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SONOMA RANCH ESTATES SUBDIVISION  
Account Book on - 5/11/1

**DECLARATION OF PROTECTIVE COVENANTS**  
**SONOMA RANCH ESTATES SUBDIVISION**  
**AT SONOMA RANCH EAST SUBDIVISION**  
**DOÑA ANA COUNTY, NEW MEXICO**

PHASE 1 & 2 at Sonoma Ranch East

KNOW ALL BY THESE PRESENTS: That Sonoma Ranch Subdivision Ltd., Co., a New Mexico limited liability company, developer and owner of Sonoma Ranch East Subdivision, Sonoma Ranch Estates in Doña Ana County, New Mexico, according to the plats thereof on file in Plat Records Book 20, pages 390-391, and Plat Records Book 20, pages 392-393, of the County Clerk's office of Doña Ana County, New Mexico, in consideration of the mutual interest of the owners of real estate in Sonoma Ranch Estates covenants and agrees with all future purchasers of lots or building sites in said Subdivision that the following restrictions and obligations shall apply to all lots and building sites in said Subdivisions, and all conveyances of any lot therein shall likewise be subject to said restrictions and obligations as follows:

**I. ESTABLISHMENT OF COVENANTS**

1) **ADDITIONAL COVENANTS.** All owners within the Sonoma Ranch East Subdivision are subject to covenants which relate to the subdivisions within the approximately 226.666 acres of Sonoma Ranch East. Those covenants burden properties within all of the subdivisions within Sonoma Ranch East, and their owners. Sonoma Ranch Estates is within Sonoma Ranch East Subdivision. The covenants set forth herein are in addition to, and not in lieu of, the covenants for Sonoma Ranch East. The owners within Sonoma Ranch Estates are obliged to abide by both sets of covenants, and to pay the assessments due to the Sonoma Ranch East Homeowners' Association as well as the assessments due under these covenants.

2) **TERM.** All of the restrictions, conditions, covenants and reservations set forth in the Declaration shall be covenants running with the land and shall continue and remain in full force and effect at all times until January 1, 2025, and shall thereafter be automatically continued without further notice from that time for successive periods of ten (10) years without limitation, unless there shall be recorded a written instrument, approved by the then-record owners of seventy-five percent (75%) of the lots in the subdivisions and executed by the members of the Design Review Committee, modifying or extinguishing this Declaration in whole or in part.

3) **ENFORCEMENT.** All persons, firms, associations, and corporations who now own, or who may in the future own, property in the subdivisions are specifically given the right to enforce these covenants through any proceeding, at law or in equity, against any person or

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persons, firms and corporations violating or threatening to violate such covenants, and to recover any damages suffered by them from any violation thereof. Neither the Declarant nor the Design Review Committee shall be obligated to enforce any covenant through legal proceedings.

4) **SEVERABILITY.** Invalidation of any one of these covenants by judgment or court order shall not affect any of the other provisions, which at all times shall remain in full force and effect.

5) **DESIGN REVIEW COMMITTEE.**

A. The Design Review Committee shall initially be composed of three persons to be chosen by the Developer. The Developer has the authority to remove any member of the Initial Committee, with or without cause. In the event of death, resignation or removal of any member of the initial committee, the above mentioned Developer shall have full authority to designate a successor or successors. The Design Review Committee may designate one of its members to take any action or to perform any duties for and on behalf of the Committee. The members of the Committee shall not be entitled to any compensation for services performed pursuant to this Covenant. The initial Design Review Committee shall exist until such time as the Developer states in writing to all individual owners of lots in Sonoma Ranch Estates that control shall pass to whomever the majority of those lot owners shall elect. A majority of the lot owners shall determine the means of the continuation and succession of members of the Design Review Committee after notice has been served. Such notice shall be given at the latest after the conveyance by the Developer of the last lot in Sonoma Ranch Estates; however, failure to give such notice shall not extend the term of any member of the Committee, nor shall Sonoma Ranch Subdivision Ltd., Co. be liable therefore.

B. In addition to other powers and authority vested in the Design Review Committee, it shall also: rule upon any questions arising with respect to interpretation of the protective covenants; grant variations from these covenants at its discretion, and, if necessary, may, but shall not be required to, take any action necessary to enforce the same on behalf of all parties having an interest. Such shall not preclude any other person authorized by law from either enforcing or enjoining the enforcement of these restrictive covenants.

C. The Design Review Committee shall also serve as an architectural review committee. The Design Review Committee shall issue standards or rules ("Design Standards") relating to the procedures, materials to be submitted and additional factors which will be taken into consideration in connection with the approval of any proposed improvements to the property.

D. The review of any plans submitted to the Design Review Committee, and any approval thereof, is intended and shall be construed solely as review of compliance with these Protective Covenants, and shall not be deemed or construed in any way to include review and/or

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approval of compliance with applicable laws, codes or regulations, nor of safety, habitability, stability or any other matter, all of which are the responsibility solely of the architect, builder and/or owner of the improvements for which plans are submitted.

6) **DESIGN REVIEW.** No building, wall or fence shall be erected, placed or altered on any lot until the construction plans and specifications, and a plan showing the location of the structure having been approved by the Design Review Committee as to materials and compliance with these covenants. Approval shall be as provided in Paragraph I-6.

7) **PROCEDURE.** Owners shall submit plans and specifications to the Committee, along with forms designated and included in Design Standards. The Committee's approval or disapproval as required in these covenants shall be in writing, and given within ten (10) working days of the submission of all required information. In the event the Design Review Committee fails to act on submitted plans within the 10-working-day review period, then the plans shall be deemed approved.

8) **NON-LIABILITY.** Neither the Developer nor the Design Review Committee shall incur liability to anyone submitting plans for approval, or to any owner or owners of land subject to these covenants by reason of mistake in judgment, negligence or nonfeasance of itself, its agents or employees, arising out of or in connection with the approval, or disapproval, or failure to approve any such plans; anyone submitting plans for approval, by the submitting of such plans, and by acquiring title to any of the property covered hereby, waives his claim for any such damages.

9) **APPLICABILITY.** The conditions and restrictions imposed herein shall apply to all lots within Sonoma Ranch Estates Subdivision, unless variations therefrom are granted by the Design Review Committee as provided herein.

## II. GENERAL RESTRICTIONS

1) **RESIDENTIALLY ZONED LOTS.** The following restrictions as to use shall apply to all Single Family Residential lots within the subdivisions:

A. Only one single family dwelling on each lot is permitted. No geodesic dome, cubical, or A-frame structures are permitted as residences or for any other purposes. No mobile homes (single wide or double wide), manufactured housing, prefabricated or modular homes are permitted, whether or not they are permanently attached to the land, and whether or not improvements are added to such mobile homes or manufactured housing or modular homes. The temporary sales office of the Developer is not, however, subject to this paragraph.

