DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

OF THE

MESILLA PARK MOSAIC SUBDIVISION

INDEX

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF THE MESILLA PARK MOSAIC SUBDVISION

This Declaration Of Covenants, Conditions, And Restrictions ("Declaration") is made effective on the date of its recordation by Emerick Real Estate & Construction, Inc., a corporation organized and existing under the laws of the State of New Mexico, herein called "**Grantor**."

RECITALS

A. Grantor is the owner of that certain real property (the "Property") located in Dona Ana County, New Mexico, legally described in the Mesilla Park Mosaic, Replat No. 1 recorded on April 28, 2004, in Plat Book 20, Pages 648-649, records of Dona Ana County (the "Plat").

B. The Property has been approved for a 25 lot gated subdivision by the Extraterritorial Zoning Authority in accordance with the Plat. The subdivision of the Property resulting from the Plat shall be known as the Mesilla Park Mosaic Subdivision (the "Subdivision").

DECLARATION

NOW THEREFORE, Grantor hereby declares that the Property is and shall hereafter be held, conveyed, encumbered, leased, developed, improved, and used subject to the following covenants, conditions, restrictions, and equitable servitudes imposed in furtherance of a plan for the subdivision, improvement, and sale of lots within the Subdivision, and to enhance and maintain the value, desirability, and attractiveness of such property. The restrictions set forth herein shall run with the Property and shall be binding upon all persons having or acquiring any interest in such real property or any part thereof and shall inure to the benefit of every portion of such real property and any interest therein and shall further inure to the benefit of and be binding upon Grantor, its successors in interest, and any person whose interest in property within the Subdivision derives from Grantor's interest.

Unless amended or repealed as provided in this Declaration, the provisions of this Declaration shall apply to and bind all of the real property in the Subdivision effective the date of recordation until December 31, 2064. Thereafter, all such provisions shall be automatically extended for successive periods of twenty (20) years unless an instrument repealing, altering, or amending some or all of the provisions has been signed by the Owners of at least seventeen (17) lots in the Subdivision and has been duly recorded in the records of Dona Ana County.

ARTICLE I

DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified.

1.1 "**Architectural Review Committee**" shall mean the committee created pursuant to Article V hereof.

1.2 "**Architectural Committee Rules**" shall mean any rules or guidelines adopted by the Architectural Review Committee pursuant to Article V hereof.

1.3 "**Articles**" shall mean the Articles Of Incorporation of the Association which have been or will be filed by Grantor in the manner prescribed by law, as may be amended from time to time.

1.4 "**Assessments**" shall mean any assessments that may be levied upon any of the lots within the Subdivision or owners thereof as provided in this Declaration.

1.5 "**Association**" shall mean the Mesilla Park Mosaic Owners' Association, Inc. (or some other similarly named corporation) described in Articles VII and VIII hereof, its successors and assigns.

1.6 "**Association Property**" shall mean all real and personal property now or hereafter owned by or leased to the Association.

1.7 "**Beneficiary**" shall mean a mortgagee under a mortgage on a Lot, and the assignees of such mortgagee.

1.8 "**Board**" shall mean the Board of Directors of the Association.

1.9 "**Bylaws**" shall mean the Bylaws of the Association which have been or shall be adopted by the Board, as such Bylaws may be amended from time to time.

1.10 "**Common Area**" shall mean any portion of the Subdivision designated as such on the Subdivision Map, in this Declaration, or in an instrument recorded by Grantor subsequent to the recordation of this Declaration.

1.11 "**Declaration**" shall mean this instrument as it may be amended from time-to-time.

1.12 "**Grantor**" shall mean Emerick Real Estate & Construction, Inc., a New Mexico corporation.

1.13 "**Improvement**" shall mean and include any structures and appurtenances thereof of every type and kind, including, but not limited to, the following: buildings, accessory buildings, garages, carports, driveways, parking areas, perimeter walls, fences, screening walls, retaining walls, stacked rock soil retention systems, stairs, decks, windbreaks, poles, signs, exterior air conditioning or heating units, utility meters, water softener fixtures or equipment, dog houses, satellite dishes, solar panels, and play equipment (*e.g.*, swings, slides, playhouses, treehouses, jungle gyms, and basketball backboards). "Improvement" shall not include trees, plants, schrubs, grass, or other plants, but shall include structures of any kind, type, or nature used in connection with landscaping such as trellises, planter boxes, and the like.

1.14 "**Lot**" shall mean that area, parcel, piece, or division of real property within the Subdivision intended for development with a single family dwelling which is specifically detailed or shown on the Subdivision Map and designated by number.

1.15 "**Manager**" shall mean the person, firm or corporation employed by the Association pursuant to and limited by Article VIII, and delegated the duties, power or functions of the Association pursuant to said Article.

1.16 "**Member**" shall mean any person who is a member of the Association pursuant to Article VII hereof.

1.17 "**Mortgage**" shall mean any mortgage or other conveyance of a Lot to secure the performance of an obligation, which conveyance will become void and be reconveyed upon the completion of such performance, and which has been recorded.

1.18 **"Owner"** shall mean any person who owns a Lot as shown in the deed records of Dona Ana County, New Mexico, but does not include a mortgagee under a Mortgage unless such mortgagee has acquired title to a Lot as a result of foreclosure or a deed in lieu of foreclosure. Owner shall also include a person who acquires any interest in a Lot under a real estate contract, and a person who retains any interest in a Lot that is the subject of a real estate contract. Where a provision of this Declaration requires the vote or consent of the Owner of a Lot, or imposes an obligation on the Owner of a Lot, all persons who hold record title to such Lot shall, in the aggregate, be considered the "Owner" of such Lot.

1.19 **"Pad Elevation"** shall mean, with respect to a particular Lot, the elevation of such Lot at the time of final approval of the Subdivision by the Extra-Territorial Zoning Commission ("ETZ").

1.20 "**Person**" shall mean a human being or any entity with the legal right to hold title to real property in the State of New Mexico.

1.21 "**Record," "recorded," and "recordation**" shall mean, with respect to any document, the recordation of such document in the office of the County Clerk, Dona Ana County, New Mexico.

1.22 "**Subdivision**" shall mean all that certain real property identified and described in the Plat as the same is now and as may from time-to-time be developed and improved.

1.23 "**Subdivision Map**" shall mean the plat referred to in Recital A on page 1 of this Declaration, as such plat may be amended from time to time.

ARTICLE II

USE REGULATIONS AND RESTRICTIONS APPLICABLE TO ALL LOTS

2.1 Except as otherwise expressly set forth herein, all Lots are hereby designated for use solely as single family lots. Lots shall be used and improved exclusively for residential

purposes in conformance with this Declaration. Only single family dwellings and Improvements commonly constructed in connection with single family dwellings may be constructed on Lots. All Lots and any Improvements thereon shall be held, used, and enjoyed subject to the limitations and restrictions set forth in this Article and elsewhere in this Declaration.

2.2 No more than one single family dwelling shall be erected or maintained on any one Lot, together with no more than two (2) detached accessory buildings (including any detached garages). As used in this section 2.2 and section 2.6(B), the term "accessory building" shall not include any structure constructed by Grantor on or in any Common Area. If allowed by applicable zoning, one (1) accessory building per Lot may contain a dwelling for guests, provided however, that such guest quarters shall not be rented separately from the primary residence. As used in this Declaration, "single family dwelling" does not include any type of multi-family dwelling (including, for example, a duplex, triplex, quadplex, or apartment house), group home, hospice, nursing home, rest home, convalescent home, rescue mission, transient accommodations, boarding or lodging house, sanitarium, hospital, day care facility, half-way house, or extended care facility. No dwellings other than single family dwellings shall be erected, placed, permitted, or maintained in the Subdivision.

2.3 Regardless of whether the Architectural Review Committee approves plans showing buildings, including accessory buildings, within setbacks, all buildings, including accessory buildings, shall comply with the setback requirements of all applicable ordinances, unless those contained in this Declaration are more restrictive, in which case the more restrictive requirements shall apply. Unless the setback requirements in an applicable ordinance are more restrictive, the following provisions apply: No portion of any wall of a single story dwelling, attached or detached garage, motor court, or accessory building shall be constructed closer than 45 feet from the edge of the sidewalk furthest away from the street. No portion of any wall of the second story of a two-story dwelling, (including an attached garage) shall be constructed closer than 55 feet from the edge of the sidewalk furthest away from the street. No portion of any wall of a dwelling, attached or detached garage, motor court, or accessory building shall be constructed closer than 17 feet from the nearest side lot line. Rear setbacks shall be governed by the zoning ordinance in effect at the time of commencement of construction on a Lot, except that for two-story dwellings on Lots 15 through 25, no portion of any wall of the second story may be constructed closer to the rear lot line than 35 feet. The foregoing restrictions shall not apply to courtyard walls and shall not be applied to prevent the construction or placement of roof overhangs, fireplaces, chimneys, or air-conditioning/heating units closer than 15 feet from the nearest side lot line.

2.4 Each single family dwelling shall have at all times an enclosed garage sufficient for the parking of a minimum of two (2) cars. Three-car garages are encouraged; however, if a three-car garage is utilized, the plane of the face of one of the garage doors must be at least 32 inches in front of or behind the plane of the face of at least one of the other garage doors. Subject to any zoning restrictions, this garage may be an enclosure attached to the principal residence or a detached building. All driveways and parking pads shall be colored concrete, stamped concrete, pavers, cobblestones, or an approved system of concrete curbs and gravel or crushed rock. No asphalt and no applied synthetic surfacings such as sprayed on or brushed on coloring, acrylic, stains, or epoxies may be used. No garage door may face the street from which

the driveway to such door originates unless garage doors are completely hidden within an approved motor court with solid gates.

2.5 The minimum floor area of the heated/air-conditioned area of any single family dwelling (inclusive of the floor area of any guest house) shall be 2800 square feet, excluding garage, decks, or open porches. On all Lots, if the principal dwelling is more than one story, it shall have a minimum enclosed heated or air-conditioned area on the ground floor of between 60% and 80% of the total square footage of the heated/air-conditioned area of such dwelling (not inclusive of the heated or air-conditioned area of any guest house), excluding garage, decks, or open porches.

2.6 All buildings and structures shall comply with the following specifications:

(A) All buildings must be site-built frame, adobe, rammed earth, or ICF (foam) block construction. No manufactured homes, mobile homes, trailers, tents, teepees, yurts, dome, pyramids, A-frames, or Quonset huts may be constructed or moved onto any Lot.

(B) The architectural style of all single family dwellings and accessory buildings shall be generally characterized as "Old World," as further defined or described by guidelines or rules adopted by the Architectural Review Committee.

(C) Exterior covering materials on buildings shall be of stucco, split-face brick, precast stone, precast concrete, stone veneer, or such other material as may be approved by the Architectural Review Committee and shall be designed so that the appearance blends and coordinates with the natural surroundings in a pleasing manner. Split face brick, precast stone, precast concrete, wood, stone, and brick accents may be used with prior approval by the Architectural Review Committee. Wood siding, vinyl siding, and aluminum siding are not permitted.

(D) Exposed concrete block construction is not permitted for any construction.

(E) All pitched roofs shall be of only clay tile, concrete tile, slate, or composite tile approved by the Architectural Review Committee after having been provided a sample of same by Owner. Asphalt built-up, asphalt shingle, fiberglass shingle, foam, wood shakes or shingles, and concrete tile shall not be used on any pitched roof in the Subdivision. Subject to approval of the Architectural Review Committee, metal roofing material may be used in limited applications. All vents extending above the roof surface shall be painted an approved color.

(F) No Owner shall allow the elevation of any portion of his, her, or its Lot to be changed from Pad Elevation without the express written permission from the Architectural Review Committee. No Owner shall allow any portion of any water retention area on his, her, or its Lot to be altered or filled without the express written permission of the Architectural Review Committee and the governmental entity having jurisdiction.

2.7 All heating and cooling equipment shall be mounted in the building which it serves or outside the building on the ground, or both. No heating or cooling equipment may be mounted on the roof, in the window of, or on an exterior wall of a building. A supply or return plenum may be constructed on an exterior wall so long as it is incorporated into the architectural design of the building, housed in a framed chase, and veneered with the same veneer as the building it serves. All flues shall be enclosed in an approved chase.

2.8 The following provisions shall apply to all Lots with respect to perimeter walls, retaining walls, and fences:

(A) Except as otherwise specified in this Declaration, all Lots shall have constructed on them rock perimeter walls as set forth in this Article.

(B) In all respects, all rock walls constructed in the Subdivision shall be constructed in accordance with the standards set forth in Division 3, Article III, Chapter 32, of the Las Cruces Municipal Code as it may be amended from time-to-time and as set forth herein (the "Design Standards"). The color of all rock used in the construction or repair of rock walls after recordation of this Declaration shall match the color of the rock used by Grantor in the Outer Perimeter Walls. Rock walls shall not have visible grout but shall instead be constructed with the same style and texture as the Outer Perimeter Walls. Each Owner shall ensure that the contractor(s) who construct(s) rock walls on such Owner's Lot knows of the requirement that such walls be constructed in accordance with the Design Standards.

