11.01. **Development of the Subdivision**

Grantor is developing the Subdivision as a development containing Common Areas and recreational areas and single-family dwelling and all Owners of property within the subdivision are hereby placed on notice of these plans and the right of Grantor to amend such plans at any time.

Each person accepting a grant of property subject to these Restrictions hereby consents to such development and covenants not to oppose such development, including Improvements, signs, parking areas and lighting provided that such development is not in violation of law. This section shall not be construed as limiting the use of property within the Subdivision by its Owners.

Section 11.02. **Limitation of Restrictions on Grantor.**

Grantor is under-taking the work of developing the Subdivision. The completion of that work and the sale, rental and other disposition of the property within the Subdivision is essential for this development. In order that the work may be completed and the property developed and fully occupied as rapidly as possible, nothing in these Restrictions shall be understood or construed to:

(a) Prevent Grantor or its agents, employees and contractors from doing on the property within the Subdivision or any Lot or unit thereof, whatever is reasonably necessary or advisable in connection with the completion of its work;

(b) Prevent Grantor or its agents, employees and contractors from erecting, constructing and maintaining on any part or parts of the Project, such facilities, structures and offices as may be reasonably necessary for the conduct of its business of completing the work

and disposing of the property in parcels by sale, lease or otherwise, including without limitation sales offices, model homes or Project Units, general business offices, for its staff and employees, contractors or subcontractors, storage and parking facilities for material and equipment and fabrication and assembly shop; or

(c) Prevent Grantor from conducting on any part of the properties its business of completing the work, and disposing of the property therein;

(d) Prevent Grantor from maintaining such sign or signs in the Subdivision as Grantor deems necessary for its advertisement, and the sale, lease or disposition of any Lot or Improvement;

(e) Prevent Grantor from making and constructing any Improvements without the permission of the Planning Committee during the period Grantor has the power to appoint the members of the Planning Committee;

(f) Prevent Grantor from combining or splitting Lots within the Subdivision or from applying for a change of zoning or use, or for a use permit on any property within the Subdivision.

Section 11.03. **Use of Subdivision Name.** Grantor may use the name Rancho Lomas and the name of the Association or of any Neighborhood Association in connection with other developments whether adjacent to the Subdivision or not, provided such names have a distinctive number or other designation so that they are not identical with the names of the Rancho Lomas, the Association and any Neighborhood Association. Consent is hereby given to Grantor and Grantor's assigns to use such names (distinguished as provided by this section) as the name of a corporation and the New Mexico State Corporation commission is authorized to permit the filing of Articles of Incorporation using such names. No other person without the written consent of Grantor shall use the name "Rancho" or "Lomas" either alone or in conjunction with any other as the name of any building, apartment, business or office except that the Association is in no way restricted from the use of its name in connection with its business and activities.

Section 11.04. **Grantor's Use of Common Area.** Grantor may reserve unto itself, in any grant of Common Area to the Association or any Neighborhood Association the following rights:

(a) To use any building as a sales center and to maintain therein a sales office with normal and customary office and communication equipment and to maintain therein personnel, maps, display cases, models and decoration; to use the adjacent -- parking facilities for itself, its agents, employees and invitees; and to use such facilities for such social events as Grantor feels are necessary or proper to promote or aid the Subdivision or Grantor.

(b) To use the facilities of the Association or of any Neighborhood Association transferred to the Association by Grantor for the purpose of promoting the sale of property within the Subdivision or of promoting Grantor; to allow the use of such facilities to its officers, employees, agents, contractors and guests.

(c) To enter onto the Common Area for any purpose for the development or promotion of the Subdivision and Grantor. These rights reserved to Grantor shall terminate upon termination of the Class II class of membership.

Section 11.05. **No Amendment or Repeal.** The provisions of this Article may not be amended or repealed without the consent of Grantor.

ARTICLE 12

Amendment, Repeal and Duration

Section 12.01. **Amendment and Repeal.**

In addition to the rights reserved to Grantor to modify or supplement these Restrictions with respect to property annexed to the Subdivision, and unless specifically provided to the contrary herein, these Restrictions, or any part thereof, as from time to time in effect with respect to all or any part of the Subdivision, and any - limitation, restriction, covenant or condition thereof, may be amended or repealed upon (i) the sixty percent (60%) vote or written consent of the Owners, and (ii) the recordation of a certificate of the Secretary or an Assistant Secretary of the Association setting forth in full the amendment or amendments to these Restrictions so approved, including any portion or portions thereof replaced, and certifying that said amendment

or amendments have been approved by a required sixty percent (60%) vote or consent, and if necessary by the consent of Grantor and the Owners of a particular class of property.