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B. No residence shall be erected, altered, placed or permitted to remain on any lot with fully enclosed living area of less than 2,000 square feet of heated living area, exclusive of garages, open porches, accessory buildings or other covered areas, with the exception of a temporary sales office placed upon a lot by the Developer, which shall remain only until the sale of the last lot in the Sonoma Ranch East Subdivisions.

C. No structure on any lot shall exceed one story above grade with a maximum height of twenty-three (23) feet above the highest finished grade of the lot, except for chimneys of reasonable size. Each dwelling shall have a minimum two car garage, being a minimum size of 400 square feet, and having one 16' by 7' door or two 8' by 7' doors at a minimum.

D. No single family residence building or any part thereof, including garages, shall be erected on any lot closer to the respective property line than as follows:

Front setback	15 feet
Garage setback	25 feet
Side street setback	15 feet
Side yard setback	10 feet
Rear yard setback	25 feet

E. All buildings erected, placed or permitted to remain on any lot shall be situated only within that portion of said lot not restricted from use by an easement or right-of-way. At street intersections, lots having frontage on two (2) streets shall have one (1) street declared by the Design Review Committee, on approval of structural plans, as the street where the "Front setback" applies. The other street shall have a minimum "Side street setback" which shall apply.

F. No variation from the "side yard setback" shall be approved.

G. Should any residence be constructed on more than one lot, the exterior lines of lot ownership shall be used for determining the front, rear and side lot setbacks subject to existing easements.

H. All buildings constructed in the Subdivision shall be frame and stucco, adobe, rammed earth or other such surfaces and materials as may be authorized by the Design Review Committee. Brick and wood siding are not acceptable surfaces. Garages, carports and permitted accessory buildings shall conform in material and design to the dwelling to which they pertain. No metal storage buildings shall be allowed on any lot unless fully shielded and screened from view from any street and any other lot either abutting or otherwise. Only exterior surface materials in desert tone colors (including tones of brown, tan and rose), shall be used for any residence, accessory structure, wall or fence. The construction of each building must comply with

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the New Mexico Uniform Building Code or the Building Code enforced by the City of Las Cruces. No structure of any nature other than the rock yard wall shall be built or placed in the NE 100 feet of Lot 11, Block A.

I. No identical front elevations will be allowed side by side or directly across the street from another. Recommended styles for exterior elevations are New Mexico Traditional, New Mexico Contemporary, Spanish Colonial/Mission, or Las Cruces Traditional. Examples of these are included in the Design Guidelines.

J. A grading plan showing finished elevations in the retention or detention areas has been approved by the City of Las Cruces. No grading, land filling, excavating, or other alterations will be done in the retention or detention areas except pursuant to the approved plan or revision approved by the City of Las Cruces and by the Design Review Committee.

K. No manufacturing or commercial enterprise of any kind for profit shall be maintained on, in front of, or in connection with single family residential lots in the subdivision; except home occupations or professionals in businesses engaged in recognized non-manufacturing professions may be permitted which would be in accordance with the codes of the City of Las Cruces.

L. There shall be no fair, exhibition, festival, show or other activity which attracts or is intended to attract, divert, or collect a large number of persons. Such restrictions shall not prevent, however, what is commonly known as "garage sales" or backyard parties conducted by residents or their children living in the subdivisions, provided such are only occasional. Open houses for the purpose of selling a home and model home shows for the same purpose may be held.

M. No animals, livestock, including horses, donkeys, and mules, or poultry or swine of any kind shall be raised, bred, or kept on any lot. Dogs, cats or other domesticated, household pets may be kept; provided, however, that they are not kept, bred or maintained for any commercial purpose, and further provided they do not disturb other property owners or become a nuisance in any way.

N. Use and occupancy of all portions of the subdivision shall be subject to zoning, building, health, sewage disposal and sanitation laws and regulations and all other applicable laws and regulations of the State of New Mexico and/or all government agencies having jurisdiction; the Declarants, its successors or assigns, may also impose rules and covenants regulating such matters from time-to-time.

O. Subdivision lots shall not be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, oil, gas or other hydrocarbons, minerals,

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rocks, stones, gravel or earth, nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted upon the surface of any portion of the Subdivision or within 500 feet below the surface of the Subdivision.

P. Each lot owner shall be responsible for removing weeds and other debris located on such Owner's lot and for maintaining, repairing and replacing in a good state of repair and in a neat and attractive condition all other improvements to Owner's lot.

**2) TEMPORARY USES.**

A. Any lot or portion thereof may be used temporarily by the Developer as a sales office, model home complex, or storage and construction yard during the construction and sales period, provided that all temporary uses defined herein must have the prior written approval of the Design Review Committee.

B. No lot shall be used for the storage of any construction or other materials except for a period of up to thirty (30) days prior to the start of construction and during the construction period.

**3) CONSTRUCTION.**

A. RESIDENTIALLY ZONED LOTS. All construction, whether new construction, alterations, additions or exterior remodeling, shall be completed in accordance with plans approved by the Design Review Committee within ten (10) months from commencement of construction. All construction shall commence upon each lot within thirty (30) months from the date of purchase of said lot from the Developer or at the Developer's option, the Developer may re-purchase the lot at the original purchase price. The Developer must exercise this option within 30 days from the 30-month date or it shall lose the right to exercise this option.

B. RESIDENTIALLY ZONED LOTS. No building previously used at another location nor any building or structure originally constructed as a mobile dwelling, except when used as a temporary sales office, may be moved onto a lot, except as expressly approved by the Design Review Committee.

4) **LANDSCAPING.**

Landscaping is required on all lots. Front yard is to be landscaped within 90 (ninety) days of initial occupancy.

A. **RESIDENTIALLY ZONED LOTS.** Typical desert environment and drought resistant landscaping is encouraged. However, a sufficiently visible amount of foliage must be present on each building lot to comply with the landscaping requirements herein established or subsequently amended. The Design Review Committee shall be the final authority as to acceptability and the following criteria shall be used as a guideline for the required landscaping:

1. Two (2) two inch (2") caliper broadleaf tree which when mature will reach a minimum height of 20 feet. (Two required if the side yard abuts a street.) Should a second tree be required by FHA or other Governmental regulation, such tree can be a 1" caliper broadleaf, unless it is in the side yard tree on an abutting street, then it must be as required above. Examples are: seedless locust, ash, red leaf maple, and similar varieties.

2. Two (2) intermediate size shrub-brush planting which, when mature will reach a minimum height and width of 8 feet. (Two required if the side yard abuts a street.) Examples are Photinia, Texas sage, oleander, India Hawthorne, pyracantha, forsythia, spirea, sumac, and similar varieties.