(C) Grantor shall be responsible for the initial construction of the rock walls and gates along the exterior boundaries of the Subdivision. These walls and gates shall be referred to herein as the "Outer Perimeter Wall" or "Outer Perimeter Walls," depending on the context. An easement is hereby reserved by Grantor for the benefit of itself and its successors and assigns across each Lot for the purpose of constructing, repairing, and inspecting any and all portions of the Outer Perimeter Walls. With respect to Lots 10, 11, 12, 13, and 14, said wall shall be constructed to the southeast of the existing concrete ditch that runs along the northwest boundary of the Property as shown on the Subdivision Map. Owners of such Lots shall not construct any fence, barricade, obstacle, or obstruction between the Outer Perimeter Wall and such northwest boundary. After initial construction of the Outer Perimeter Walls by Grantor, maintenance and repair of that portion of the Outer Perimeter Walls that bounds a Lot shall be the responsibility of the Owner of such Lot, although Grantor may undertake such repair, and charge the cost of such repair to Owner on whose Lot the repaired portion of the wall is situated. Provided however, Grantor shall maintain that portion of the Outer Perimeter Walls along the Highway 28 right of way.

(D) All Lots shall have constructed on the side and rear lot lines perimeter rock walls. The perimeter walls (except the Outer Perimeter Walls) shall be centered on the lot lines with roughly half the width of the footers required for such walls on either side of the lot lines. In addition to those lines that are obviously side lot lines, the following lines shall

be considered side lot lines: line between Lot 18 and Lot 19; line between Lot 18 and Lot 17; line between Lot 25 and Lot 21; line between Lot 25 and Lot 24; line between Lot 23 and Lot 24; line between Lot 23 and Lot 22. Except where a maximum height is specified elsewhere in this Declaration, the height of a perimeter wall constructed on a side lot line shall be equal in height to that portion of the Outer Perimeter Wall or wall constructed on the rear lot line to a point on that side lot line designated by the Architectural Review Committee at the time it designates the landscaping, drainage, and irrigation plan pursuant to Article IV.

(E) With respect to the walls between Lot 19 and Lots 18, 17, 16, 15, and 20 and between Lot 22 and Lots 23, 24, and 21, such walls shall be 6 feet in height, plus or minus 4 inches. Grantor hereby reserves the right, but shall not be obligated, to construct all or a portion of the perimeter rock walls on the lots identified in this subparagraph (E).

(F) In no case shall broken glass or any other sharp object be embedded in the rock walls referred to herein.

(G) With respect to each Lot, construction of the perimeter walls required for such Lot shall be completed no later than the date on which a certificate of occupancy is issued for the single family dwelling constructed on such Lot.

(H) Except as otherwise expressly set forth herein, the Owner of a Lot (except Grantor) is responsible for constructing the perimeter walls required by this Declaration with respect to such Lot, and maintaining them in good and attractive condition and repair. An Owner who constructs a perimeter wall on a lot line shall construct such wall in one phase so that it simultaneously fulfills the height and other perimeter wall provisions of this Declaration with respect to the Lots on both sides of the line. Except as otherwise set forth in this Declaration, the costs of design, construction (including clean up), maintenance, and repair of a perimeter wall on a lot line shall be shared equally by the Owners of the Lots on either side of the line. In the first instance, Owners of adjoining Lots should cooperate with one another in the design, construction, maintenance, and repair of the perimeter walls affecting their respective Lots, and in the sharing of the costs of same. In the absence of such cooperation or agreement otherwise, the following provisions shall apply:

> **(1)** The Owner of a Lot who undertakes the responsibility of designing, constructing, maintaining, or repairing a perimeter wall on a portion of the Lot of such Owner (the "Responsible Owner"), which also satisfies the burden of the Owner of an adjoining Lot (the "Benefited Lot") in fulfilling the requirements of this Declaration with respect to the design, construction (including clean up), maintenance, or repair of perimeter walls with respect to that Lot shall have the right to recover from the Owner of the Benefited Lot an amount equal to one-half of the cost of the design, construction (including clean up), maintenance, or repair (the "Work"), plus interest on such amount at the rate of 10% per annum from the date the Responsible Owner presents a written demand for payment to the Owner

of the Benefited Lot. In the event the Responsible Owner is reasonably required to employ an attorney to collect payment, the Responsible Owner shall also be entitled to recover costs and attorney fees. The Responsible Owner shall also have a lien or liens against the Benefited Lot for the cost of the Work. The lien(s) shall arise at the time the Responsible Owner pays the contractor(s) who performed the Work (thus, separate liens may arise for, *e.g.*, design and construction). The Responsible Owner shall comply with the provisions of Article IX with respect to such lien(s).

(2) Notwithstanding any other provision in this Declaration to the contrary, the following provisions shall apply where Grantor holds record title to the Benefited Lot at the time the Responsible Owner pays for the Work (if record title to the Benefited Lot has been transferred by Grantor by such time, then the provisions in the foregoing paragraph apply). The Responsible Owner shall have a lien (or liens) against Grantor's Lot for such Lot's share of the costs of such Work, but not for any interest, other costs, or attorney fees (unlike where the Owner of the Benefited Lot is not Grantor, the Responsible Owner shall not have the right to assert a claim against Grantor as an Owner to recover the amount; the Responsible Owner shall have only the right to claim the lien). Such lien(s) shall arise at the time the Responsible Owner pays the contractor(s) who performed the Work (thus, separate liens may arise for, *e.g.*, design and construction). Immediately after a lien arises, the Responsible Owner shall record a claim of lien against the Benefited Lot. Such lien(s) may not be foreclosed while Grantor holds record title to such Lot. When the closing of the sale by Grantor to a buyer of such Lot occurs -- regardless of when it occurs -- the buyer of the Lot shall pay the cost of the Work identified in the claim of lien to the Responsible Owner (or its designee or assignee). Upon payment of the amount due, the Responsible Owner (or its designee or assignee) shall immediately release the lien. Should the Responsible Owner fail to record the claim of lien before Grantor sells the Benefited Lot, the Responsible Owner may record the claim of lien, and foreclose the lien, after such sale, provided however, (a) the Responsible Owner shall first make written demand on the buyer of the Benefited Lot for such Lot's share of the costs and such share of the costs shall not have been paid by the buyer within 10 days of the demand; (b) the Responsible Owner shall not be entitled to any interest or attorney fees from the buyer of the Benefited Lot accruing prior to the time of the written demand; (c) the lien shall be inferior to any interest created by an instrument recorded prior to the recordation of the claim of lien; and (d) if the claim of lien is not recorded within 12 months of the date on which the lien arose, the Responsible Owner shall lose entirely the right to claim or enforce the lien. Except to the extent Article XII is inconsistent with the provisions of this paragraph (2), the Responsible Owner shall comply with the provisions of Article XII with respect to such lien(s).

(3) Grantor, as an Owner of a Lot, shall not be required to erect any perimeter walls on any Lot owned by Grantor. However, if Grantor erects a perimeter wall,

it shall have a lien as a Responsible Owner on all Lots on which any portion of the perimeter walls is located.

(4) In the event of the failure of the Owners of two adjoining Lots to construct the walls required by this Article, Grantor may (but is not required to) erect such walls in which case it shall have a lien as a Responsible Owner on all Lots on which any portion of such walls is located.

(5) In the event a dispute arises between the Owners of adjoining Lots regarding the sharing of the costs of designing, constructing, maintaining, or repairing any of the perimeter walls required by this Declaration, such dispute shall be submitted to binding arbitration as set forth in Article XII, except that judicial proceedings to foreclose any lien created or authorized by this Article (except a lien against a Lot owned by Grantor) may be commenced in a court of competent jurisdiction without prior resort to binding arbitration.

(I) No Owner shall allow water to pond or pool on his, her, or its Lot against any portion of a perimeter wall. Where a perimeter wall is damaged by the fault or neglect of an Owner of a Lot on which all or a portion of the wall is situated (regardless of the mechanism of damage), then such Owner shall be solely responsible for the cost of repairing the wall to the condition it was in at the time of the damage, and no lien or right of contribution shall arise in favor of such Owner for the costs of the repair. Similarly, where repair or maintenance is required on the side of a wall for only cosmetic reasons, then the Owner of the Lot to which such side faces shall be solely responsible for the cost of the repair or maintenance, and no lien or right of contribution shall arise in favor of such Owner for such repair or maintenance.

(J) Non-exclusive easements on each Lot for the purpose of construction, maintenance, and repair of any perimeter walls are hereby reserved by Grantor for its benefit and the benefit of its successors and assigns. Furthermore, all deeds conveying any Lot shall be construed to include the conveyance with such Lot of an easement appurtenant to such Lot, burdening each adjoining Lot, for the construction, maintenance, and repair of perimeter walls. Use of the easements herein reserved and granted shall at all times be reasonable, and shall occur only after reasonable written notice to the Owner of the servient Lot. By accepting a deed to a Lot, all Owners agree that if it is established at an arbitration or judicial proceeding that an Owner used such an easement for the primary purpose of annoying or harassing another Owner, the offending Owner shall pay the offended/annoyed Owner two thousand dollars ($2,000) in damages, plus attorney fees and costs.

(K) An Owner may, with prior approval of the Architectural Review Committee, construct a perimeter wall that is higher than the minimum height specified in the Declaration. However, except as otherwise allowed by this Declaration, an Owner may not increase the height of an existing wall on a lot line without the written permission of the Owner of the other Lot (and the Owner increasing the height of an existing wall shall

be responsible for any damage occurring to the other Lot as a result of the work performed to increase the height, and shall be responsible for ensuring that only materials of the same kind, color, style, and texture are used to construct the increased-height wall). Unless otherwise agreed, the cost of increasing the height (but not the cost of repairing or maintaining the increased-height wall) shall be borne exclusively by the Owner wishing to increase the height. For example, if an Owner wished to construct a 7-foot high perimeter wall on the lot line between his Lot and an adjoining Lot for a cost of $3,000, but, if the same length of a 6-foot high wall would cost only $2,000 to construct, the Owner of the adjoining Lot would be responsible for only $1,000 of the $3,000 cost. And, if during construction of an increased-height wall, landscaping on the servient Lot is damaged by the contractor increasing the height, the Owner who ordered the increased height would be responsible to the Owner of the servient Lot for such damage.

(L) Each Owner is obligated to construct a wall or fence ("Connecting Wall") from exterior walls of the dwelling or accessory buildings to the side perimeter walls. The Connecting Walls shall be constructed of the same type of material used to construct the walls of the single family dwelling constructed on the Lot or the same material used to construct the perimeter walls, or such other material as is approved by the Architectural Review Committee; provided however, subject to the approval of the Architectural Review Committee, Connecting Walls may be constructed of wrought iron.

(M) No perimeter wall or Connecting Wall may be constructed, removed, replaced, or altered in height, width, or length without the prior written approval of the Architectural Review Committee.

(N) The use of chain link, wood, tin, sheet metal, corrugated metal, wire, chicken wire, wire mesh, and barbed wire gates and fences are specifically prohibited. Except as otherwise specifically approved by the Architectural Review Committee, all gates shall be made of wrought iron or iron tubing overlaid with wood slats.

(O) The requirements that perimeter walls be constructed on all side and rear lot lines and that Connecting Walls be constructed may be modified by the Architectural Review Committee if the shape or orientation of a Lot makes compliance with such requirements impractical.

(P) Notwithstanding anything to the contrary herein, no perimeter wall shall be constructed on the common boundary between Lots 8 and 9. Instead, the Owner of Lot 9 shall construct on Lot 9 a perimeter wall parallel to and 3 feet away from the southerly boundary of Lot 9, and such Owner shall not be entitled to any contribution from any other Owner. The Owner of Lot 8 shall, at such owner's sole expense, construct a perimeter wall along the southerly boundary of the utility and access easement shown on the Subdivision Map, no part of which may encroach into such easement. Association funds may be used to maintain these walls.

2.9 The following provisions shall apply to signs in the Subdivision:

(A) Grantor shall supply and install at Grantor's expense a street number sign visible from the street for each Lot. Thereafter, responsibility for maintenance of such signs shall be on the Owner of the Lot to which the sign pertains. Any replacement street number signs shall conform in all respects to the original sign installed by Grantor. No street numbers or other information may be painted, etched, or otherwise displayed on curbs.

(B) Except as set forth in subparagraph (A) of this section 2.9, no signs or other advertising shall be displayed on any Lot unless the size, form, and number of same are first approved in writing by the Architectural Review Committee; provided however, an Owner may, without such prior approval, erect the following:

(1) One sign affixed to an exterior wall of the single family dwelling identifying the Owner or occupant, and containing no other language other than "welcome," "mi casa es su casa," and words or phrases of similar meaning, not exceeding one (1) square foot in area and pertaining only to the Lot of the Owner or occupant thereof upon which the sign is located.

(2) Two (2) unlighted signs, not exceeding four (4) square feet in area each, to advertise the lease, rental, or sale of the Lot upon which it or them is or are located. Such sign(s) may show the name, address, and telephone number of the Owner or his authorized agent.