Section 12.02. **Duration**

All of the limitations, restrictions, covenants and conditions of these Restrictions shall continue and remain in full force and effect at all times with respect to all property, and each part thereof, included within the Subdivision, to the Owners of such property and to the Association, through December 31, 2030 A.D., subject however, to the right to amend and terminate. Provided, however, that unless within one (1) year prior to December 31, 2030, there shall be recorded an instrument directing the termination of these Restrictions signed by a majority of the then Owners these Restrictions as they are in effect immediately prior to the expiration date shall be continued automatically, without any further notice, for an additional period of ten (10) years and thereafter for successive periods of ten (10) years unless within one (1) year prior to the expiration of any such period these Restrictions are terminated as set forth in this paragraph.

ARTICLE 13

Miscellaneous provisions

Section 13.01. **Enforcement: Non-Waiver**

(a) Except to the extent otherwise expressly provided herein, Grantor and the Association or any Owner shall have the right to enforce any and all of the limitations, restrictions, covenants, conditions, obligations, liens and charges now or hereafter imposed by these Restrictions upon other Owners, or upon any property within the Subdivision.

(b) Except to the extent otherwise expressly provided herein, Grantor and any Owner or Owners shall have the right to enforce any and all limitations, restrictions, covenants, conditions, obligations now or hereafter imposed by these Restrictions upon the Association.

(c) Every act or omission whereby any restriction, condition or covenant of these Restrictions is violated in whole or in part is hereby declared to be and to constitute a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by Grantor, the Association or by an Owner or Owners, as provided for in subsections (a) and (b) above; provided, only the Association or its duly authorized agents may enforce by self-help any limitation, restriction, covenant, condition or obligation herein set forth.

(d) Each remedy provided for in these Restrictions is cumulative and not exclusive.

(e) The failure to enforce the provisions of any limitation, restriction, covenant, condition, obligation, lien or charge of these Restrictions shall not constitute a waiver of any right to enforce any such provision or any other provision of these Restrictions.

Section 13.02. **Construction: Compliance with Laws: Severability; Singular and Plural; Titles.**

(a) All of the limitations, restrictions, covenants and conditions of these Restrictions shall be liberally construed, together, to promote and effectuate the beneficial operation of the Subdivision and the Lots, Common Area and Neighborhood Common Area located therein.

(b) No provision of these Restrictions shall be construed to excuse any person from observing any law or regulation of any governmental body having jurisdiction over such person or the Subdivision.

(c) Notwithstanding the provisions of Subsection (a) above, the limitations, restrictions, covenants and conditions of these Restrictions shall be deemed independent and severable, and the invalidity or partial invalidity of any provision, or portion thereof, or any such limitations, restrictions, covenants or conditions shall not affect the validity or enforceability of any other provision.

(d) The singular shall include the plural and the - plural the singular unless the context requires the contrary, and the masculine, feminine and neuter, as the context requires.

(e) All titles used in these Restrictions, including those of articles and sections, are intended solely for convenience of reference and the same shall not, nor shall any of them affect that which is set forth in such articles, sections nor any of the terms or provisions of these Restrictions.

Section 13.03. **Lot Splitting; Consolidation.**

(a) No Lot shall be split unless the Planning Committee and the Association shall have given their written consent.

(b) No two or more Lots within the Residential Area shall be consolidated into one Lot or combined for the purpose of building one residence thereon whether or not the

Lots are consolidated, unless the Planning Committee and the Association shall have given their written consent.

(c) Nothing contained in Subsection (a) or (b) above shall apply to the splitting of any Lot by Grantor or the consolidation of two or more Lots into one Lot by Grantor, or the resubdivision into a project of a Lot designated for project use.

Section 13.04. Transfer of Common Area: Reservation of Easements and Rights of Way.

Grantor shall transfer and convey to the Association, or to a neighborhood Association, and the Association or Neighborhood Association shall accept the fee in all of the real property within the Subdivision designated by Grantor as "Common Area" and not constituting the Common Area of a project. Such real property may be subject to any or all of the following exceptions, liens and encumbrances:

(a) The lien of real property taxes and assessments not delinquent;

(b) Such easements and rights of way as may have been offered for dedication to the City of Las Cruces, or any other political Subdivision or public organization, or public utility corporation;

(c) Such easements and rights of way, licenses or rights of use, on, over or under all or any part of any such property or structures or improvements thereon as may be reserved to Grantor or granted to any Owner for the use thereof in accordance with the provisions of these Restrictions;

(d) Such easements and rights of way on, over or under all or any part thereof as may be reserved to Grantor for access to property contiguous to Common Area;

(e) The obligation imposed, directly or indirectly, by virtue of any statute, law, ordinance, resolution or regulation of the united states of America, the state of New Mexico, or any other political Subdivision or public organization having jurisdiction over such property, or by virtue of any organization or body politic created pursuant to any such statute, law, ordinance or regulation; and

(f) Any other lien, encumbrance or defect of title of any kind whatsoever (other than of type which would at any time from time to time create a lien upon such property to secure an obligation to pay money) which would not materially and actually prejudice Owners in their use and enjoyment of such property.