3. Ten (10) lower foundation plantings which when mature will reach a height of 2 - 3 feet (eight required if the side yard abuts a street). Examples are: Most of the above shrubs, plus nandina, rosemary, mock orange, tam junipers and similar varieties, however, no more than 2 of the above required 5 plantings shall be a juniper variety.

4. An assortment of other hardy, drought-resistant broad leaf plantings, including cacti, yucca, cholla, agave, century plant, ocotillo and similar plantings are acceptable and encouraged in addition to or instead of the above required plantings.

5. Ground cover vegetations are encouraged on at least a portion of the front yard (and side yard when it abuts a street). Examples are: seedless Bermuda, blue gramma, fescue, and similar hardy grasses. If such organic ground cover covers less than twenty percent (20%) of the non-driveway area of the landscaped area, then the number of intermediate shrubs and foundation plantings must be increased by one hundred percent (100%) each in number. Inorganic material shall be used to cover those areas of the front yard not planted or covered otherwise. In no event is the natural sandy surface to be left exposed and un-landscaped. Examples are: crushed rock, crusher fines, brick, crushed brick, paving stone, and similar materials. A minimum of 6 mm. black plastic shall be used under any inorganic material in the

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front and side yards. The landscaping material shall cover the plastic in such quantity that the underlying plastic shall not show through the surface material.

6. Any variation in use or placement of materials as prescribed above must first be approved by the Design Review Committee.

B. At any time a substantial change, alteration or modification is made to the front yard or side yard of a lot relative to landscaping, the Committee must approve such substantial change, modification or alteration. Excluded shall be the instance where plants, trees, shrubbery or other landscaping materials may die, be destroyed, removed or similarly caused to be reduced in quantity and as such require replanting or replacement according to the same rules as apply to the initial planting requirements set forth above.

**5) FENCING AND WALLS.**

A. Any fence, wall, building or structure placed on the lot shall be in compliance with the set back and zoning requirements of the City of Las Cruces, and shall not impair the drainage function of the ponding areas, as shown on the plat. All perimeter and/or retaining walls and fences shall be placed on the dividing lines between lots, except that all lots that are immediately adjacent to and bounded by land not in the Sonoma Ranch East Subdivisions shall have walls or fences along said perimeter lines completely within the perimeter lot lines, and said perimeter wall shall not be party walls. All walls or fences adjoining the street property must be built within the perimeter lot line of said lots. Retaining walls shall be party walls if placed on the common property line between two (2) or more lots, and shall not be removed by either property owner without the written consent of the other party and the Design Review Committee.

All residentially zoned lots are required to have perimeter walls or fences constructed. Such required walls must extend along the side lot lines from the rear most point of the dwelling to the rear lot line, and along the rear lot line in its entirety. Other walls and fences are optional. The party walls shall be a minimum of forty-two (42) inches in height, except where otherwise physically limited to a lower height. The party walls shall be no more than six (6) feet in height except retaining walls that are party walls.

B. All fences, perimeter walls, and retaining walls in view from at least one side, shall be constructed of rock or stone in conformance with what is known as "Las Cruces Rock Walls" standards, materials and styles, and shall be of a yellow, reddish or tan color, rather than gray in color. However, those walls, forming the "return" from the residence, or courtyard and patio walls tied to the residence, may be of the same material and color used in the residence construction.



C. Decorative wrought iron may be used for wall accents, gates and such, subject to Design Review Committee approval.

D. Tin or other sheet metal, chain link, wire and barbed wire are specifically prohibited, except wire fences may be constructed for dog runs when located within and enclosed by a permitted exterior fence. The fence height for such runs shall be a maximum of one (1) foot taller in height than the exterior fence.

E. Perimeter fences shall be six (6) feet in height or less, when measured directly from the highest adjacent ground surface, and may be erected on that portion of a lot situated to the rear of the front wall of the main building except retaining walls which may be higher.

**6) TRAILERS, CAMPERS, AND RECREATIONAL VEHICLES.**

Boats, campers, other trailers, buses, recreational and similar vehicles or equipment, or vehicles under extensive repair, storage piles and construction materials shall be stored only in the garage, or within walls which conceal them from the view from neighboring lots or streets.

**7) GARBAGE AND TRASH.**

No refuse, garbage, trash, collection container, lumber, grass, shrub or tree clippings, plant waste, compost, metal, bulk materials, scrap, junk cars, paint cans, oil, flammable objects, concrete tailings, rock wall residue, refuse or debris of any kind shall be kept, stored or allowed to accumulate on any lot except within an enclosed structure or area appropriately screened from view. Rubbish and garbage must be kept in suitable containers provided by the City of Las Cruces and removed from lots by such in accordance with ordinances, rules and regulations of the City of Las Cruces, and all regulations promulgated thereunder. No rubbish or garbage may be burned or dumped on lots or elsewhere in the subdivisions.

**8) ANTENNAE, EQUIPMENT, PIPES, UTILITY LINES, AND TRANSMITTERS.**

A. Pipes for water, gas, sewer, drainage, or other purposes, and wires, poles, aeri-als, antennae, satellite dishes and other facilities for the transmission or reception of audio or visual signals or electricity, and utility meters or other utility facilities, such as solar equipment, shall be kept and maintained, to the extent reasonably possible, underground or within an enclosed structure and shall not be visible from the street. Any items that can not meet these requirements shall be subject to the approval of the Design Review Committee. No transmission towers, or microwave equipment shall be erected or placed on the property.

B. Evaporative or refrigerated air cooler(s), are to be ground mounted unless construction of house will effectively hide the unit from entire view of all other houses, lots or streets in subdivision.

**9) SIGNS.**

No billboards or advertising signs of any character shall be erected, placed, permitted, or maintained on any residential lot or on any building erected thereon or within windows of said building, other than one (1) name plate of the occupant of any residence upon which his or her professional or occupational title may also be added, and provided no such sign or name plate shall exceed a size of one square foot, and no such sign shall be lighted. Provided, however, that permission is granted for the erection and maintenance of not more than one signboard to each building site during the course of construction of a new single-family dwelling and upon its completion, during the course of its initial sale, or resale, which signboard shall not exceed forty-eight (48) square feet and be supplied by Sonoma Ranch Development. This condition shall expire when the Developers have sold the last residential lot in Sonoma Ranch East. Notwithstanding anything herein contained to the contrary, nothing herein shall be construed to prevent the Developer from erecting, placing, or maintaining sign structures and offices as may be determined necessary by the Developer to promote sale and development of lots or properties within the subdivision.

**10) FLAGS/PENNANTS**

No flags or pennants used in marketing home for sale may be used in the subdivision on homes or lots without approval of the Design Review Committee.