(3) In addition to the signs mentioned in subparagraph (2) above, one "open house" sign, not exceeding four (4) square feet in area, which invites the general public to inspect the premises for lease, rent, or sale, provided that, at the time such property is open for inspection and the "open house" sign is displayed, the Owner, his tenant, or his agent is in attendance to display any such house or building thereon. Such "open house" sign shall only be displayed on or from the Lot being leased, rented, or sold; provided however, exactly one "open house" and exactly one directional sign may be placed near the entrance of the Subdivision in the Highway 28 right-of-way with the approval of the New Mexico State Highway Department. Except as otherwise specifically set forth below, in no event shall the easements created or identified in the Subdivision Map or this Declaration be construed to permit the placement of signs by one Owner on another Owner's Lot. No signs may be placed in the Common Area without the written approval of Grantor.

(C) Upon approval of the Architectural Review Committee, an Owner may allow contractors who are performing work on his, her, or its Lot to erect no more than two (2) signs, not to exceed four (4) square feet each, identifying the contractor and the type of work the contractor is performing on the Lot or, if the Owner is also the contractor, to

advertise the home or other buildings the contractor/Owner is building in the Subdivision. No Owner shall allow any contractor performing work on the Owner's Lot to imply by such signs that the contractor represents the Grantor or other contractors. For example, a model home out of which sales of other homes in the Subdivision built by the same contractor are conducted shall be identified as that of the particular contractor who owns it.

(D) Notwithstanding anything in this Declaration to the contrary, nothing in this Declaration shall be construed to prevent Grantor from erecting, placing, or maintaining signs within the Subdivision as may be determined necessary or desirable by Grantor to promote the sale and development of Lots and homes within the Subdivision. Easements on each Lot are hereby reserved by Grantor for this purpose; provided however, such easements shall not be deemed to pass to any grantee of Grantor.

(E) Nothing in this Declaration shall be construed as prohibiting an Owner from placing on his, her, or its Lot on a temporary basis a sign or signs not exceeding four (4) square feet urging the election of a candidate for public office, or urging the passage or defeat of any proposition or proposal put before the voters in any election. Such signs may be displayed no earlier than 90 days before the election and shall be removed within 2 business days of the day on which the election takes place.

(F) Each Owner hereby authorizes Grantor and the Architectural Review Committee to remove and discard any sign, after notice to such Owner, that is placed by an Owner on his, her, or its Lot or elsewhere in the Subdivision in violation of this Declaration, and releases Grantor and the Architectural Review Committee (and its members) from any liability for doing so.

2.10 Satellite dishes, antennas, solar collectors, and flags in the Subdivision shall be governed by the following provisions:

(A) Absent written approval from the Architectural Review Committee, (1) satellite dishes greater than 21 inches in diameter are not allowed in the Subdivision; and (2) satellite dishes must be completely hidden from view from the ground elevation at a line of sight beginning at a point 6 feet above the sidewalk in front of the residence. Satellite dishes may also be installed within 5 feet of side lot lines in the rear yard if they are hidden from view from the front of the dwelling and from adjoining Lots at ground level.

(B) Solar collectors may be installed on the ground in the back yard, but must be out of sight of the street and may not be higher than the height of the lowest perimeter wall in closest proximity to the collector. Solar collectors may not be installed on pitched roofs. Solar collectors may be installed on flat roofs but only if all portions are below any parapet walls.

(C) Radio and television antenna may be installed on roofs but only if they are completely hidden from view behind parapet walls and if they are completely hidden from view from the ground elevation of adjoining Lots at a line of sight beginning at a

point 6 feet above such ground elevation. Attic installations of radio and television antennas are recommended.

(D) No flags or banners, and no flag poles of any type are permitted in the Subdivision; provided however, (i) Grantor may install a lighted ground set flagpole near the entrance of the Subdivision on or in the vicinity of Lot 1 or Lot 14 and may fly the American Flag thereon; (ii) an Owner may display one American Flag on the Owner's Lot, but not on any pole and only so long as proper flag etiquette is observed; and (iii) subject to the approval and any rules of the Architectural Review Committee, Grantor and an Owner's contractor may use flags and pendants to identify their particular projects in conjunction with periodic "showcases" of homes and other organized marketing events of limited duration.

(E) Nothing contained in this Declaration shall be construed to prohibit the installation by Grantor of a tower or antenna in the Subdivision for the purposes of receiving or transmitting electromagnetic transmissions.

2.11 No lands or residences within the Subdivision shall ever be occupied or used for any commercial or business purpose or for any noxious or illegal activity, and nothing shall be done or permitted to be done on any Lot which is a nuisance or might become a nuisance to the Owner or Owners of any of adjoining Lots; provided however, (a) the use of the concrete ditch along the northwest boundary of the Property as an irrigation ditch shall not be considered a noxious activity or otherwise in violation of this Declaration; (b) home occupations (but not offices for the conduct of any law, medical, dental, psychiatric, psychological, engineering, holistic, counseling, or architectural business) are permitted so long as operation and conduct of such occupation does not result in materially increased traffic within the Subdivision, regular visits by clients or customers, or violation of this Declaration. No signage may be displayed anywhere in the Subdivision in connection with a home occupation. No firearms shall be unlawfully discharged within the Subdivision. No odor shall be emitted from any Lot, which is noxious or offensive to others. No animals, livestock, or poultry or any kind shall be raised, bred, or kept on any Lot, except that, no more than a total of four (4) household pets (consisting of any combination of dogs and cats) may be kept on a Lot or in any Improvement, and then only if they are not kept, bred, or maintained for any commercial purpose. Pets may not run free in the Subdivision. Any dog that is discovered running at large in the Subdivision more than 3 times shall be removed from the Subdivision. No vicious animals, and no animal that has bitten any person on any street, sidewalk, or front yard of any dwelling in the Subdivision, are allowed in the Subdivision. All pets when outside of the dwelling must be kept on a leash or within a walled yard with solid gates. Owners shall not allow droppings from pets to accumulate, and shall pick up immediately any feces deposited by a pet on any property within the Subdivision other than their own Lot. Owners shall not allow their dogs to bark in a manner that bothers or annoys any other Owner. Dogs that bark at night shall be kept inside the dwelling or garage. Stray cats shall not be fed within the Subdivision. To avoid attracting vermin, pet food shall not be left outside overnight. Nothing contained in this Declaration shall be construed to prohibit or limit the keeping of fish, birds, and reptiles so long as such pets are kept indoors at all times and do not constitute a nuisance or result in other violation of this Declaration or the law.

2.12 Nothing contained in the Declaration shall be construed to prevent an Owner from leasing or renting the single family dwelling located on his, her, or its Lot under the Uniform Owner-Resident Relations Act. Provided however, any Owner who leases or rents a dwelling shall inform his or her tenant of the provisions of this Declaration, but in any event shall remain ultimately responsible for compliance with this Declaration.

2.13 Lots shall not be further subdivided, and no portion of any Lot may be sold or conveyed except to Grantor separately from the rest of that Lot. Subject to compliance with all applicable ordinances, two or more adjoining Lots under the same ownership may be combined to create one or more lots ("New Lot"); provided however, in no event shall the total number of lots in the Subdivision be increased as a result of such combination. Setback requirements would then pertain only to the New Lot(s). Each New Lot shall be considered as one residential lot for all of the purposes of this Declaration and may not thereafter be split or developed as two or more parcels but shall be developed as, and remain, a single parcel.

2.14 No unsightly articles shall be permitted to remain on a Lot so as to be visible from any adjoining Lot. No Lot shall be used or maintained as a dumping ground for rubbish. Refuse, garbage, and trash shall be kept at all times in a sanitary, covered, plastic container, and any such container shall be kept within an enclosed structure (such as a garage) or appropriately screened from view from ground level of all streets and other Lots; provided however, trash containers may be placed at the curb for pickup no more than twenty-four (24) hours prior to the scheduled pick-up time. Owners shall not contract for household garbage service and shall instead use the service provider engaged by Grantor or the Association (during construction activities on a Lot, the Owner of that Lot shall provide for the removal of construction debris from such Lot). Service areas, storage piles, compost piles, and facilities for hanging, drying, or airing clothing or household fabrics shall be screened from view from all other Lots. No lumber, grass, shrub or tree clippings or plant waste, metals, bulk materials or scrap, refuse, trash, or firewood shall be kept, stored, or allowed to accumulate on any Lot except within an enclosed structure or screened from view from all other Lots. No dumpsters shall be permitted, except for temporary use during construction. No garbage or household trash or debris shall be burned in the Subdivision. Clotheslines may be used only in the backyard area of a Lot, must be retractable, and must be retracted when not it use. No screening which is not approved by the Architectural Review Committee may be used. No above-ground swimming pools are permitted in the Subdivision. Hot tubs, including above-ground hot tubs, are permitted but only in the back yard area of a Lot and if screened from view from adjoining Lots from ground level.

2.15 No light shall be emitted from any Lot that is unreasonably bright, or which would constitute an annoyance to a person of ordinary sensitivities. Flood lights and bright exterior lights shall not be left on all night. No sound shall be emitted from any Lot that is unreasonably loud or annoying to another in the Subdivision. Nothing in this section shall be construed as prohibiting streetlights or flagpole lights erected by Grantor in the Subdivision.

2.16 Every Owner, whether or not his Lot contains any Improvements, shall take all action necessary to restrict the growth of, and to remove, noxious weeds or grasses in accordance with any local, state, or federal requirements. All Lots shall be maintained at all times by the

Owner thereof, both prior to and after construction of Improvements thereon, in an attractive manner, free of trash, debris, weeds, and other unsightly material.

2.17 All power, telephone, and other service lines installed by or at the direction of an Owner shall be located underground.

2.18 No quarrying, tunneling, excavating, or drilling for any substances within the earth, including for oil, gas, minerals, gravel, sand, or rock shall ever be permitted within the Subdivision, and no derrick or other structure designed for use in drilling shall be erected, maintained, or permitted to remain on any Lot. Provided however, septic systems may be installed and maintained, and domestic water wells may be drilled and maintained on a Lot, but any pressure tanks or pumps (other than submersible pumps) must be located in the dwelling, garage, motor court or back yard area of the Lot (in which case it shall be enclosed in a structure approved by the Architectural Review Committee). No windmills, including decorative windmills, shall be erected or allowed to remain in the Subdivision.

2.19 All Owners shall maintain adequate drainage and runoff water storage on their Lots so as to not cause drainage onto adjoining Lots except as envisioned by the Subdivision grading plan. No Owner shall block runoff from the street onto yards or interfere with the established drainage pattern over any Lot unless adequate provision is made for alternative drainage and is approved by the Architectural Review Committee. No structure, fence, planting, or other material shall be placed or permitted to remain which may damage or interfere with the direction or flow of drainage channels or which may obstruct or retard the flow of water through drainage channels. Any ditch easements shown on the Subdivision Map shall not be considered drainage channels.

2.20 No Improvement upon any Lot within the Subdivision shall be permitted to fall into disrepair, and each such Improvement shall at all times be kept in good condition and repair. Among other things, an Owner shall not allow paint on any Improvement to peel. Cracks in stucco any part of which exceeds 1/8 inch in width shall be repaired by refinishing the entire wall on which the crack appears. Metal drip edges shall be kept painted. Cracked or broken roof tiles shall be replaced.

2.21 The following provisions apply with respect to the storage, maintenance, and use of vehicles and recreational equipment:

(A) At no time may more than three (3) cars be parked or allowed to remain on a Lot outside of the garage by an Owner or any family member, guest, or invitee of an Owner or Owner's family member, and then only on a driveway or parking pad approved by the Architectural Review Committee. No cars may be parked on the sidewalk. No Owner shall park, allow his or her family members, guests, or invitees to park, or allow to remain any car parked by an Owner, Owner's family member, guest, or invitee, any car or other motor vehicle on any street within the Subdivision for more than five (5) hours at a time.

(B) No commercial vehicle (excluding sedans or standard-sized pickup trucks which are used both for business and personal use), motor vehicle displaying any advertisement affixed to the roof thereof or exceeding 4 square feet in area, boat, camper trailer, motor home, wagon, trailer, recreational vehicle, or other mechanical equipment (collectively, an "Item" or "Items") may be kept on any Lot unless it is kept in a fully enclosed garage or motor court, except that an Item may be temporarily parked outside a garage or motor court, not to exceed fourteen (14) days in the aggregate during any calendar year. Subject to any applicable ordinances, house guests may park their recreational vehicle for up to ninety-six (96) hours in any thirty-day period while visiting an Owner.

(C) No tractor-trailer rigs, or part of one, may be parked in the Subdivision except for the temporary purpose of loading or unloading.

(D) Any motor court must be approved by the Architectural Review Committee and shall conform to the following standards: (1) the height of the walls enclosing the Items shall be at least twelve (12) inches higher than the highest point of the tallest Item stored or parked in the motor court, but in no event less than eight (8) feet; (2) walls of the motor court must be at least twelve (12) inches thick; (3) the gate to the motor court shall be steel with wood veneer unless the motor court does not house a recreational vehicle or motor home, in which case the gate may be wrought iron; and (4) the motor court shall otherwise comply in all respects with the provisions of this Declaration and the Architectural Committee Rules.

