

**AMENDED AND RESTATED DECLARATION OF
COVENANTS**

FOR

EAST RANCH SUBDIVISION

Duplicate Copy (7/26/17) of:

Amended and Restated Declaration of Covenants
for
East Ranch Subdivision

Dated: May 4, 1994

TABLE OF CONTENTS

Article 1 - Definitions	1
Article 2 - Property Rights	2
2.1 Owners' Rights in Common Area	2
2.2 Delegation Of Use.....	2
Article 3 - Use and Occupancy Restrictions	3
3.1 Antennae.	3
3.2 Trees and Landscaping	3
3.3 Driveways	3
3.4 Utilities	3
3.5 Set-backs.....	4
3.6 Grading.....	4
3.7 Fence and Wall.....	4
3.8 Trash	4
3.9 Garages.....	5
3.10 Storage Tanks	5
3.11 Windmills	5
3.12 Animals.....	5
3.13 Home Occupations.....	6
3.14 Billboards and Signs	6
3.15 Exterior Lights.....	7
3.16 Water Conservation	7
3.17 Wells	7
3.18 Drainage.....	7
3.19 Liquid Waste Disposal	7
3.20 Hunting and Firearms.....	7
3.21 Motor Vehicles.....	7
Article 4 - Architectural Control	8
4.1 Approval Required.....	8
4.2 Building Site Restrictions.....	8
4.2 Building Site Restrictions.....	8
4.4 Approval of Plans.....	8
4.5 Disapproval of Plans.....	9
4.6 Appeal of Committee Decision.....	9
4.7 Architectural Standards.....	9
4.8 Submittals	10
4.9 Fee for Review of Plans.....	11
4.10 Variances	12
Article 5 - The Association, Membership and Voting Rights	12
5.1 Function of the Association	12
5.2 Membership	12
5.3 Classes of Voting Membership.....	13

Article 6 - Rights and Obligations of the Association	13
6.1 Common Area.....	13
6.2 Personal Property and Real Property for Common Use	13
6.3 Rules.....	13
6.4 Enforcement.....	14
6.5 Implied Rights; Board Authority.....	14
6.6 Indemnification	14
6.7 Dedication of Common Areas.....	14
6.8 Recycling Programs	15
Article 7 – Assessments	15
7.1 Creation of Assessments.....	15
7.2 Declarant’s Obligation for Assessments	16
7.3 Computation of Base Assessment.....	16
7.4 Reserve Budget.....	17
7.5 Special Assessments.....	17
7.6 Specific Assessments.....	17
7.7 Date of Commencement of Assessments.....	18
7.8 Lien for Assessments	18
7.9 Failure to Assess.....	18
7.10 Capitalization of Association.....	19
7.11 Subsidy for Fire Protection.....	19
7.12 Exempt Property	19
Article 8 – Maintenance	19
8.1 Association: Responsibility	19
8.2 Owner’s Responsibility	20
Article 9 – Insurance and Casualty Losses.....	20
9.1 Association Insurance	20
9.2 Damage and Destruction	22
9.3 Disbursement of Proceeds.....	23
Article 10 - Condemnation.....	23
Article 11 - Annexation or Property.....	23
11.1 Annexation Without Approval of Membership.....	23
11.2 Annexation with Approval of Membership	23
11.3 Additional Covenants and Basements	24
11.4 Amendment.....	24
Article 12 – Easements.....	24
12.1 Easements of Encroachment.....	24
12.2 Easement: for Utilities, Etc.....	24
12.3 Easements to Serve Additional Property.....	25
12.4 Cross-Easements for Drainage.....	25
12.6 Right Entry.....	25
Article 13 - Mortgages Provisions	26
13.1 Notices of Action.....	26

13.2 Other Provisions for First Lien Holders	26
13.3 Amendments to Documents	27
13.4 No Priority.....	27
13.5 Notice to Association	28
13.6 Amendment by Board.	28
13.7 Applicability of Articles 13, 14.....	28
13.8 Failure of Mortgagee to Respond.....	28
Article 14 – Declarant’s Rights	28
Article 15 - General Provisions	29
15.1 Term	29
15.2 Amendment.....	29
15.2.1 By Declarant.....	29
15.2.2 By Owners.....	29
15.2.3 Validity and Effective Date of Amendments	29
15.3 Severability	30
15.4 Litigation.....	30
15.5 Compliance	30
15.6 Notice of Sale or Transfer of Title	30
15.7 Enforcement.....	31