**11) CLEAR SIGHT TRIANGLE**

The clear sight triangle area of unobstructed vision must be maintained at street intersections, entrances/exits, permitting a vehicle driver to see approaching vehicles to the right or left. Nothing over three (3) feet in height measured from the street at the point where the pavement meets the curbstone shall be permitted to obstruct a sight line, which shall be the front street and side street lines of a corner lot and a line connecting points 30 (thirty) feet distant from the intersection of the property line of such lot.

Any existing trees located within the clear sight triangle will be allowed to remain if all branches are trimmed from a height between three (3) and eight (8) feet.

No single post or column within the designated triangle shall exceed twelve (12) inches in thickness at its greatest cross-section dimension.

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In all areas requiring entrances/exits that are not at street intersections, for multiple parking areas (parking lots) a clear sight triangle shall be formed by a line twenty (20) feet on the front street property line and a line ten feet perpendicular to the front street property line on either side of the entrance/exit and a line connecting these points.

**III. EASEMENTS, STORM DRAINAGE AND SUPPORT STRUCTURES**

**1) EASEMENTS.**

A. Utility easements and rights-of-way designated on the plat of the Subdivision, as amended from time-to-time, are hereby reserved unto the Declarant, and the City of Las Cruces and all public and private utility companies (as specifically shown as such plat or assigned by the Declarant) for the construction, installation and maintenance of any and all utilities, such as power, cable, gas lines, drains, roads, water supply lines, telephone and telegraph lines or the like, necessary or desirable for public health, welfare and convenience.

B. Within these easements no structure shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or streets. Within each drainage easement, no temporary or permanent structure shall be placed, and no structure, or planting or movement of materials shall be permitted which may interfere with the direction of flow in the drainage channels in the easements, unless approval is first obtained from the City of Las Cruces and then once again by the Design Review Committee.

C. All easements shall be kept free from alteration, and owners of lots containing such easements shall keep them free from permanent structures and shall provide access without trespass by maintenance personnel for the installation, upkeep, repair, removal and replacement of such facilities which may be constructed within those easements.

D. Each lot in the subdivision has an area designated on the Plat that is a ponding area. Each lot owner is responsible for retaining water on that owner's lot as called for on the Plat. The swale, slope or indentation which acts as the ponding area may not be altered unless consent is obtained from the City of Las Cruces and then again by the Design Review Committee.

E. Sale of any lot shall include all rights of Declarant in and to the street, road or highway affronting the same, subject however to the rights of all others to use the same as public or private thoroughfares. Declarant reserves the right to dedicate to the public all streets, roads and highways within or abutting the Subdivision without the consent of any owner within the Subdivision. However, the roads in the subdivision are currently private and will be owned by the Sonoma Ranch Estates Subdivision owners association.

F. All public and private rights-of-way, including streets and roads dedicated the City of Las Cruces, shall also be considered a utility easement. Such easements shall be measured by a perpendicular (or radial on curves) from the front property corners of all lots to the centerline of such street or road.

#### IV. MISCELLANEOUS PROVISIONS

1) Each grantee of a lot within Sonoma Ranch Estates Subdivision by the acceptance of a deed or conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights and benefits hereby granted, created, reserved or declared, and all obligations hereby imposed shall be covenants running with the land, and shall bind any person having at any time any interest or estate in the land, and shall ensure to the benefit of such owner in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

2) Any provision hereof may be changed, amended or rescinded by written instrument setting forth such amendment which has been approved by owners of ninety (90) percent of the lots, and executed by the members of the Design Review Committee.

3) The agent for service of process upon the Developer is David M. Steinborn, 250 South Downtown Mall, Las Cruces, NM, 88001.

4) Any amendment, change, modification or rescision of this Declaration shall be effective only when filed for record in the office of the County Clerk of Dona Ana County, New Mexico. No amendment, change, modification or rescision of any provision of this Declaration shall be valid or effective if such amendment, change, modification or rescision violates or conflicts with any applicable statute of New Mexico.

5) Declarant shall have, retain, and reserve certain rights until the last lot within the subdivisions has been sold and conveyed.

6) Each grantee of a lot within the Subdivision is hereby placed on notice of the plans of the Developer to develop other lands, including other units or phases of Sonoma Ranch East Subdivision, and other adjacent subdivisions, in the City limits of Las Cruces, having minimum lot sizes as required under districts zoned or classified residential by the City of Las Cruces zoning code and regulations and containing certain PUD, multi-family, and commercial lots. Each grantee accepting a grant of a lot, subject to these Protective Covenants, hereby consents to such development and covenants not to oppose such development, provided such development is not in violation of law.

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7) Each grantee of a lot within the Subdivision acknowledges that, as other subdivisions are developed within Sonoma Ranch East Subdivision, that the lot owners within said subdivisions shall become "lot owners" and members of the Sonoma Ranch East Subdivisions Owners Association, Inc., defined as described in Section V of these Protective Covenants.

**V. OWNERS' ASSOCIATION**

Sonoma Ranch Estates Owners Association, Inc., which is an incorporated association made up of all the lot owners in Sonoma Ranch Estates in Sonoma Ranch East Subdivision, has as its purpose the ownership, development and maintenance of common areas and facilities within the subdivision.

**1) DEFINITIONS.**

For the purposes of this Declaration, the following terms are defined:

ASSOCIATION: All of the lot owners acting as a group in accordance with the By- Laws adopted by them and this Declaration.

MAINTENANCE AREAS: Maintenance areas are those areas which are to be maintained by the Association. They include all areas owned by the Association or owned by the Declarant and within the subdivision's boundaries, tracts designated as roads or rights-of-way, tracts designated as open areas, the landscape at entry monument, the areas at two (2) entrance gates, street lights and such other areas designated as maintenance areas by the Association. The maintenance areas includes certain lands between the road pavement and the sidewalks or the walkways and the back yard rock walls along Calle Abuelo, Sonora Springs Blvd., and Sedona Hills Parkway and any areas at the end of cul-de-sacs that abut roadways, the entry monuments, and any street-side area deemed in the best interest of the subdivision to be maintained by the owners association.

LOT OWNERS: Person(s) owning a lot within Sonoma Ranch Estates Subdivision in fee simple.

**2) NON-PROFIT PURPOSE.**

No director, officer, member or employee of the Owners' Association, or any other private individual shall receive at any time any of the earnings or funds of the Owners' Association; provided that this shall not prevent payment to any such person of reasonable compensation for services rendered, and no such person shall be entitled to share in the distribution of any of the Owners' Association assets upon the dissolution of the Owners' Association. At dissolution, excess assessments may be funded to the lot owners, and all other assets shall be transferred exclusively to charitable, religious, scientific, or educational institutions which would then qualify under the provisions of Section 501 (c)(3) of the Internal Revenue Code as it now exists, or as amended hereafter.