(E) Notwithstanding any other provision in this Declaration, no vehicle, wagon, trailer, motor home, camper trailer, boat, or other mechanical equipment of any type, which is abandoned or inoperative, shall be stored or kept on any Lot unless it is screened from view in a garage or approved motor court. No such item may be kept or parked on any street in the Subdivision. No vehicles, recreational vehicles, wagons, trailers, motor homes, camper trailers, boats, or other mechanical equipment may be dismantled or repaired on any Lot or on any street in the Subdivision.

(F) Only licensed motor vehicles may be operated within the Subdivision, and all motor vehicles shall be operated only by licensed drivers. All Owners shall obey, and shall ensure that their family members, guests, and invitees comply with all traffic signage in the Subdivision and all rules posted at the gate house concerning operation and use of the gate and the code(s) thereto, and access to the Subdivision. Nothing contained herein shall be construed to prohibit the use of bicycles or unlicensed electric scooters or toy cars within the Subdivision so long as such use does not constitute a nuisance and is otherwise in accordance with the law.

(G) No recreational equipment or playground equipment of any kind shall be installed, stored, or left in the front yard of any Lot or in the street right-of-way; provided however, a portable goal is acceptable so long as it is stored in the garage or motor court when not in use. Basketball goals permanently affixed above a garage door or in the back yard area of a Lot are acceptable. No basketball goal may be used during the hours of 8:00 p.m. and 8:00 a.m. Tennis courts are not allowed in the Subdivision. Playground

equipment (such as swing sets or slides) is permitted in the back yard area of a Lot so long as the height of such equipment does not exceed thirteen (13) feet.

2.22 No storage shed, tree house, play house, dog house, dog run, or similar or related type object shall be located on any Lot if the height of such object is greater than the height of the perimeter wall on said Lot or if such object is visible from the front of the Lot from street level. Tree houses, play houses, dog houses, and dog runs which are not visible from street level at the front of the Lot on which it or they are situated and that are not higher than the lowest perimeter wall in closest proximity to such object, need not conform to guidelines as to style and material. All storage sheds, regardless of height or placement, shall be of the same architectural style and constructed of the same types of materials as the dwelling on such Lot. Provided however, nothing in this section shall be construed to prohibit a gazebo, cabana, play house, tree house, or storage shed up to thirteen (13) feet tall on a Lot, even if it is visible from the street, so long as it is of the same materials and architectural style and detail as the single family dwelling on such Lot and so long as it has been approved by the Architectural Review Committee and complies with all applicable zoning and setback ordinances and this Declaration. Notwithstanding any setback or zoning ordinance, all swings, slides (including those used in connection with a swimming pool), other play ground equipment, gazebos, cabanas, play houses, tree houses, dog houses, dog runs, and storage sheds shall be at least ten (10) feet from perimeter rock walls (except Outer Perimeter Walls).

2.23 Non-exclusive easements for the installation and maintenance of utilities and other infrastructure are reserved and are hereby expressly acknowledged and granted as shown on the Subdivision Map. Upon such easements, no structure shall be placed or permitted to remain which would interfere with the reasonable use of the easement; provided however, no utility easement shall be construed as prohibiting the construction of the perimeter walls required by this Declaration. Except as otherwise set forth in this Declaration, all portions of a Lot, including those portions subject to an easement, shall be maintained by the Owner of the Lot; provided however, subject to the requirements pertaining to perimeter walls, an Owner is not responsible for maintaining any improvement constructed or placed in an easement by the owner of such easement.

2.24 No building or Lot in the Subdivision shall be decorated in an outlandish, distasteful, garish, extreme, or otherwise offensive style which is not in harmony with the character of the Subdivision as determined by the Architectural Review Committee. This section shall not be construed or applied so as to prohibit temporary holiday displays during holidays expressly recognized under state law, other well-recognized religious holidays, and Halloween, St. Patrick's Day, and St. Valentine's Day. Grantor reserves the right to decorate the entranceway to the Subdivision in any manner Grantor deems fit.

ARTICLE III

CONSTRUCTION AND BUILDING PROVISIONS

In addition to the provisions contained elsewhere in this Declaration, the following provisions shall apply with respect to the construction of Improvements in the Subdivision:

3.1 The provisions of this Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during any construction of Improvements by any Owner (including Grantor) so long as such Improvements conform in all ways with this Declaration and the Architectural Committee Rules, and so long as such construction activities do not in any way damage, hinder, or delay the construction or development activities of others within the Subdivision. Specifically, no such construction activity shall be deemed to constitute a nuisance or violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, erection of temporary structures, or similar activities, provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area. In the event of any dispute, a temporary waiver of the applicable provision, including, but not limited to, any provision prohibiting temporary structures, may be granted by the Architectural Review Committee, provided that such waiver shall be only for the reasonable period of such construction. Such waiver may, but need not, be recorded or in recordable form.

3.2 During construction of a single family dwelling or other Improvement on a Lot, the owner of such Lot shall ensure that construction activities are conducted in such a manner so as to not damage, hinder, or delay the construction or development activities with respect to other Lots, and so as to not impair the value of other Lots. During construction, an Owner shall keep his, her, or its Lot substantially free of weeds and excessive construction debris. Should an Owner fail to comply with this provision, Grantor retains, and each Owner grants, the right to enter upon such Lot and remove weeds or debris after notice has been given to the offending Owner and the Owner has failed to remedy the situation. Grantor shall have a lien on such Lot for the costs incurred by Grantor in doing so, plus interest at the rate of 10% per annum from the date the work is completed. Such lien shall arise on the date the work is completed.

3.3 The provisions of this Declaration shall not be construed so as to prevent or limit Grantor's right to maintain construction, sales, or leasing offices or similar facilities on any property within the Subdivision owned by Grantor or on the property of any other Owner if such Owner consents to such use, nor to prevent or limit Grantor's right to post signs incidental to construction, sales, or leasing.

3.4 Temporary model homes or real estate offices and adjacent parking areas are permitted subject to rules and regulations as may be prescribed by the Architectural Review Committee. In all cases, any such temporary model home or real estate office must remain "for sale" and may not also be used as a residence.

3.5 Temporary storage and parking for contractors' equipment during actual construction is permitted, subject, however, to rules and regulations as may be prescribed by the Architectural Review Committee.

3.6 No Owner shall commence or allow construction on his, her, or its Lot of any Improvement unless and until the Owner has first submitted a construction schedule, the plans, specifications, other information identified in this article and in Article V with respect to such Improvement(s), a plan review fee, and such plans and specifications and the proposed Improvement have been approved by the Architectural Review Committee as indicated by the

written endorsement of the committee on such plans and specifications. Nor shall any Owner remove, repair, replace, alter, or modify any existing Improvement unless and until written plans and specifications for same (and any applicable plan review fee) have been submitted to the Architectural Review Committee and such plans and specifications and the proposed removal, repair, replacement, alteration, or modification have been approved by the Architectural Review Committee as aforesaid. The foregoing provisions shall not be construed to require the submission of plans and specifications or approval thereof by the Architectural Review Committee with respect to repair, replacement, alteration, or modification of the interior of a building, or with respect to the repair, replacement, alteration, or modification ("Work") of an existing exterior Improvement when the Work is repair work and will simply restore the Improvement to the same condition the Improvement was in prior to the need for repair arising. No material changes or deviations in or from the approved plans and specifications may be made without the express written approval of the Architectural Review Committee. Plans submitted to the committee shall be to scale and shall include, among other things, the location(s) and dimensions of existing and proposed Improvements on the Lot, the location(s) of any drainage channels or retention ponds on the Lot, and architectural drawings including elevations.

3.7 Unless otherwise approved in writing by the Architectural Review Committee, an Owner who purchases a Lot from Grantor shall commence construction of the single family dwelling on such lot within 2 years of the date on which the instrument by which Grantor conveyed such Lot is recorded. Should an Owner (the "New Owner") acquire a lot from someone other than Grantor, then commencement of construction of the single family dwelling shall commence no later than the later of (a) 2 years from the date on which the deed first conveying such Lot by Grantor is recorded; or (b) 1 year after the date upon which the deed to the New Owner is recorded. Provided however, if the New Owner is an individual who was an officer, director, shareholder, member, partner, trustee, beneficiary, or other principal of the seller, or New Owner is an entity in which the seller or any of the seller's officers, directors, shareholders, members, partners, trustees, beneficiaries, or other principals is an officer, director, shareholder, member, partner, trustee, beneficiary, or principal, then construction of the single family dwelling on the Lot shall be commenced within 2 years of the date on which the deed first conveying such Lot by Grantor is recorded. Construction shall be deemed to commence when the building permit with respect to such dwelling has been issued by Dona Ana County. The purpose of this provision is to further the intent of Grantor that the Subdivision be fully developed and built out relatively quickly, and the intent that Owners of Lots who have complied with this provision should not have to endure the unsightliness or impact on value of an undeveloped Lot for any appreciable length of time. Accordingly, Grantor hereby retains and every deed to a Lot shall be deemed to contain, the reservation by Grantor and the granting to Grantor by the Owner who accepts such deed, an option to purchase from such Owner, the Lot if construction of a single family dwelling has not commenced on it within the period specified herein. If construction on a Lot is not commenced within the period specified herein (or any written extension from the Architectural Review Committee) Grantor may either commence a judicial proceeding (without prior submission of the dispute to binding arbitration) seeking an injunction compelling the Owner to commence construction, or may exercise such option. To exercise the option, Grantor shall deliver a written notice of such exercise and tender into escrow for the benefit of the record owner and, if there is a first Mortgage on the Lot, jointly to the

holder of such mortgage, an amount in cash equal to ninety percent (90%) of the price at which Grantor first sold such Lot to the first buyer thereof. The record owner hereby agrees that the option price may first be used to satisfy the obligation for which the Mortgage was given. Upon such tender, the record owner of such Lot shall convey such Lot to Grantor by warranty deed, free and clear of any encumbrances except those existing at the time of the initial sale of such Lot to the first buyer thereof, and the holder of any first Mortgage shall release such mortgage. Upon the record owner's refusal or failure to convey the Lot, or the holder of any first Mortgage to release the Mortgage, Grantor may immediately bring a civil action to compel the conveyance or release, and need not engage in binding arbitration. Grantor shall be entitled to an award of costs and attorney fees incurred by Grantor in such suit. The option price identified herein is not meant to constitute a forfeiture, but to reflect the costs and inconvenience to Grantor of enforcing this provision and reselling the Lot.

3.8 Unless otherwise approved in writing by the Architectural Review Committee, construction of a single family dwelling on a Lot, once commenced, shall be pursued by the Owner with due diligence continually from the time of commencement until fully completed and shall be completed within ten (10) months from the date of commencement of construction. Unless otherwise approved in writing by the Architectural Review Committee, the construction of all other Improvements on a Lot, once commenced, shall be completed within three (3) months from the date of commencement of construction. With respect to single family dwellings and other buildings, construction shall be deemed to commence when the building permit has been issued and construction shall be deemed to be completed on the date a certificate of occupancy is issued or the date the municipality with jurisdiction inspects and gives final approval of the work. With respect to other Improvements, construction shall be deemed to commence on the date any required building or other permit is issued or, if no permit is required, when construction actually begins; completion will be deemed to occur when any required final inspection and approval has been obtained from the municipality with jurisdiction or, if no inspection or approval is required, when construction is actually completed. Permissible accessory structures shall be constructed on a Lot simultaneously with or after construction or substantial construction of the single family dwelling on such Lot. The Architectural Review Committee shall not approve an extension of the time limitations set forth in this section unless the Owner's inability to comply with such limitations is the result of the scope of the proposed improvement, fire, casualty, acts of God, strikes, unavailability beyond the control of the Owner of materials specified on the approved plans and specifications necessary for the completion of the Improvement, or interference by other persons or factors beyond the control of the Owner which prevents timely completion. Financial inability of an Owner or an Owner's contractor(s) to secure labor or materials, or discharge liens on the Lot, shall not be deemed to be a factor beyond the Owner's control.

3.9 If after commencement of construction of an Improvement, such construction is not completed within the time limitations set forth in this Declaration, and if no extension of time has been given by the Architectural Review Committee, or if, after commencement of construction of a single family dwelling on a Lot, substantial construction activities on such dwelling ceases for a period of one hundred and twenty (120) days and no extension has been given by the Architectural Review Committee, Grantor, the Architectural Review Committee, or

the Owner of another Lot shall have the right to seek (without prior resort to binding arbitration) an injunction against the Owner of the Lot compelling the completion of the construction. The plaintiff shall be entitled to an award of costs and attorney fees, and such costs and attorney fees shall become a lien on the Lot (which lien arises on the date of the award). Alternatively, Grantor or its designee may enter upon such Lot and complete any partially completed Improvement(s) (or remove them if the cost to complete would result in economic waste and if no Mortgage securing a construction loan is recorded against such Lot). Grantor shall have a lien against the Lot for the expenses incurred by Grantor in performing such work, plus interest at the rate of 10% per annum from the date the work is completed. Such lien shall arise on the date the work is completed.

3.10 No building shall be occupied until the issuance of a certificate of occupancy with respect to such building by Dona Ana County or other jurisdiction with authority.