**Amended and Restated Declaration of Covenants
for
East Ranch Subdivision**

The undersigned, being owners of all of the lots covered by the Declaration of Covenants for East Ranch Subdivision, recorded in Book 990, pages 243-274, of the Records of Santa Fe County (Declaration), do hereby amend and restate the Declaration as follows.

Article 1 - Definitions

Association: East Ranch Association, a New Mexico nonprofit corporation, its successors and assigns.

Board of Directors or Board: the board of directors of the Association.

Bylaws: the Bylaws of the Association.

Committee: the Architectural Committee of the Association.

Common Area: all real property held by the Association for the common use and enjoyment of the owners. The Common Area at the time of the conveyance of the first Lot is described as follows: Tract A (roads), the park parcel, and easements as shown on the Plat, recorded at Book 259, pages 30-31, Records of Santa Fe County, New Mexico.

Declarant: East Ranch Partners, its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Declarant Control Period: the period of time during which the Class "B" Member is entitled to appoint a majority of the members of the Board of Directors as provided in §5.3 hereof.

Declaration: this Declaration of Covenants and any amendments thereto.

Eligible Mortgagee: An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates).

Lot: any plot of land shown upon the Plat with the exception of the Common Area.

Owner: the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Plat: the subdivision plat for East Ranch, recorded at Book 259, pages 30-31, Records of Santa Fe County, New Mexico.

Property: that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Security Interest: a first priority interest in real estate created by contract or conveyance, which secures performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, and any other consensual lien or title retention contract intended as security for performance of an obligation.

Article 2 - Property Rights

2.1 Owners' Rights in Common Area.

Every owner shall have a right and a nonexclusive easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- this Declaration, the Bylaws and any other applicable covenants;
- Any restrictions or limitations contained in any deed conveying such property to the Association;
- the right of the Board to adopt rules regulating the use and enjoyment of the Common Area;
- the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- the right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.
- the right of the Association to dedicate or transfer all or any part of the Common Area to any charitable entity, to be held for the use and enjoyment of Owners and others, to any public agency, authority, or utility, for such purpose and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded.

2.2 Delegation Of Use.

Any owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Article 3 - Use and Occupancy Restrictions

3.1 Antennae.

No exterior antenna, including without limitation satellite dishes, shall be installed on the Property without the prior approval of the Committee as to the location, size, material, color and screening of the antenna.

3.2 Trees and Landscaping.

The native growth of the property, including but not limited to pinon and juniper trees, shall not be destroyed or removed, except such native growth as it may be necessary to remove for the construction and maintenance of roads, driveways, dwellings and other approved structures unless written permission be first obtained from the Committee. Efforts should be made to limit green areas, gardens and lawns, as well as limited outdoor pool areas. Permission for the removal of a reasonable number of trees shall be granted when necessary to provide an improved view from any residence. When planting is anticipated, the use of drought resistant plantings should be considered. Lawns will be restricted to a maximum of two thousand (2,000) square feet. The use of drought resistant grasses is encouraged.

3.3 Driveways.

3.3.1 No private road or driveway shall be constructed until two sets of plans have been submitted to the Committee showing the location, course and width of said private road or driveway and the approval of the Committee for the construction of said private road or driveway has been obtained

3.3.2 All driveways and private roads shall be surfaced by Lot Owners with gravel to prevent dust, and maintained so as to reduce erosion and eliminate unsightly conditions.

3.3.3 All driveways shall be graded and sloped for proper drainage.

3.3.4 All driveways shall have culverts large enough for proper drainage. A minimum 12" diameter culvert shall be installed where the driveway crosses the roadside ditch adjacent to the private access road system for the subdivision. The Committee may mandate that a larger culvert be installed if it determines a larger culvert would be desirable.

3.4 Utilities.

3.4.1 All electrical service and telephone lines shall be placed underground and installed in or adjacent to the driveway.