**3) ADMINISTRATION OF THE MAINTENANCE AREAS.**

The areas to be maintained shall be administered as follows:

**A. LOT OWNERS AND BOARD OF DIRECTORS:** The administration of the maintenance shall be vested in the lot owners, the owners of each lot having one vote. The owners shall elect and act through a Board of Directors (hereinafter called the "Board") in the manner set forth in the By-Laws attached hereto. Each member of the Board shall be a lot owner except that if a lot owner is a corporation, partnership, trust or other legal entity other than a natural person or persons, then any director of such corporation, partner of such partnership, individual trustee of such trust, or manager of such other legal entity shall be eligible to serve as a member of the Board.

**B. INITIAL BOARD OF DIRECTORS:** The initial Board of Directors shall be composed of three persons to be chosen by the members of Sonoma Ranch Subdivision Ltd., Co. The Board of Directors shall consist of the above members until either (a) the General Partners state in writing to all lot owners that control shall pass to a Board of Directors elected by the lot owners, or (b) the sale of all lots in the subdivisions.

**C. GENERAL POWERS AND DUTIES OF THE BOARD:** The Board shall have the duty and such powers as shall be reasonably required to direct, administer, manage and protect the maintenance areas in accordance with the provisions of this Declaration and said By-Laws and, without limiting the foregoing, the Board shall have the duty and power to acquire and pay for the following:

1. Water, waste removal, electricity and other necessary utility services for the maintenance areas. The manner in which utility services will be metered and charged may be determined by the Board of Directors.

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2. A policy or policies in amounts determined by the Board, insuring the members of the Board and their agents and employees and the owners against any liability to the public or to the owners and their invitees and tenants.

3. Landscaping, gardening, snow removal, painting, clearing, maintenance, decorating, repair and facilities and the Board shall have the exclusive right and duty to acquire the same.

4. Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance or assessments, water, electricity, and other utility services for the areas and facilities which the Board is required to secure or pay for pursuant to the terms of this Declaration or By-Law or which, in the Board's opinion, are necessary or convenient for the benefit of the lot owners or for the enforcement of this Declaration and/or the By-Laws attached hereto.

5. Any amount necessary to discharge any mechanic's or materialmen's lien or other encumbrance levied against the maintenance areas or any part thereof. Where one or more owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it and any costs incurred by the Board by reason of such lien or liens shall be specially assessed to said owners, including attorneys fees.

6. The services of any person or firm employed by the Board in furtherance of its general powers and duties herein stated, including but not limited to, accountants, bookkeepers, tax advisors, lawyers, architects, engineers, carpenters, electricians, plumbers, painters, gardeners, managers and others determined by the Board to be necessary or convenient.

7. Any income taxes payable by the Association.

**D. LIMITATION OF THE POWERS OF THE BOARD:** The Board's powers herein above enumerated shall be limited in that the Board shall have no authority to acquire and pay for any capital addition or improvement (other than for purposes of replacing or restoring portions of the maintenance areas, subject to all of the provisions of this Declaration) having a total cost in excess of \$4,000.00; nor shall the Board authorize any structural alterations, capital additions to, or capital improvements requiring an expenditure in excess of \$4,000.00, without in each case obtaining the prior approval of seventy-five (75%) of the lot owners. The Board may adopt such reasonable rules and regulations as it may deem advisable for the maintenance, conservation and beautification of the maintenance areas and for the health, comfort, safety and general welfare of the owners. Written notice of such rules and regulations shall be given to all owners and the areas shall be at all times maintained subject to such rules and regulations.

4) **ASSESSMENTS AND MAINTENANCE FUND**

There shall be a maintenance fund and assessments against the lot owners as follows:

**A. CREATION OF MAINTENANCE FUND AND OBLIGATION FOR ASSESSMENTS:**

The Board shall establish a maintenance fund for the administration, maintenance, repair, replacement and improvement of the maintenance areas and facilities and for the enforcement of the provisions of this Declaration and the By-Laws, which maintenance fund shall be financed or funded by assessments as herein provided, paid by all lot owners. Each future lot owner, including transferees of future lot owners, shall make monthly payments to the maintenance fund a sum of money determined by the Board to be adequate to pay the share of the maintenance fund of such future owner or transferee. If the Board fails to determine the amount of such sum, the amount shall be \$50.00 per month for each lot. The fund shall be administered on a fiscal year basis, which fiscal year shall end on December 31st of each year.

Each year, on or before November 30<sup>th</sup>, the Board shall estimate the total amount necessary to pay the cost of wages, materials, insurance, services and supplies, which will be required for the administration, tax and insurance payments, maintenance, repairs replacement and improvement of the maintenance areas during the ensuing fiscal year, for the exercise and performance of the owners and duties of the Board and for the enforcement of the provisions of this Declaration and the By-Laws attached hereto, together with a reasonable amount considered by the Board to be necessary as a reserve for contingencies and replacements and shall notify each owner as to the amount of such estimate.

On or before the second day of each month, each owner shall be obligated to pay to the Board the assessments due pursuant to these covenants, unless other payment arrangements are made with approval of the Board.

**B. MANAGEMENT OF THE MAINTENANCE FUND AND COLLECTION OF THE**

**ASSESSMENTS:** On or before the date of each annual meeting of the owners, the Board shall supply to each owner an itemized accounting of the administrative, maintenance and other expenses for the preceding fiscal year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the estimates provided, and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall be credited to the amount due from the owners next year's estimate, until exhausted, and any net shortage shall be added to the next year's estimate after rendering of the accounting. The Board shall build up and maintain a reasonable reserve for contingencies and replacements. Extraordinary expenditures not originally included in the annual estimate which may become necessary during the year shall be charged first against such reserve. If said estimated cash requirement proves inadequate for any reason, including non-payment of any owner's assessment, the Board may serve notice of such further assessment on all owners by



SONOMA RANCH ESTATES SUBDIVISION DECLARATION OF PROTECTIVE COVENANTS

a statement in writing, giving the amount and reasons therefore, and such further assessment shall become effective with the next payment.

All owners shall be obligated to pay the adjusted annual amount. The initial Board shall determine the "estimated cash requirement" as above defined. The failure or delay of the Board to prepare or serve the annual or adjusted estimate on the owners shall not constitute a waiver or release in any manner of such owner's obligation to pay the maintenance costs and necessary reserves. The Board shall keep full and correct detailed books of account and records of the receipts and expenditures affecting the common areas, specifying and itemizing the maintenance and repair expenses of the common areas and any other expenses incurred. The records and the vouchers authorizing the payments shall be available to inspection by any owner or any representative of any owner at reasonable times. All funds collected hereunder shall be held and expended for the purposes designated herein and shall be deemed to be held for the benefit, use and account of all the owners.