3.11 Grantor makes no representation regarding soil compaction or bearing capacity on Lots. Each Owner is solely responsible for ensuring that soil compaction on his, her, or its Lot and foundation design meets all applicable standards. Should Grantor provide to any Person any sort of report concerning any matter, each such Person covenants and agrees that he, she, or it will (a) not rely on the inclusion or omission of any matter in such report; (b) hire a consultant to confirm the accuracy and completeness of the report; (c) not assert any claim, or commence any sort of arbitration or judicial proceeding against Grantor or anyone else based on the report or the provision of the report by Grantor.

3.12 An Owner of a Lot on which Improvements are constructed shall be responsible for the removal of any construction debris left by the Owner or the Owner's contractors on any adjoining Lots (provided however, nothing contained herein shall be construed as permission to dump anything on anyone else's Lot). If an Owner fails to remove such debris upon completion of construction, Grantor or the Owner of the adjoining Lot may, without prior notice to such Owner, remove it at such Owner's expense. Grantor or the Owner of the adjoining Lot shall have a lien against the offending Owner's Lot for the costs incurred in removing the debris, plus interest at the rate of 10% per annum from the date the work is completed. Such lien shall arise on the date the work is completed. The provisions of Article XII apply to such liens.

3.13 All single family dwellings constructed in the Subdivision shall be of quality construction appraising or costing at least one hundred twenty dollars ($120) per square foot of heated/air-conditioned area, exclusive of the costs of the Lot, window coverings, furniture, swimming pool, back-yard landscaping, perimeter walls, motor court, or any garage other than a two-car garage, but inclusive of the costs of appliances, fixtures, and landscaping required by this Declaration. Grantor or the Architectural Review Committee may, by recorded written instrument, increase or decrease the minimum cost per square foot, as may be necessary to ensure quality construction within the Subdivision in light of interest rates, inflation, taxes, prevailing labor and material costs in the Las Cruces area, and the like, and such recorded instrument shall be binding on all subsequent Owners. Proof that the cost per square foot requirement has been fulfilled shall be established by a bona-fide pre-construction appraisal by a member of the Appraisal Institute or other qualified appraiser, a bona fide construction contract

between the Owner and the Owner's contractor, or calculations by the Architectural Review Committee based on the plans and specifications and other information provided by the Owner. Nothing contained in this provision shall be construed as a requirement that any single family dwelling be sold at any set, minimum, or maximum price on a square foot basis or otherwise.

3. 14 All Improvements shall be constructed by licensed contractors. Without the prior written approval of the Architectural Review Committee, no single family dwelling or other Improvement intended for occupancy shall be constructed by or at the request of any Owner unless the general contractor which or who undertakes such construction or makes application for the building permit has held a GB98 contractor's license issued by the State of New Mexico, or equivalent, for a period of five (5) years preceding the date on which construction is commenced and who has constructed five (5) or more single family dwellings in Las Cruces or Dona Ana County, New Mexico, under requirements at least as stringent as those set forth in this Declaration or the Architectural Committee Rules. The purpose of this section is to ensure attractive, quality construction in the Subdivision and to minimize the possibility of unfinished dwellings in the Subdivision resulting from a contractor's default, or failure or inability to complete a project. Accordingly, this requirement may be waived by the Architectural Review Committee on a case-by-case basis by a showing by an Owner that such Owner's proposed contractor has the experience, knowledge, reputation, or financial wherewithal indicative of such contractor's ability to provide quality, attractive work in a finished product in accordance with the plans and specifications approved by the Architectural Review Committee.

3.15 All construction shall comply with all applicable building codes, regulations, ordinances, and statutes.

ARTICLE IV

LANDSCAPING

4.1 Each Lot, and all portions of Tract A between the lot line and the edge of the sidewalk, shall be landscaped according to a landscaping, drainage, and sprinkler/irrigation plan and equipment specifications ("Plan") to be developed for each such Lot by a landscape architect designated by Grantor or the Architectural Review Committee and for which a fee may be charged to the Owner (see Article V for fee details). The Plan for each Lot shall be determined in consultation with Owner as part of the design review process identified in Article V. The entire cost of implementing the Plan shall be born by the Owner of the Lot to which it applies. Once implemented, the Plan may not be modified without the approval of the Architectural Review Committee. The Architectural Review Committee may approve modification of a Plan if, among other reasons, the state engineer denies permits for domestic wells for landscape irrigation or revokes such permits as a result of insufficient water in the basin that serves the Subdivision.

4.2 All work required by the Plan applicable to a Lot shall be completed by the Owner no later than the earlier of three (3) months after the date the certificate of occupancy is issued by Dona Ana County (or other authority with jurisdiction) with respect to the single family dwelling on the Lot or thirteen (13) months after the commencement of construction of

the single family dwelling as determined in section 3.8. Should any Owner fail to landscape such Owner's Lot within the time specified herein in accordance with the designated Plan, Grantor may, but is not required to, perform such work on such Lot according to such Plan. Grantor shall have a lien against such Lot for the costs incurred by Grantor in doing the work plus interest at the rate of ten percent (10%) per annum from the date the work is completed. Such lien shall arise on the date the work is completed.

4.3 No Owner shall allow a mulberry tree to be planted or to remain on his, her, or its Lot.

4.4 Until such time as the Subdivision is substantially built out, an Owner may, with the prior approval of the Architectural Review Committee, erect temporary sand or wind screening around sensitive areas of landscaping.

4.5 No tree that exists on any Lot as of the date of recordation of this Declaration may be cut down or removed from such lot without the express written approval of the Architectural Review Committee.

ARTICLE V

ARCHITECTURAL REVIEW COMMITTEE

5.1 There is hereby created the Architectural Review Committee. Such committee shall initially consist of three (3) members. The initial members shall be Lewis E. Emerick, Jr., Joanne Emerick, and Anna Emerick-Biad. Any member of the Architectural Review Committee, except the three initial members identified herein, may be removed by a petition signed by the Owners of at least 17 Lots. In the event of death, resignation, or removal of any member of the committee then Grantor may appoint successor members by recording an instrument appointing such members specifying their names, addresses, and telephone numbers. If Grantor fails to appoint successor members, then any three (3) Owners may form the committee by recording an instrument identifying such Owners. In the case more than one group of Owners attempts to form the committee, the first recorded instrument identifying the members shall prevail.

5.2 The vote or written consent of a majority of the Architectural Review Committee shall constitute action of the committee.

5.3 Except as expressly authorized in this Declaration, no Owner shall make, permit, or allow, with regard to his, her, or its Lot, any change in the existing state of the Lot without first obtaining the written approval of the Architectural Review Committee. Changes in the existing state of a Lot that require approval shall include, without limitation, (a) the construction of any building, structure, or other Improvement, including utility facilities; (b) the excavation, filling, or similar disturbance of the surface of the land including, without limitation, change of grade or elevation, ground level, or drainage pattern; or (c) the exterior appearance of any previously approved change in the existing state of the Lot; provided however, landscaping plans for areas on a Lot not included in the landscaping, drainage, and irrigation plan identified in Article IV need not be submitted to the committee or approved by the committee.

5.4 The Architectural Review Committee shall have broad discretion to approve or not approve any change in the existing state of the Lot. The committee shall exercise such discretion within the bounds of reasonableness and to carry out the following objectives: (a) to implement the general purposes expressed in this Declaration; (b) to further the goal of the Subdivision being a high quality first-class residential subdivision; (c) to prevent violation of any specific provision of this Declaration or any amendments thereto and the Architectural Committee Rules; (d) to assure that any change will be of good and attractive design and in harmony with the architectural style prevalent in the Subdivision and will serve to preserve and enhance architectural consistency within the Subdivision; (e) to assure that material and workmanship for all Improvements are of high quality comparable to other Improvements in the vicinity of the Subdivision; and (f) to assure that any change will require as little maintenance as possible so as to assure a better appearing area under all conditions. The committee may adopt written rules or guidelines regarding the design, specifications, materials, and construction of Improvements.

5.5 On a case-by-case basis, the Architectural Review Committee shall have the power, but shall not be required, to authorize variances from the provisions of this Declaration that pertain to the design or construction of Improvements on a Lot. An Owner desiring such a variance must demonstrate to the satisfaction of the Architectural Review Committee that compliance with a particular provision would be impractical or would impose an undue and inequitable hardship on such Owner. Hardship or expense resulting from an Owner's failure to follow the provisions of this Declaration requiring the submittal of plans and specifications of proposed Improvements to the Architectural Review Committee, and the approval of such committee, prior to commencement of construction, shall not be adequate grounds to justify a variance. Any variance granted by the Architectural Review Committee shall be in writing and shall be the minimum variance necessary to mitigate the hardship demonstrated by the requesting party.

5.6 Prior to expenditures of any substantial time or funds in the planning of any proposed change in the existing state of a Lot, the Owner of such Lot shall advise the Architectural Review Committee in writing of the general nature of the proposed change and shall, if requested by the committee, meet with a member or members of the committee to discuss the proposed change. Such Owner shall read or become familiar with any guidelines or rules which may have been prepared or formulated by the committee and shall, if requested by the committee, furnish the committee with preliminary plans and specifications for comment and review. After the nature and scope of a proposed change in the existing state of the Lot is determined and prior to the commencement of work to accomplish such change, the Owner shall furnish at his, her, or its expense, three (3) copies of a complete and full description of the proposed change in the existing state of the Lot in writing and with final working drawings, drawn to such scale as may be reasonably required by the Architectural Review Committee, showing all boundaries, existing and proposed contour lines and elevations at reasonably detailed intervals, all existing and proposed Improvements, the existing and proposed drainage pattern, the existing and proposed utility facilities, and any existing substantial trees and shrubs. With respect to plans for buildings and other structures, the plans shall include floor plans, elevation drawings, and final working drawings, descriptions of exterior materials, and final construction specifications. The Owner shall also furnish to the committee any and all further information

with respect to the existing state of the Lot which the committee may reasonably require to permit it to make an informed decision on whether or not to grant approval of the change, or which is required by the Architectural Committee Rules.

5.7 No proposed change in the existing state of a Lot shall be deemed to have been approved by the committee unless its approval is in writing as set forth above, provided that approval shall be deemed given if the committee fails to approve or disapprove a proposed change or to make additional requirements or request additional information within 45 days after a full and complete written description of the proposed change and all additional instruments, documents, plans, and fees have been furnished to the committee with a written and specific request for approval.

5.8 After approval by the Architectural Review Committee of any proposed change in the existing state of a Lot, the proposed change shall be accomplished as promptly and diligently as possible and in complete conformity with the description of the proposed change and any proposed plans and specifications therefor given to the committee. Failure to accomplish the change strictly in accordance with the description thereof and approved plans and specifications therefor shall operate to automatically revoke the approval of the proposed change, and, upon demand by the committee, the Lot shall be restored by the Owner as nearly as possible to its state existing prior to any work in connection with the proposed change. The committee and its duly appointed agents may enter upon any Lot at any reasonable time or times to inspect the progress or status of any changes in the existing state of a Lot being made or which may have been made. The committee shall have the right and authority to record a notice to show that any particular change in the existing state of a Lot has not been approved or that any approval given has been revoked.

5.9 The Architectural Review Committee and its members shall not be liable in damages to any person or entity submitting any proposed plans for approval or to any Owner or other person or entity, by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove with regard to such plans, the granting or failure to grant a variance, or the enforcement or non-enforcement of any of the provisions of this Declaration. Any person or entity acquiring any interest in any property in the Subdivision, including the Association, or any person or entity submitting plans to the Architectural Review Committee for approval, by so doing, agrees and covenants that he, she, or it will not bring any arbitration proceeding or civil action seeking any relief from or against Grantor, the Architectural Review Committee, its members, or its advisors, employees, or agents.

5.10 The Architectural Review Committee shall keep and safeguard for at least two (2) years complete permanent written records of all applications for approval submitted to it (including one set of all preliminary sketches and all plans so submitted) and of all actions taken by it.

5.11 The Architectural Review Committee is hereby authorized to charge a fee each time it reviews plans for proposed changes in the existing state of a Lot, or any amendments to such plans. A fee may be charged each time the committee reviews plans submitted by an Owner or any amendment or supplement to plans previously submitted. Depending on the

complexity of the plans submitted, and the time required to review the plans, the committee has discretion to charge all, or only a portion of such fee, or to waive the fee entirely. No waiver shall be enforceable unless it be in writing signed by the committee. Any such fee shall be payable by the Owner requesting review of the plans and shall be submitted at the time the plans, or any amendments or supplements, are submitted for review. All such fees shall be non-refundable even in the event the plans are not approved by the committee. Any plan review fee not paid shall become a lien on the Lot to which the plan(s) pertained, enforceable by Grantor or the committee in the manner set forth in Article XII. The fees set forth herein may be changed from time to time by the Architectural Review Committee by recording an amended fee schedule setting forth the changed fees. Subsequent to such recording, the amended fee schedule shall apply to all Owners.

Unless and until changed by the Architectural Review Committee, the initial fee schedule is as follows: (1) one hundred fifty dollars ($150) plus gross receipts tax for the initial review of an Owner's proposed development plans; (2) seventy five dollars ($75) plus gross receipts tax for review of any plans submitted by Owner subsequent to the initial plans; and (3) eight hundred seventy five dollars ($875) plus gross receipts tax for preparation of the initial landscape, irrigation, and drainage plan referred to in Article IV.