Section 13.05. **Condemnation of Common Area.**

If at any time, or from time to time, all or any portion of Common Area, or Neighborhood Common Area, or any interest therein, be taken for any public or quasi-public use, under any statute, by right of eminent domain or by private purchase in lieu of eminent domain, any award in condemnation shall be paid to such Association and deposited into its operating fund. No Owner shall be entitled to participate as a party, or otherwise, in any proceedings relating to such condemnation, such right of participation being herein reserved exclusively to the Association or Neighborhood Association, which shall, in its name alone, represent the interest of all Owners.

Section 13.06. **Authority for Conveyance of Common Area and Special Use Property.**

The Association may from time to time own both Common Area as defined in these Master Restrictions and Special Use Property as also defined in these Master Restrictions. The following sets forth the conditions for conveyance *of* such property.

(a) Common Area may not be sold or transferred or otherwise conveyed from Association ownership except with the affirmative vote *of* two thirds (2/3) *of* the Association Members of each class. Said conveyance does not include grants *of* easement across Common Areas as described elsewhere in these Master Restrictions.

(b) The Association may purchase, maintain, hold, use or sell Special Use Property by the act of the Board of Directors. Said transactions shall require the two thirds (2/3) vote of the Board of Directors of the Association.

(c) If ingress or egress to any residence is through a Common or Special Use Area, any conveyance or encumbrance of such area is subject to the Owner's Easement.

Section 13.07. **Dedication of Common Area and Improvements.**

Grantor shall have the unilateral right to dedicate such Common Area and Improvements to the Association, and the association's only basis for objection shall be a certification of an engineer, architect or accountant that there is a defect in an Improvement, which is not relative to its age and normal wear and tear. The said registered or licensed engineer, registered architect or certified public accountant shall be selected by mutual agreement of Grantor and the Association, and Grantor shall pay for his fees. If Grantor and, the Association are unable to agree upon such an engineer, architect or accountant, then each shall choose one at their own expense, and those two shall choose a third, whose fees shall be split evenly. The Association must deliver written

objection to Grantor within sixty (60)- days after written notification of dedication of property to the Association. Failure to object in writing to the Grantor shall waive any future objection.

Section 13.08. **Destruction of Common Area.**

If Common Area is destroyed by fire or other casualty the Board shall have the Improvements replaced or rebuilt if the Board determines that such rebuilding is in the best interest of the Owners and sufficient funds are reasonably available for such rebuilding.

Section 13.09. **Obligations of Owners; Avoidance; Termination**

(a) No Owner, including Owners of property in the Commercial Area, through non-use of any Common Area or recreational facility, or by abandonment of his property, may avoid the burdens or obligations imposed on Owner by these Restrictions by virtue of being an Owner.

(b) Upon the conveyance, sale, assignment or other transfer of a Lot to a new Owner, the transferring Owner shall not be liable for any assessments levied with respect to such Lot after the date of such transfer, and no person, after the termination of his status as an Owner and prior to his again becoming an Owner, shall incur any of the obligations or enjoy any of the benefits of an Owner under these Restrictions following the date of such termination.

Section 13.10. **Notices: Documents; Delivery.**

Any notice or other document permitted or required by these Restrictions to be delivered may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows: If to an Owner, then at any Lot within the Subdivision owned by the Owner or at such other address given by Owner to the Association, and if to the Grantor, the Planning Committee or the Association at an address to be provided at the time a lot is purchased; provided, however, that any such address may be changed from time to time by any such Owner, by the Planning Committee, or by Grantor by notice in writing, delivered to the Association, or by the Association, by notice in writing delivered to all Owners. If any mortgagee of an Owner files a written notice with the Association setting forth in detail the name or names of the Owner, mortgagee's address for notice and proof of its secured position, the Association will mail copies of all notices to such Owner to mortgagees; provided, however, the failure to do so shall not invalidate any such notice.

Section 13.11. **Additional Covenants, Conditions and Restrictions.** It is contemplated by this declaration that Grantor or purchasers of property within the Subdivision may, if allowed by law further subdivide the property so purchased and may further encumber such property with additional declarations of covenants, conditions, restrictions, limitation and terms and conditions of record for such purposes in connection with such further subdivisions as may be required by law. Such additional declarations of covenants, conditions, restrictions, limitations and terms and conditions are expressly contemplated and allowed by these Restrictions provided no such additional declaration shall conflict with any provision of these Restrictions. If there is any conflict between any additional declaration and these Restrictions, these Restrictions shall control and the provisions of the additional declaration to the extent they conflict with these Restrictions shall be void and unenforceable.

Section 13.12. **Enforcement.** The Association, or any Owner, shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservation, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.