If an owner is in default in the annual payment of the aforesaid charges or assessments for thirty days or longer, the members of the Board may bring suit for and on behalf of themselves and as representatives of all owners to enforce collection thereof or to foreclose the lien therefor as hereinafter provided and there shall be added to the amount due the costs of such suit, together with legal interest and reasonable attorney's fees to be fixed by the court. To the extent permitted by any court decision or any statute or law now or hereafter effective, the amount of any delinquent and unpaid charges or assessments and interest, costs and fees, as above provided, shall be and become a lien or charge against the lot owned by the lot owner involved when payable and may be foreclosed by an action brought in the name of the Board as foreclosure of mortgage against real estate, and the period allowed for redemption shall be one month from and after the date of foreclosure suit. Said lien shall take effect and be in force, provided, however, that encumbrances owned or held by any bank, insurance company or savings and loan association shall be subject as to priority, after written notice to said encumbrances of unpaid maintenance expenses, only to the lien of all common expenses on the encumbered lot which become due and payable subsequent to the date said encumbrances either takes possession of the lot, accepts a conveyance of any interest therein, or files suit to foreclose his/her lien. In the event of a voluntary conveyance of ownership, the grantor and grantee shall be jointly and severally liable for all unpaid common expenses and assessments for common expenses related to said ownership to the time of such grant or conveyance. Amendments to this paragraph shall only be effective upon unanimous written consent of the owners and their mortgagees. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the maintenance areas or by abandonment of his/her lot.

**5) INSURANCE AND TAXES.**

The Board of Directors shall purchase such liability or casualty insurance as it deems advisable. The Board shall file the association's annual tax return, and annual election as a tax exempt homeowners association, if applicable; and shall pay property taxes and special assessments which are or could become a lien upon the maintenance areas.

**6) GENERAL PROVISIONS.**

The following general provisions shall govern the administration and management of the maintenance areas:

A. Until the Board of Directors provided for in this Declaration is formed, the Developer shall exercise the powers, rights and functions of the Board.

B. Upon written request to the Board, the holder of any duly recorded mortgage or deed of trust against any lot owner shall be given a copy of any and all notices permitted or required by this Declaration to be given to the owner or lot owners whose ownership is subject to such mortgage or deed of trust.

C. Notices required to be given to said board or the owners may be delivered to any member of the Board either personally or by mail addressed to such Board member at his home.

D. Notices required to be given any devisee or personal representative of a deceased owner may be delivered either personally or by mail to such personal representative at his/her or its address appearing in the records of the court wherein the estate of such deceased owner is being administered.

E. Each grantee of the Developer, by the acceptance of a deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and owners created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared and all obligations hereby imposed shall be covenants running with the land and shall bind any person having at any time any interest or estate in the land, and shall inure to the benefit of such owner in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

F. No covenants, restrictions, conditions, obligations or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

SONOMA RANCH ESTATES SUBDIVISION DECLARATION OF PROTECTIVE COVENANTS

G. The agent for service of process upon the Owners' Association is David M. Steinborn, 250 South Downtown Mall, Las Cruces, New Mexico 88001, until such time as the President of the Association is elected.

H. Any amendment, change, modification or rescision of this Declaration or the By-Laws hereto attached shall be effective only when filed for the record in the office of the County Clerk of Dona Ana County, New Mexico. No amendment, change, modification or rescision of any provision of this Declaration or the By-Laws hereto attached shall be valid or effective if such amendment, change modification or rescision violates or conflicts with any applicable statute of New Mexico.

**7) BREACH OF COVENANTS.**

It is further stipulated that breach of any of the foregoing conditions and covenants shall not affect any mortgage or other lien which in good faith may be existing at the time upon said property or any improvements thereon.

**8) AMENDMENT.**

Any provision hereof may be changed, amended or rescinded by a written instrument setting forth such amendment which has been approved by ninety (90) percent of lot owners in attendance or by proxy at a called meeting for that purpose, and executed by the chairman of the Board, except that this provision (V, paragraph 9) may be changed only by unanimous vote of the lot owners.

**9) NO REVERSION OF TITLE.**

Nothing contained in this Declaration or in any form of deed which may be used by the Declarant or its successors and assigns in selling any lot shall be deemed to vest or reserve in Declarant or the owners association any right of reversion for breach or violation hereof, and any such reversionary right is hereby expressly waived by Declarant.

**VI. DEFINITION**

SONOMA RANCH ESTATES SUBDIVISION DECLARATION OF PROTECTIVE COVENANTS

The term "Declarant," as used herein, means Sonoma Ranch Subdivision, Ltd., Co., a New Mexico limited liability company, and its successors or assigns as Developer of the Subdivision. Any such successor or assign intended to become the "Declarant" hereunder shall be designated as such in the instrument of conveyance from the then-Declarant to such successor or assign.

**VII. EFFECTIVE DATE**

These restrictions, covenants and reservations, and any amendments or exceptions thereto shall be effective as of the date of their filing with the County Clerk of Doña Ana County, New Mexico.

DATED at Las Cruces, New Mexico, this 8 day of July, 2003.

SONOMA RANCH SUBDIVISION LTD., CO.

By David M. Steinborn  
David M. Steinborn, Member

George B. Rawson  
George B. Rawson, Member

Dale A. Schueller  
Dale A. Schueller, Member

STATE OF NEW MEXICO        )  
  ) ss.  
COUNTY OF DOÑA ANA        )

26285

SONOMA RANCH ESTATES SUBDIVISION DECLARATION OF PROTECTIVE COVENANTS

The foregoing instrument was acknowledged before me this 8 day of July, 2003 by David M. Steinborn, George B. Rawson and Dale A. Schueller, Members of Sonoma Ranch Subdivision Ltd., Co., a New Mexico limited liability company.



*Melissa Lujan*  
\_\_\_\_\_  
Notary Public

State of New Mexico County of Doña Ana, ss  
RECEPTION NO. 26285  
I hereby certify that this instrument  
was filed for recording and duly recorded on  
**JUL 25 2003**  
at 10:34 o'clock A  
Book 444 Page 446-486  
County Clerk BY: [Signature] Deputy



686

**BY-LAWS  
OF  
SONOMA RANCH ESTATES SUBDIVISION  
HOMEOWNERS' ASSOCIATION, INC.**

1. Name of Association. The name of this Corporation shall be Sonoma Ranch Estates Subdivision Homeowners' Association.

2. Association is Nonprofit. The Association has been formed pursuant to the New Mexico Non-Profit Corporation Act.

3. Specific Purpose. The specific and primary purposes of this Association shall be to repair, maintain and manage the Maintenance Areas within Sonoma Ranch Estates subdivision, located in the City of Las Cruces, Doña Ana County, State of New Mexico, to enforce the Declaration of Protective Covenants and the Rules adopted by the Board of Directors, from time-to-time, and to otherwise enhance and promote the use and enjoyment of the Maintenance Areas by the Owners in common.