5.12 Notwithstanding any other provision of this Declaration, Grantor or the Architectural Review Committee may, but shall not be required to, seek an injunction from the Third Judicial District Court to enjoin construction of any Improvement in the Subdivision which has not been approved in the manner set forth in this Declaration.

ARTICLE VI

MAINTENANCE OF LANDSCAPING, COMMON AREA, AND INFRASTRUCTURE

6.1 Grantor shall be responsible for the maintenance of landscaping installed on each Lot under the Plan referred to Article IV. Such maintenance shall include, but not necessarily be limited to, mowing, trimming, pruning, adjusting sprinklers, applying fertilizer, and applying herbicides. Responsibility for maintenance of the drainage and sprinkler/irrigation system shall remain on the respective Owners (although as part of landscaping maintenance, Grantor may adjust or replace sprinkler heads, and may adjust sprinkler coverage and times of operation). Should any Owner fail to keep the drainage or sprinkler/irrigation system in good working order, Grantor may, but is not required to, make necessary repairs, in which event, Grantor shall have a lien against such Lot for the costs incurred by Grantor in doing the work plus interest at the rate of ten percent (10%) per annum from the date the work is completed. Such lien shall arise on the date the work is completed. Owners shall ensure that the programming boxes specified as part of the Plan for the sprinkler system are accessible from the outside by Grantor. In addition to any landscape easement shown on the Subdivision Map, an easement on each Lot is hereby reserved by Grantor for the purposes of maintaining any landscaping and maintaining, adjusting, and operating any sprinkler system installed as part of the Plan. Grantor shall have no responsibility to maintain any landscaping installed in the backyard portion of any Lot.

6.2 Grantor shall be responsible for maintenance of the Outer Perimeter Wall along Highway 28, the landscaping between such wall and such highway (so long as the permit for same has not been revoked by the highway department and reserving the right to alter such landscaping as Grantor deems fit), Common Area including the gates and associated structures at the entrance to the Subdivision, and the streets, sidewalks, streetlights, LAN systems, security cameras, subdivision signage, and any benches ("Infrastructure"). Grantor shall have no responsibility to maintain any sewer or septic systems, electrical distribution system, water system, Owner-drilled wells, telephone wiring, cable television system, or gas system.

6.3 To fulfill its maintenance responsibilities, Grantor may levy assessments as set forth in Article X.

6.4 Each Owner shall be responsible for providing, at that Owner's sole expense, water sufficient to maintain the landscaping installed in accordance with the Plan, and Grantor shall have no obligation to provide any such water or to share in its expense.

ARTICLE VII

MESILLA PARK MOSAIC OWNERS' ASSOCIATION

7.1 Prior to the sale of the last Lot by Grantor, or within a reasonable time thereafter, Grantor shall form the Association as a non-profit New Mexico corporation by filing the Articles in the manner prescribed by law. Subsequent to the filing of the Articles, (a) Grantor may, but shall have no responsibility to, participate in the Association or its Board; and (b) Grantor shall have no responsibility for establishing or ensuring the corporation's non-profit status with the taxing authorities.

7.2 Upon filing of the Articles, all provisions in this Declaration that are for the benefit, protection, or convenience of Grantor (including the provisions regarding assessments), shall also inure to the benefit, protection, and convenience of the Association, and they or either of them may exercise or assert such benefit, protection, or convenience. Provided however, notwithstanding the filing of the Articles, the exclusive power to alter, amend, or repeal those provisions of this Declaration identified in section 13.1 and Grantor's option under section 3.7 shall remain exclusively in and for Grantor until such time as Grantor records an instrument authorizing the Association to exercise such power.

7.3 Upon filing of the Articles, (a) all provisions in this Declaration that impose a duty, responsibility, or obligation on Grantor shall be deemed to impose such duty, responsibility, or obligation on the Board and the Association; (b) the Board and the Association shall be deemed to have accepted all such duties, responsibilities, and obligations; (c) Grantor shall be deemed to have fulfilled in all respects all such duties, responsibilities, and obligations imposed on it by this Declaration; and (d) each Owner by accepting a deed to any Lot, whether an Owner before or after such filing, shall be deemed to have released, and hereby releases, Grantor from any and all claims or liability arising out of any duty, responsibility, or obligation imposed by this Declaration, and covenants and agrees to assert no claim or commence any proceedings of any

nature whatsoever against Grantor based or arising out of any such duty, responsibility, or obligation.

7.4 Each Owner of a Lot, including Grantor, by virtue of being such an owner and for so long as he is such an owner, shall be deemed a member of the Association. The Association membership of each Owner, including Grantor, and voting rights resulting from membership, shall be appurtenant to said Lot and shall not be transferred, pledged or alienated in any way except upon the transfer of title to said Lot, and then only to the transferee of title to said Lot. Any attempt to make a prohibited transfer shall be void. Any transfer of title to said Lot shall operate automatically to transfer said membership to the new owner thereof.

7.5 Voting

(A) Only Members shall have the right to vote on matters submitted to the membership for voting. The Association shall have two classes of voting membership: Class A members who shall be all Owners (with the exception of Grantor) and shall be entitled to one vote for each Lot owned; and Class B members who shall be Grantor and shall be entitled to three (3) votes for each Lot owned. Class B membership shall cease upon the sale of the last Lot by Grantor.

(B) The right to vote may not be severed or separated from the ownership of the Lot to which it is appurtenant, except that an Owner may, by written notice to the Board, designate a person (who need not be an owner) to exercise the vote for such Lot. Such designation shall be revocable at any time by notice to the Association by the Owner, and shall be automatically revoked upon the occurrence of any of the following events: the sale of the Lot to which the vote was appurtenant or the death or mental incapacity of the designating Owner. The powers of designation and revocation set forth herein may be exercised by a duly appointed guardian of an Owner or conservator of an Owner's estate (or in the case of a minor having no guardian, by the parent entitled to his custody), or during the administration of a deceased Owner's estate, by his personal representative where the Lot in question is subject to administration.

(C) When more than one person holds an interest in any Lot, the vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot (except by a Class B member). The vote for each such Lot shall, if at all, be cast as a unit, and fractional votes shall not be allowed. If any Owner casts a vote representing a Lot in which such Owner holds a record interest, it will thereafter be conclusively presumed for all purposes that such Owner was acting with the authority and consent of all other Owners of the same Lot unless such other owners shall have given written notice to the Board prior to the time the votes are tallied that such is not the case; provided however, in the event that joint owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question.

(D) Meetings of the Members shall be as set forth in the Articles or the Bylaws, but in no event shall the Members meet less than once annually. At each annual meeting, the

Board shall present a written statement of the financial condition of the Association, itemizing receipts and disbursements for the preceding calendar year and the allocation thereof to each Member. Within ten (10) days after the date set for each annual meeting, the financial statement shall be mailed or delivered to the Members not present at said meeting.

(E) In any election of the members of the Board, every member, including Grantor, entitled to vote at such an election shall have the right to cumulate his votes and give one candidate, or divide among any number of the candidates, a number of votes equal to the number of votes to which that member is entitled in voting upon other matters multiplied by the number of directors to be elected. The candidates receiving the highest number of votes, up to the number of the Board members to be elected, shall be deemed elected. Commencing with the first election of directors and for so long as there are two classes of membership, not less than twenty percent (20%) of the membership in the governing body shall be elected solely by the votes of the Class A members.

7.6 No member of the Board shall be personally liable to any Person, including Grantor, for any error or omission unless an error or omission resulting from such member's fraud or bad faith.

7.7 Subsequent to forming the Association, Grantor shall convey to the Association Tract A as shown on the Plat, as well as any of the Common Area or Infrastructure in which Grantor then has an interest. The conveyance of Tract A shall be by warranty deed. The conveyance of any other property or interest therein shall be by quitclaim deed or bill of sale. The conveyance of the property shall be in an "as is" condition. Upon recordation of the conveyancing instruments, the Association shall be deemed to have accepted all such property in the physical condition it was in at the time of recordation, and the Association shall have no recourse against Grantor concerning the condition of any such property.

ARTICLE VIII

DUTIES AND POWERS OF THE ASSOCIATION

8.1 The Association shall be charged with the duties and invested with the powers prescribed by law, and those set forth in this Declaration, the Articles, and the Bylaws.

8.2 In addition to all other powers and duties delegated or granted elsewhere in this Declaration or as provided by law, the Association (and Grantor until such time as the Articles are filed) shall have the following duties or powers with respect to the Subdivision:

(A) To accept title to and exercise jurisdiction over all property and appurtenances thereto, real and personal, conveyed to the Association by Grantor, including but not limited to the following: (1) Common Areas and Infrastructure; (2) easements for operation and maintenance of Infrastructure, utilities, roadways, and structures in, under, over, or upon any part of the Subdivision; and (3) easements for the benefit of Association members.

(B) To open and maintain bank accounts, to make assessments and expenditures as authorized by this Declaration, and enforce Owners' obligation to pay assessments.

(C) Upon dissolution of the Association, to convey and distribute the assets of the Association in the manner authorized by law.

(D) To perform, or to provide for the performance of, all duties or obligations of Grantor set forth in the Declaration or imposed by law, and to perform, or to exercise or provide for the exercise of any rights of Grantor granted or reserved in the Declaration or recognized by law.

(E) To pay, contest, or compromise all real property taxes and assessments levied upon any Association Property.

(F) To obtain and maintain in force any policies of insurance that the Board deems necessary and proper, including, but not limited to:

(1) Fire, extended coverage and all risk insurance on any Association Property or any structures, facilities and improvements erected or installed in the Common Area. The amount of such insurance shall be not less than ninety percent (90%) of the aggregate full insurable value, meaning actual replacement value exclusive of the cost of excavations, foundations and footings. Such insurance shall insure the Association, the Members, and the Members' respective mortgagees, as their interests may appear. As to each such policy, the Association and its Members hereby waive and release all claims against the Board, the Manager, Grantor, and agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons.

(2) A policy of insurance in an amount not less than one million dollars ($1,000,000), combined single limit, providing coverage to the Association for bodily injury and property damage liability. Said policy shall insure against liability for bodily injury, death and property damage arising from the activities of the Association or with respect to any property, utilities and facilities under its jurisdiction, operation or control. The liability insurance referred to above shall name as separately protected insureds Grantor, the Manager, the Association, the Board, and the Architectural Review Committee, and their respective representatives, members and employees, with respect to any alleged liability arising out of the maintenance or use of any Association Property. Every policy of insurance obtained by the Association shall contain an express waiver, if available, of any and all rights of subrogation against Grantor, the Manager, the Board, the Architectural Review Committee, and their representatives, members and employees.

(3) Workmen's compensation insurance to the extent necessary to comply with any applicable laws.

(4) A fidelity bond in the penal mount of twenty-five thousand Dollars ($25,000) or more, naming the members of the Board and the Manager, and such other persons as may be designated by the Board, as principals and the Association as obligee.

(5) Such other insurance, including indemnity and other bonds as the Board shall deem necessary or expedient to carry out the Association functions as set forth in this Declaration, the Articles, or the Bylaws, including errors and omissions insurance.

(G) To appoint members of the Architectural Review Committee as provided in section 5.1 of this Declaration.

(H) To perform such other acts, whether or not expressly authorized by the Declaration, as may be reasonably necessary to implement or enforce any of the provisions of the Declaration or the Architectural Committee Rules.

(I) To carry out the duties of the Association set forth in this Declaration, the Articles, or the Bylaws.

(J) To provide for an annual independent audit of the accounts of the Manager and the Association and for delivery of a copy of such audit to each Member within thirty (30) days after completion thereof.

(K) To make, establish, promulgate, amend or repeal rules governing the use of any Common Area or Association Property, a copy of which rules and regulations (as adopted, amended or repealed) to be mailed or otherwise delivered to each Member or recorded in the records of Dona Ana County, New Mexico. Upon such mailing, delivery or recordation, said rules and regulations shall have the same force and effect as if they were set forth in and were a part of this Declaration.

(L) To enter without liability (after twenty-four (24) hours' written notice) upon any Lot for the purpose of enforcing by peaceful means this Declaration or for the purpose of maintaining or repairing any such area if for any reason whatsoever the owner thereof fails to maintain or repair any such area as required by this Declaration, to charge the Owner of such Lot for the costs of doing so (including attorney's fees), and to assert and foreclose a lien against such Lot for such costs in the manner set forth in Article XII; provided however, no notice is necessary for performing or fulfilling Grantor's landscaping maintenance obligation.

(M) To commence, maintain, dismiss, or compromise from time to time in its own name on its own behalf or on behalf of any Owner or Owners who consent thereto, actions, proceedings, and suits to restrain and enjoin any breach or threatened breach of the this Declaration or the Architectural Committee Rules, and to enforce, by mandatory injunctions or otherwise, all of the provisions of said Declaration and Rules.

(N) To grant and convey to any person easements, rights-of-way, parcels or strips of land, in, on, over or under any Association Property for the purpose of constructing, erecting, operating or maintaining thereon, therein and thereunder: (a) roads, streets, walks, driveways, parkways, and park areas, (b) underground lines, cables, wires, conduits, or other devices for the transmission of electricity for lighting, heating, power, telephone and other purposes, (c) sewers, stormwater drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, (d) any similar public or quasi-public improvements or facilities, and (e) roof overhangs or eaves.

(O) To retain and pay for the services of a person or firm ("Manager") as the Board determines may be necessary or proper for the conduct of the business and fulfillment of the duties of the Association, whether such personnel are employed directly by the Association or are furnished by the Manager. The Association and Board may delegate any of their duties, powers or functions to the Manager, provided that any such delegation shall be revocable upon notice by the Association or Board, and further provided that duties, powers, or functions relating to the conveyance of property (or interests therein), disbursement of Association funds, decisions regarding litigation or arbitration, or altering, amending, or repealing this Declaration or any rules or regulations authorized by the Declaration shall not be delegated. The Owners release the Board and its members from liability for any omission or improper exercise by Manager of any such duty, power or function as delegated. Nothing contained in this Declaration shall be construed as a release by the Association or its members of any contractor hired by the Association or Manager to perform work in the Subdivision or on the Association Property.

(P) To retain attorneys, accountants, engineers, architects, and other professionals, and to pay for the services thereof, as may be necessary or proper in the operation of the Association, enforcement of the Declaration, or in performing any of the other rights, duties, or obligations of the Association.

(Q) To contract and pay for water, sewer, garbage, electrical, telephone, gas, maintenance, post office box, gardening service, and other necessary utilities or other services for the Association Property or conduct of Association business or to fulfill its obligations under this Declaration.

(R) To maintain and repair easements, roads, roadways, roadway rights-of-way, Infrastructure, Common Areas, Association Property, and other areas of the Subdivision not maintained by governmental entities, to the extent deemed advisable by the Board, and at the Board's election, easements not a part of the Association Property.

(S) To obtain any other property, services, taxes or assessments which the Association or the Board is required to secure pursuant to the terms of this Declaration or the Bylaws, or in the exercise of reasonable business judgment should secure, including security services for the Association Property or for the Subdivision generally.

(T) To, with the approval of the Architectural Review Committee, construct new improvements or additions to the Association Property or demolish existing

improvements; provided that in the case of any improvements, addition or demolition (other than maintenance or repairs to existing improvements) involving a total expenditure in excess of one thousand dollars ($1,000), the vote of a majority of the Members in each voting class voting in person or by proxy at a regular or special meeting called for that purpose approving plans and a maximum total cost therefor shall first be obtained. The Association may levy a special assessment on all owners for the cost of such work.

(U) With the affirmative vote of the Owners of at least seventeen (17) Lots in person or by proxy at a regular or special meeting called for that purpose, to dedicate or convey to governmental entities all or any portion of the Common Area and Infrastructure.

(V) To enter into leases of Association Property so long as such lease does not deprive the Association of use of the property so leased.

ARTICLE IX

DAMAGE TO OR DESTRUCTION OF COMMON AREA IMPROVEMENTS

In the event of damage to or destruction of any Association Property, the Association shall repair or replace the same from the insurance proceeds payable to it by reason of such damage or destruction. If any such damage or destruction was insured against and the insurance proceeds are insufficient to cover the cost of repair or replacement of the property damaged or destroyed, the Association may make a special assessment in accordance with the provisions of this Declaration to cover the additional cost of the repair or replacement not covered by the insurance proceeds. Such special assessment is in addition to any other assessments made against Owners and is subject to the rules herein relating to special assessments.

ARTICLE X

ASSESSMENTS AND FUNDS

10.1 Each Owner of a Lot, by acceptance of a deed therefor, whether or not it be so expressed in the deed, shall be deemed to covenant and agree with the other Owners and with Grantor to pay to Grantor on a regular and periodic basis when so assessed, funds for the construction, operation, maintenance, repair, insurance, and payment of taxes on or with respect to the Outer Perimeter Walls, Common Area, Association Property, and Infrastructure, and for the costs of administering and fulfilling Grantor's duties and obligations under this Declaration (and the operation of the Association once the Articles have been filed). In establishing the amount of an assessment, Grantor may include a reasonable contribution to a reserve fund created for the purpose of providing for major repairs, component replacement or system improvements it feels may become due in future years. This portion of the assessment may be accumulated and carried over into subsequent years.

10.2 Commencing upon the recordation of the first deed from Grantor to a Lot, an annual assessment may be levied by Grantor upon each Lot, which shall be fixed on a pro rata basis and collected in the manner specified herein or in such manner as may be directed by the

Association. The amount of an annual assessment shall be determined by Grantor based upon its best estimate of expenses to be incurred during the following year in fulfilling Grantor's obligations and duties under this Declaration or in exercising its rights and powers. Such expenses are anticipated to include expenses for landscape maintenance, insurance, operation and maintenance of Common Areas and Infrastructure, and operation of the Association, and may include any other expenses authorized or directed in this Declaration. After all Lots in the Subdivision have been sold by Grantor, Grantor (or the Association) may adjust the anniversary on which the assessment for the upcoming year is levied. Commencing with the third annual assessment, the per Lot annual assessment may not be increased more than twenty percent (20%) over that of the last preceding annual assessment without the written consent or vote of a majority of the Owners.

10.3 In addition to the annual assessments, special assessments may be levied by Grantor upon each Lot for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any Common Area, Infrastructure or Association Property, for any necessary capital improvement Grantor is obligated to make, or for the purpose of performing any unanticipated maintenance.

10.4 Annual assessments may be made by Grantor sending a written notice of assessment to every record Owner (to the address of such Owner as indicated in the records of the Dona Ana County assessor) setting forth the amount of the annual assessment and its component parts, the amount of the previous year's annual assessment, and the payment due date(s). Grantor may require the payment of the annual assessment in monthly installments; provided however, the annual assessment shall not be payable in less than three (3) equal installments over the course of the year. Each Owner shall pay the amount so assessed to Grantor or its designee within twenty (20) days after the payment due date.

10.5 Special assessments may be made by Grantor sending a written notice of assessment to every record Owner (to the address of such Owner as indicated in the records of the Dona Ana County assessor) specifying the expenditure made, or anticipated to be made in the discretion of Grantor, the pro-rata share of such expenditure attributable to such Lot, and the date of the assessment notice. Each Owner shall pay the amount so assessed to Grantor or its designee within twenty (20) days after the date of the assessment notice.

10.6 In addition to any other assessment authorized in this Declaration, each Owner of a Lot, by acceptance of a deed therefor, whether or not it be so expressed in the deed, shall be deemed to covenant and agree with the other Owners and with Grantor to pay to Grantor or the Architectural Review Committee (and its members) periodic assessments to finance the defense of any suit or proceeding (including arbitration proceedings) brought against Grantor or the committee (or its members) which seeks any remedy as a result of or with respect to the approval of, disapproval of, or failure to consider any Owner's proposed plans or specifications or request for a variance or for any other action or inaction of Grantor or the committee (or its members). Furthermore, each Owner of a Lot shall be deemed to covenant and agree with the other Owners and with Grantor to pay to Grantor (or its designee) the costs, including attorney fees, of defending (whether successful or not) any suit or proceeding (including any arbitration proceedings) seeking to have this Declaration or any part thereof declared ambiguous or

unenforceable or seeking to establish a breach of any obligation of Grantor or seeking any remedy from Grantor. An assessment may be made by sending a written notice of assessment to every record Owner (to the address of such Owner as indicated in the records of the Dona Ana County assessor) specifying the costs and attorney fees incurred or anticipated by Grantor or the committee (or its members) to be incurred in the defense of the suit or proceeding, the pro-rata share of such costs and attorney fees attributable to such Owner's Lot, and the date of the assessment notice. Each Owner shall pay the amount so assessed to Grantor or the Architectural Review Committee (or its members or designee) within 20 days after the date of the assessment notice. Any amount assessed and collected in excess of the amount actually spent on defense of the suit or proceeding shall be refunded, on a pro-rata basis, to the Owners who paid such assessment. Grantor and the Architectural Review Committee (and its members) shall have a lien for any unpaid assessment as set forth in Article XII. Provided however, any monies received as a result of assessments made under this section 10.6 shall be refunded to those Persons who paid the assessment(s), and any lien resulting from non-payment of the assessment shall be deemed void, invalid, and of no force or effect if the arbitration panel or court makes a specific finding that the actions of the person making the assessment and which resulted in the arbitration or litigation was fraudulent, criminal, or in bad faith.

10.7 Grantor shall establish a fund (the "Mesilla Park Mosaic Operating And Maintenance Fund") into which shall be deposited all moneys received by Grantor from the assessments, and from which disbursements shall be made. On an annual basis, Grantor shall provide a written accounting of the assessments received and disbursements made. Provided however, the deposit provisions of the foregoing two sentences of this section 10.7 shall not apply to any assessments made by Grantor (as compared to the Association) or the Architectural Review Committee under section 10.6.

10.8 If any assessment, whether regular, special, or otherwise assessed to an Owner is not paid within thirty (30) days after it is due, Grantor reserves the right to charge a late fee equal to ten percent (10%) of the amount of the assessment.

10.9 The amount of any assessment levied upon a Lot, whether regular, special, or otherwise, plus any late fee, plus interest on such assessment and late fee at a rate of ten percent (10%) per annum simple interest, and costs including reasonable attorneys fees, shall become a lien upon such Lot upon recordation of a notice of lien stating the amount of the assessment, late fee, interest, and costs accrued. Such lien shall arise on the date payment is overdue. Upon recordation, such assessment lien shall be prior to any declaration of homestead recorded after the recording of this Declaration. The lien shall continue until fully paid or otherwise satisfied. No Owner may waive or otherwise escape liability for any assessment provided for herein by nonuse of the Common Area or abandonment of his Lot. When the lien has been fully paid or satisfied, a further notice releasing the lien shall be recorded.

10.10 Except for assessments identified in section 10.6, notwithstanding anything to the contrary herein, no Lot (or Owner thereof) shall be subject to an assessment until a building permit has been issued for the first time with respect to such Lot.

ARTICLE XI

LENDERS' REGULATIONS

In order that the single family dwellings erected in the Subdivision may qualify for existing subsidized lending programs, Grantor declares that the following rights exist in favor of any first mortgagee, notwithstanding contrary or conflicting provisions contained elsewhere in the Declaration.

11.1 For a period of no more than three (3) years from the date of recordation hereof, the holder of a first Mortgage on any Lot or single family dwelling thereon may request written notice from Grantor of any default by the mortgagor of such property in the performance of such mortgagor's obligations under this Declaration. Such request shall state the name and mailing address of the requesting mortgagee and the official records book and page number, file number or other reference identifying the Mortgage, the Lot number encumbered by said Mortgage, and a reference to this Declaration. Each notice of default given pursuant to such request may be sent by regular mail, postage prepaid, addressed to the mortgagee at the address stated in such request.

11.2 Any holder of a first Mortgage who acquires title to a Lot pursuant to the remedies provided for in the Mortgage, or foreclosure of the Mortgage, shall be exempt from Grantor's option to re-purchase the Lot for failure to commence construction within the time specified in this Declaration. Provided however, upon conveyance of the Lot by the mortgagee, such option shall reattach to the Lot and shall be exercisable upon the failure of the buyer from such mortgagee to commence construction of a single family dwelling within two years from the date of the purchase from the mortgagee.

11.3 Unless at least seventy-five percent (75%) of the holders of first Mortgages (based upon one vote for each Mortgage) on single family dwellings within the Subdivision have given their prior written approval, Grantor shall not be entitled to:

(A) Materially change the method of determining the obligations, assessments, or other charges which may be levied against an Owner of a Lot; and

(B) By act or omission change, waive, or abandon any scheme or regulation pertaining to the architectural design or the exterior appearance of single family dwellings and other structures, or the construction and maintenance of Improvements, where such change, waiver, or abandonment would be result in a material change in the scheme of development of the Subdivision; provided however, this provision shall not be construed as imposing a continuing obligation on Grantor to enforce the provisions of this Declaration through arbitration proceedings, judicial action, or otherwise.

11.4 No amendment to this Declaration shall affect the rights of any mortgagee under a Mortgage who does not join in the execution thereof so long as his, her, or its Mortgage is recorded prior to the recordation of such amendment. Provided however, such amendments shall be binding on any person or entity who acquires a Lot from a mortgagee who acquired the Lot as a result of foreclosure of a Mortgage or a deed in lieu of foreclosure.

11.5 No lien created or authorized by this Declaration shall defeat or render invalid the rights of a beneficiary under any duly recorded Mortgage made in good faith and for value, provided that after the foreclosure of any such Mortgage or conveyance of any Lot to such beneficiary by deed in lieu of foreclosure, such Lot shall remain subject to this Declaration and the amount of all assessments to the extent they relate to expenses incurred subsequent to such foreclosure shall be assessed hereunder to the purchaser at such foreclosure sale.

ARTICLE XII

ENFORCEMENT

12.1 As to Grantor or any and all grantees deriving title to any Lots through Grantor, the covenants, conditions, and restrictions contained in this Declaration shall operate as covenants running with the land for the benefit of Grantor and all Owners of Lots.

12.2 Every act or omission whereby any provision of this Declaration is violated, in whole or in part, is hereby declared to be a nuisance and may be enjoined or abated (subject to the requirement for binding arbitration set forth below), whether or not the relief sought is for negative or affirmative action, and the provisions of this Declaration may be otherwise enforced, by Grantor, the Association, the Architectural Review Committee, or any Owner or Owners; provided however, neither Grantor nor the Architectural Review Committee shall have the obligation to enforce the terms of this Declaration.