4. Declaration. "Declaration" means all of the Declaration of Protective Covenants filed or to be filed for Sonoma Ranch Estates subdivision.

5. Owners' Meetings. The Owners shall hold meetings as follows:

a. Lot owners in the Sonoma Ranch Estates subdivision are owners for purposes of these By-Laws.

b. No Owners' meeting shall be held until such time as the members of Sonoma Ranch Subdivision Ltd., Co., the Developer of Sonoma Ranch Estates subdivision, state in writing to all lot owners that control shall pass to the lot owners. The first meeting shall be called by the said members and be held at a place in Las Cruces, New Mexico, or in the subdivision, designated by the members.

c. The Annual Owners' Meeting shall be held on the 1<sup>st</sup> Thursday of November of each year for the purpose of electing Directors and transacting any other business authorized to be transacted by the Owners. If that day is a legal holiday, the meeting shall be held at the same hour on the next day which is not a legal holiday.

d. Special Owners' Meeting shall be held whenever called by the President or Vice President or a majority of the Board of Directors, and must be called by such officers upon receipt of a written request from one-third of the lot owners.

e. Notice of all Owners' meetings stating the time and place and the object for which the meeting is called shall be given by the President, Vice President or Secretary unless waived in writing. Such notice shall be in writing to each lot owner at his or her address as it appears on the records of the Association and shall be mailed not less than ten nor more

than sixty days prior to the date of the meeting. Proof of such mailing shall be the certificate of the person giving notice. Notice of meeting may be waived before or after meetings.

f. The Owner of each lot shall be entitled to cast one vote. If there are multiple owners of one lot, and they are unable to agree upon the casting of one vote, no vote shall be counted for that lot.

g. A quorum at lot owners' meetings shall consist of persons entitled to cast twenty percent (20%) of the votes. The owner of each lot is entitled to one vote. If any meeting of the Owners cannot be organized because a quorum has not attended, the Owners who are present either in person or by proxy, may adjourn the meeting for at least ten days and adequate notice of the new date shall be given as described in subparagraph (d) of this section 5. At a subsequent rescheduled meeting, a quorum shall consist of ten percent (10%).

If a lot is owned by one person, his right to vote shall be established by the record title to his lot. If a lot is owned by more than one person, the person entitled to cast the vote for that lot shall be designated by a certificate signed by all of the record owners of that lot and filed with the Secretary of the Board of Directors. If a lot is owned by a partnership or corporation, the person entitled to cast the vote for the lot shall be designated by a certificate of appointment signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the corporation and filed with the Secretary of the Board of Directors. Such certificates shall be valid until revoked, or until superceded by a subsequent certificate, or until a change in the record ownership of the lot concerned. A certificate designating the person entitled to cast the vote of a lot may be revoked by any Owner thereof.

h. Votes may be cast in person or by proxy. Owners may, by written proxy, authorize others to cast votes on their behalf. A written proxy shall be limited to six months duration. Proxies should be filed with the Secretary. Owners who have given proxies shall be counted for purposes of a quorum.

i. Until the developer of the Sonoma Ranch Estates subdivision, hereinafter "the Developer," has completed and sold all of the lots in the subdivisions, or until the Developer elects to terminate its control of the subdivision, whichever shall first occur, there shall be no meeting of the owners of the lots unless a meeting is called by the Developer.

6. Directors. The affairs of the association shall be managed by a Board of Directors as follows:

a. The Board shall consist of not less than three Directors, the exact number (which shall be an odd number) to be determined by the lot Owners at the time of election of the Directors. The original Board of Directors shall consist of three, as follows: David M. Steinborn, George B. Rawson, and Dale A. Schueller. Directors, other than the original Board of Directors, shall be lot owners. The original Board shall serve at no pay.

b. Election of Directors shall be conducted at the Annual Meeting of the Owners. Nominations for Directors shall be made from the floor. The election shall be by ballot (unless dispensed with by unanimous consent) and by a plurality of the votes cast, each

person voting being entitled to cast his/her votes for each of as many nominees as there are vacancies to be filled. There shall be no cumulative voting.

c. Except as to vacancies provided by removal of Directors by Owners, vacancies in the Board of Directors occurring between annual meetings of Owners shall be filled by the remaining Directors.

d. Any Director may be removed by a two-thirds (2/3) majority vote of the Owners at a Special Meeting of the Owners called for that purpose. The vacancy in the Board of Directors so created shall be filled by the Owners at the same meeting.

e. Until the Developer has completed and sold all of the lots in the subdivisions, or until the Developer elects to terminate its control of the Owners Association, whichever shall first occur, the original Directors above-named shall serve, and in the event of vacancies the remaining Directors shall fill the vacancies, and if there are no remaining Directors the vacancies shall be filled by the Developer. Thereafter, each Director shall be elected for a term of three (3) years except that the first Board of Directors elected thereafter shall consist of one-third (1/3) of the Directors whose terms expire in one (1) year, one-third (1/3) of the Directors whose terms expire in two (2) years, and one-third (1/3) of the Directors whose terms expire in three (3) years.

f. Notwithstanding the foregoing, each Director shall serve until his successor is duly elected or appointed and qualified, or until he resigns or is removed in the manner elsewhere herein provided.

7. Directors' Meetings. The Directors shall hold meetings as follows:

a. Regular meetings of the Board of Directors may be held at such times and places as shall be determined, from time-to-time, by a majority of the Directors. Notice of regular meetings shall be given to each Director, personally or by mail, telephone or otherwise at least three (3) days prior to the date named for such meeting.

b. Special Meetings of the Directors may be called by the President and must be called by the Secretary at the written request of any Director. Notice of the meeting shall be given personally or by mail, telephone or otherwise, at least three (3) days prior to the date named for such meeting, and shall state the time, place and purpose of the meeting.

c. Any Director may waive notice of a meeting before or after the meeting and such waiver shall be deemed equivalent to the giving of notice.

d. A quorum at Directors' meetings shall consist of a majority of the entire Board of Directors. The acts approved by a majority of those present at a meeting at which a quorum is present shall constitute the acts of the Board of Directors, except where approval by a greater number of Directors is required by the Declaration or these By-Laws. If at any meeting of the Board of Directors less than a quorum is present, the majority of those present may adjourn from time-to-time until a quorum is present. The joinder of a Director in the action of a meeting by signing and concurring in the minutes thereof shall constitute the presence of such Director for the purpose of determining a quorum.