12.3 Liens

(A) Except where otherwise specified in this Declaration, no lien created or authorized by this Declaration shall be enforceable unless a written acknowledged claim of lien is recorded within twelve (12) months of the date on which the lien arose. Except as otherwise provided in this Declaration, no interest in a Lot shall be taken subject to a lien created or authorized by this Declaration unless a claim of lien has been recorded by the lien claimant prior to the recordation of the instrument transferring, conveying, or creating such interest, even if the lien arose prior to the recordation of such instrument. Nothing in the foregoing sentences of this paragraph shall be construed as a limitation on the right of Grantor or of an Owner to whom an obligation is owing from another Owner to assert a claim for payment against the owing Owner; provided however, any such claim shall be asserted within eighteen (18) months of the date on which the work was performed or payment made giving rise to the obligation.

(B) By taking title to a Lot, each Owner consents to the recordation in such Lot's chain of title of a claim of lien for a lien authorized or created by this Declaration.

(C) A claim of lien required to be recorded by this Declaration shall contain the name, address, and telephone number of the lien claimant, the legal description of the Lot against which the lien is claimed and the name of the then record owner thereof, an explanation of the basis of the lien (including reference to the portion of the Declaration

on which the lien is based, a description of the work performed or payment made giving rise to the lien, and the date on which the lien arose), and the amount claimed.

(D) Except as specifically provided otherwise in this Declaration, any lien arising from or created or authorized by this Declaration shall include the costs and attorney fees incurred by the person claiming the lien in connection with the preparation, recording, and foreclosure of the lien. If the Owner of a Lot against which a lien is asserted successfully defends a suit to foreclose the lien, such Owner shall be entitled to an award of costs and attorney fees from the lien claimant, except that no costs or attorney fees shall be awarded against Grantor or the Architectural Review Committee (or its members).

(E) Liens created or authorized by this Declaration shall be foreclosed in the same manner as is provided in the laws of the State of New Mexico for the foreclosure of mortgages on real property. The redemption period shall be one month in lieu of nine (9) months.

(F) Upon payment by an Owner or other person of an obligation owed by an Owner to another Owner (including Grantor), the paid Owner shall give the paying Owner (or other person), upon request, a release of lien in recordable form. Failure to do so shall entitle the paying Owner to recover all costs, including attorney fees, incurred in clearing the lien from title to such Owner's Lot.

(G) Unless assigned in writing by an Owner in whose favor a lien arises, the lien rights created by this Declaration shall remain in such Owner, and shall not pass to a purchaser of such Owner's Lot from such Owner.

(H) Except as otherwise specified in this Declaration, a lien created or authorized by this Declaration shall be a cumulative remedy and shall not be construed to limit the remedies otherwise available to the person to whom the lien runs.

(I) Judicial proceedings to foreclose any lien created or authorized by this Declaration may be commenced without prior resort to binding arbitration. An action to foreclose a lien created or authorized by this Declaration shall be commenced within two (2) years of the date the claim of lien is recorded.

12.4 Arbitration

(A) Except as expressly set forth in this Declaration, all controversies regarding enforcement or interpretation of the provisions of this Declaration shall be submitted to binding arbitration as set forth in the Uniform Arbitration Act, NMSA §§ 44-7-1 to 44-7-22 (2000), as it may be amended from time-to-time (the "Act"). For purposes of this Article, the Declaration shall be construed as a written contract between the Grantor and all persons who acquire any interest in any Lot, and between and among such persons, to

submit to binding arbitration all controversies regarding the enforcement or interpretation of the provisions of this Declaration.

(B) The binding arbitration required by this Article shall be conducted by the Las Cruces Better Business Bureau in accordance with the Better Business Bureau Rules Of Arbitration as are published from time-to-time by The Council Of Better Business Bureaus, Inc. Should the Las Cruces Better Business Bureau decline to accept a controversy regarding enforcement or interpretation of the provisions of this Declaration, then the controversy shall be submitted to binding arbitration under the arbitration rules of the American Arbitration Association, as such rules may be published by such association from time-to-time.

(C) Any decision or award rendered by the arbitrators may be confirmed as provided in the Act and shall be enforceable as provided in the Act.

(D) The prevailing party in any arbitration proceeding, or judicial confirmation or enforcement proceeding under the Act, shall be entitled to an award of costs and attorney fees, except that, no costs or fees shall be awarded against Grantor or the Architectural Review Committee or any of its members.

(E) To the extent a provision of this Declaration conflicts with a provision of the Uniform Arbitration Act, the Better Business Bureau Rules Of Arbitration, or the arbitration rules of the American Arbitration Association, the provisions of this Declaration shall control.

(F) Subject to other provisions in this Declaration, no person shall be entitled to enforce a provision of the Declaration against a violator thereof, unless a demand for arbitration is made within three (3) years after the violation or alleged violation of the provision (except where this Declaration exempts enforcement from prior binding arbitration). Should a violation involve the design, specifications, or construction of an Improvement, which design, specifications, or construction does not comply with this Declaration, such non-compliant Improvement shall be deemed to fully comply with the provisions of this Declaration if demand for arbitration is not made within three (3) years after the date construction of the Improvement is completed. Provided however, no such non-conforming Improvement shall constitute grounds, justification, or precedent for any other non-compliance by or variance for any Owner. Provided further, subject to the provisions of this paragraph, failure of Grantor, the Architectural Review Committee, or of any grantee taking title to any part of the Subdivision through the Grantor to enforce any of the provisions of this Declaration shall in no event be deemed a waiver of the right to do so thereafter as to the same breach, or as to one occurring prior to or subsequent thereto.

12.5 Any violation of any state, municipal, or local law, ordinance, or regulation pertaining to the ownership, occupation, or use of any property within the Subdivision is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth in said Declaration.

12.6 Except as otherwise specified in this Declaration, each remedy provided by this Declaration is cumulative and non-exclusive.

ARTICLE XIII

MISCELLANEOUS PROVISIONS

13.1 Until such time as the first deed to a Lot from Grantor to a buyer has been recorded, Grantor may, by a recorded instrument, alter, amend, or repeal all or any portion of this Declaration. Thereafter, this Declaration may be altered, amended, or repealed only by the recordation of a written instrument signed by the Owners of at least seventeen (17) Lots which specifies the alteration, amendment, or repeal, except that, in the absence of a recorded instrument by Grantor stating otherwise, only the original Grantor shall have the power to amend or repeal the following provisions: (a) the provisions in section 2.9(D); (b) the provision in section 3.7 granting and reserving Grantor an option to repurchase a Lot for the reasons and on the terms set forth in such section; (c) the provision in section 3.13 allowing Grantor to increase or decrease the minimum appraisal or cost per square foot; (d) the provision in section 5.1 allowing Grantor to appoint members of the Architectural Review Committee; (e) the provisions in section 5.11 authorizing fees to be charged by the Architectural Review Committee and allowing the committee to amend the fee schedule set forth therein; (f) the provision in section 7.1 that Grantor shall have no responsibility to ensure the non-profit status of the Association in the eyes of the taxing authorities; (g) the provisions in Article X authorizing Grantor and the Architectural Review Committee (and its members) to levy assessments for defense of actions or proceedings brought against them (or any of them); (h) any provision in the Declaration relieving Grantor, the Architectural Review Committee, or the Board from liability or whereby the Owners release claims against Grantor, the Architectural Review Committee, or the Board, or covenant not to assert any such claims; and (i) the provisions of sections 13.1 and 13.7. No amendment of this Declaration shall operate to defeat or render invalid the rights of any Beneficiary under any recorded Mortgage upon a Lot made in good faith and for value, provided that after the foreclosure of any such mortgage, such Lot shall remain subject to this Declaration, as amended.

13.2 The provisions of this Declaration shall be liberally construed to effectuate their purpose of creating a uniform plan for the development of the Subdivision and to promote and effectuate the fundamental concepts of the Subdivision and the purposes of this Declaration as set forth in such Declaration. All provisions affecting development in the Subdivision shall be construed so as to be in conformance with the laws of the State of New Mexico. This Declaration shall be construed and governed under the laws of the State of New Mexico.

13.3 The covenants, conditions, and restrictions contained in this Declaration are subordinate and inferior to the laws and ordinances of the United States of America, the State of New Mexico, Dona Ana County, and any other political entity having jurisdiction over the Subdivision and do not in any way purport to abrogate, alter, amend, or qualify the force and effect of said laws and ordinances; provided however, if a provision of this Declaration is more restrictive than such laws and does not violate such laws, the more restrictive provision in this Declaration shall control.

13.4 Each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

13.5 Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine, or neuter shall each include the masculine, feminine, and neuter.

13.6 All captions and titles used in this Declaration are intended solely for convenience or reference and shall not affect the meaning of that which is set forth in any of the provisions hereof.

13.7 Nothing contained in this Declaration shall be construed to limit the right of Grantor, its officers, directors, or shareholders, or any other entity or partnership in which Grantor, its officers, directors, or shareholders has an interest to re-zone or develop any property adjoining, adjacent to, or in the vicinity of the Subdivision in any manner it deems or they (or any of them) deem fit. By accepting a deed to a Lot, each Owner consents to any such re-zoning or development and covenants not to oppose same.

13.8 By accepting a deed to a Lot, each Owner acknowledges that, until a majority of the Lots and other area in the vicinity of the Subdivision are landscaped, there is a high probability that dirt or sand will blow or wash into or onto such Owner's Lot from other parts of the Subdivision or elsewhere. Grantor hereby reserves for its benefit an easement on all Lots for blowing or drifting dirt and sand, whether from this Subdivision or any other property owned by Grantor. All deeds conveying any Lot shall be construed to include the conveyance with such Lot of an easement appurtenant to such Lot, burdening all other Lots, for blowing or drifting dirt and sand.

13.9 There are no Rio Grande Project-Elephant Butte Irrigation District surface water rights or any other appurtenant rights conveyed with any Lot. All Rio Grande Project-Elephant Butte Irrigation District surface water rights or other appurtenant water rights have been suspended and transferred from all Property within the Subdivision. Every deed from Grantor to a Lot shall be deemed to include the following language: "Grantor hereby reserves unto itself all rights and claim to surface and underground waters appurtenant or in any way related to the real property herein granted." By accepting a deed to a Lot, an Owner expressly waives any right to use any ditch easement shown on the Subdivision Map for any reason, and shall be deemed to have quitclaimed any interest he, she, or it may have had in any ditch easement shown on the Subdivision Map to the Owners of the Lots over which the ditch easements run.

13.10 By accepting a deed to a Lot, an Owner shall be deemed to have waived any right or interest created or existing by virtue of the recordation of the plat recorded at Plat Book 20 Pages 248-249, records of Dona Ana County.

13.11 In addition to any easements shown on the Subdivision Map or identified elsewhere in this Declaration, Grantor hereby reserves the following easements: (a) an easement on Lots 1 and 14 for the purpose of accessing for purposes of maintenance or repair the

entranceway to the Subdivision including the gates, gate houses, bell tower, and lighted flagpole; (b) an easement on Lot 10 for purposes of construction and maintenance of a tower or antenna to provide LAN services within or without the Subdivision; (c) an easement on Lot 16 for operation, repair, and maintenance of a well located thereon and for underground transport of water from such well to the Highway 28 right of way; (d) an easement on Tract A and Lot 14 for underground transport of water from the well on Lot 16 to the Highway 28 right of way; (e) a ten-foot wide utility easement on Lots 1 and 2 centered on the line between such lots; (f) a ten-foot wide utility easement on Lots 13 and 14 centered on the line between such lots; (g) a five-foot wide easement on Lot 9 parallel to the line between Lots 8 and 9; (h) an easement on and over Lots 1, 5, 6, 9, 10, 14 for placement, operation, and maintenance of security cameras; (i) an easement on Lot 14 for emergency access from the Highway 28 right of way to Tract A; and (j) an easement on each Lot for any pipes, wires, or conduits buried beneath the surface of the ground as of the time of the first sale of such Lot by Grantor.

IN WITNESS WHEREOF, Grantor has executed this Declaration on the date indicated in the notary jurat below.

EMERICK REAL ESTATE & CONSTRUCTION, INC.
a New Mexico Corporation

By: Lewis E Emerick
Lewis E. Emerick, Jr., its President

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

The foregoing instrument was acknowledged before me this 19th day of May 2004, by Lewis E. Emerick, Jr., as President of Emerick Real Estate & Construction, Inc., a New Mexico corporation, on behalf of said corporation.

OFFICIAL SEAL
DEBORAH GREENHAW
NOTARY PUBLIC - STATE OF NEW MEXICO
My commission expires: May 6, 2008

Deborah Greenhaw
Notary Public

My Commission Expires: May 6th 2008

State of New Mexico
County of Dona Ana, ss
RECEPTION NO. 16193
I hereby certify that this instrument was filed for recording and duly recorded on
MAY 19 2004
at 9:36 o'clock A M
Book 521 Page 1042-1085
of the Records of said County.
Rita Torres, County Clerk
BY: Sarah Lucero DEPUTY