8. Powers and Duties of the Board of Directors.

a. All of the powers and duties of the Owners existing under the Declaration and these By-Laws shall be exercised exclusively by the Board of Directors, its agents, contractors, or employees, subject only to approval by the Owners when such approval is specifically required.

b. The Board of Directors is empowered to adopt rules concerning the Homeowners' Association and all its assets. This power includes, but is not limited to, the authority to adopt rules allowing the private use of the common areas.

9. Officers. The executive officers of the Homeowners' Association shall be:

a. The President, who shall be a Director; a Vice President, who shall also hold the office of assistant secretary and who shall be a Director; a Secretary, who shall be a Director; and a Treasurer, who shall be a Director, all of whom shall be elected annually by the Owners at their annual meeting and who may be removed by vote of a majority of the votes of the Owners at any meeting called for such purpose. The Board of Directors may, from time-to-time, elect other officers to exercise such powers and duties as the Board may find necessary to manage the affairs of the Association. No compensation of officers shall be paid, unless a decision to pay compensation is made by majority vote of the lot Owners.

b. The President shall be the chief executive officer of the lot Owners and of the Board of Directors. He/she shall have all of the powers and duties which are usually vested in the office of President, including, but not limited to, the power to appoint committees from among the lot Owners from time-to-time, as he/she may in his/her discretion deem appropriate to assist in the conduct of the affairs of the Association.

c. The Vice President and Assistant Secretary shall, in the absence or disability of the President, notify the owners and perform the duties of the President and, in the absence or disability of the Secretary, exercise and perform the duties of the Secretary. He shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Directors.

d. The Secretary shall keep the Minutes of all proceedings of the Directors and of the Owners. He/she shall attend to the giving, mailing and serving of all notices to the Owners and Directors and other notices required by law. He/she shall keep the records of the Owners and the Board of Directors, except those of the Treasurer, and shall perform all other duties incident to the office of Secretary and as may be required by the Directors or the President.

e. The Treasurer shall have custody of all property of the Owners' Association, including funds, securities and evidence of indebtedness. He/she shall keep the books of the Owners' Association in accordance with good accounting practices and shall perform all other duties incident to the office of Treasurer.

f. Any person may hold more than one office, except that, in all events, the President and Secretary shall be two different individuals.

10. Accounting. The funds and expenditures of the Association shall be credited and charged to accounts under the following classifications as shall be appropriate, all of which expenditures shall be common maintenance expenses:

a. "Current expenses" which shall include all funds and expenditures to be made within the fiscal year for which the funds are budgeted, including a reasonable allowance for contingencies and working funds, except expenditures chargeable to reserves, to additional improvements or to operations. The balance in this fund at the end of each fiscal year shall be applied to reduce the assessments for current expenses for the succeeding year.

b. "Reserve for deferred maintenance and replacement," which shall include funds for maintenance items which occur less frequently than annually, and funds for repair or replacement required because of damage, depreciation or obsolescence.

c. "Capital Additions and Improvements," which shall include the funds to be used for capital expenditures for additional improvements.

11. Expenditures.

a. Budgets. As soon as insurance rates, utility rates and other expenses can be determined for each fiscal year, the Board of Directors shall adopt a budget for that fiscal year which shall include the estimated funds required to defray common expenses and funds for the accounts listed in Paragraph 10 of these By-Laws. Copies of the budget and proposed assessments shall be transmitted to each lot Owner as soon as practicable. If the budget is subsequently amended, a copy of the amended budget shall be furnished to each lot Owner.

b. Limits. No expenditure for any capital addition or improvement having a total cost in excess of Four Thousand Dollars (\$4,000.00) shall be made without the prior approval of seventy-five percent (75%) of the lot Owners in attendance at a membership meeting, general or special, where a quorum is present. Said approval may also be given in writing.

c. Nonprofit Purpose. No director, officer, member or employee of the Owners' Association, or any other private individual, shall receive at any time, any of the earnings or funds of the Owners' Association; provided that this shall not prevent the payment to any such person of reasonable compensation for services rendered, and no such person shall be entitled to share in the distribution of any of the Owners' Association assets upon the dissolution of the Owners' Association. At dissolution, excess assessments may be refunded to the lot Owners, and all other assets shall be transferred exclusively to charitable, religious, scientific, or educational institutions which would then qualify under the provisions of Section 501(c)(3) of the Internal Revenue Code as it now exists, or as amended hereafter.

12. Assessments. Assessments shall be made as follows:

a. Assessments against each lot Owner for his share of the budget shall be set on or before November 30 of the year prior to which the assessment is applicable. Such assessment shall be due and payable in monthly payments with each payment due no later than the second day of the month. The Board of Directors shall have the power to increase or decrease such assessment during the fiscal year for which the assessment is made as expenses may require. If an assessment is not made as required, an assessment shall be presumed to have been made in the amount of \$50.00 per month. If the assessment proves to be insufficient, the budget and assessments may be amended at any time by the Board of Directors. Increases in excess of fifteen percent (15%) shall be made only by the Owners, by majority vote at a special meeting called for that purpose.

b. The depository of the Owners shall be such bank or banks as shall be designated from time-to-time by the Directors. Withdrawal of monies from such accounts shall be only by checks signed by such persons as are authorized by the Directors.

c. Fidelity bonds may be required by the Board of Directors for all persons handling or responsible for funds of the lot Owners. The amount of such bonds, if required, shall be determined by the Directors and the premiums on such bonds shall be paid by the Directors and shall be common expenses.

13. Amendments. These By-Laws may be amended in the following manner:

a. Notice of the subject matter of a proposed amendment shall be included in the notice of any Owners' meeting at which a proposed amendment is to be considered.

b. A Resolution adopting a proposed amendment may be proposed by either the Board of Directors or by the Owners. Directors and Owners not present in person or by proxy at the meeting considering the amendment may express their approval or lack thereof in writing, either before or after the meeting. All amendments must be approved by a majority of the votes of all the Owners, with the owner of each lot entitled to cast one vote, and the owners of multiple lots entitled to cast the number of votes equal to the number of lots owned.

c. No amendments shall discriminate against any Owner, unless the Owner so affected shall consent thereto in writing. No amendment shall change the share in the common areas and facilities appurtenant to any lot (except as provided in the Declaration in the event of expanding the property by adding additional land), nor increase the Owner's share of the common expenses, nor change the voting rights or members (except as provided in the Declaration in the event of expansion of the property by addition of real estate) or amend Section 11(b) hereof, unless the record Owner of lot concerned and all record Owners of liens thereon shall join in the execution of the amendment.

d. A copy of each amendment shall be certified by the president and Secretary as having been duly adopted and shall be effective only when recorded in the office of the County Clerk of Doña Ana County, New Mexico, and no modification of or amendment