3.4.2 Additional utility easements as shown and stated on the recorded plat of the subdivision are imposed on the Lots and Common Area of the subdivision.

3.5 Set-backs.

Any structure erected upon any Lot and every part thereof, shall be located not closer to any property line of the Lot than twenty-five (25) feet. This provision shall not apply to the east boundaries of Lots 16, 17 and 18, nor to the south boundaries of Lots 18, 19, 27 and 28. No structure shall be erected within fifty feet (50') of boundary lines along ridges, as shown on the Plat.

3.6 Grading.

Disturbance of the natural ground surface is not permitted outside the limits of grading as shown on the plans approved by the Committee. Grading is permitted for lawns, not to exceed two thousand (2000) square feet, and vegetable gardens, not to exceed one thousand (1000) square feet. Any disturbance of natural ground beyond the grading limits shown on the plans shall be revegetated. Revegetation of disturbed areas shall include planting of drought-tolerant grasses, shrubs, and trees as required to restore the graded area, as much as is practical, to its original condition.

3.7 Fence and Wall. [See Board Clarification of Article 3.7, March 26, 2014]

All walls (excluding retaining walls) and fences are subject to approval by the Committee. No fences or walls may be more than sixty (60) inches high, except as may be necessary to comply with the provisions of Sections 3.8.3 and 3.9.3, or closer than twenty-five (25) feet to any Lot line abutting a street, except for short walls constructed as part of an entry treatment. Fences and walls in excess of thirty (30) inches in height must be attached to the residence and cannot enclose more than a total of six thousand (6,000) square feet. No wire or metal mesh fencing is allowed, except with the permission of the Architectural Committee.

3.8 Trash.

3.8.1 No Lot shall be used for the storage or dumping of rubbish or debris of any kind, or for the storage of any property or thing that will cause such Lot to appear in an unclean or untidy condition, or that will be visually offensive or obnoxious, and no substance, thing or material may be kept upon any Lot that will emit foul or obnoxious odors, or that will cause any noise that will disturb the peace, quiet, comfort, or serenity of any occupants or Owners of Lots in the subdivision.

3.8.2 The Association shall contract for solid waste removal services on behalf of the owners of all Lots. The party providing such service shall have all necessary governmental licenses, and shall dispose of all solid waste in accordance with all applicable governmental rules and regulations.

3.8.3 Before and after construction, the storage of construction material, supplies and equipment shall be prohibited unless placed out of view of other Lot Owners in the subdivision. During construction, the construction site shall be maintained in an

orderly condition, and refuse shall be collected daily. Waste concrete and mortar shall not be dumped within the Property.

3.8.4 All clothes lines, clothes drying facilities, mechanical and other equipment, wood piles, storage piles, campers, horse trailers, boat trailers, trailer homes, motor coaches, and similar vehicles, shall be walled in and/or concealed at all times so that they may not be seen from any point beyond the building site on which they are located.

3.9 Garages. [See Board Clarification of Article 3.9, September 9, 2015]

3.9.1 A garage of sufficient size to accommodate at least two automobiles shall be constructed with each house.

3.9.2 The garage shall be used for vehicles and incidental storage, so long as vehicles can still be parked therein. Any storage areas shall be constructed in addition to garages.

3.9.3 Extra automobiles, trailers, boats, recreational vehicles and similar mobile structures and vehicles shall be screened from view by means of a coyote fence, wall, or similar treatment.

3.10 Storage Tanks.

No elevated tank of any kind shall be erected or permitted. Any tanks for use in connection with any residence, including tanks for the storage of liquefied petroleum gas and fuel oil, gasoline or oil, must be buried.

3.11 Windmills.

3.11.1 No wind-driven machinery for the generation of power or other use or purpose shall be placed on any Lot without the prior written approval of the Committee.

3.12 Animals.

Except as provided herein, no animal of any kind may be kept on any Lot, whether for personal or commercial purposes, without the prior written approval of the Board. Each Lot may have a maximum of two dogs more than sixteen (16) weeks old. No wolf, wolf hybrid or American Bull Terrier (Pit Bull) shall be kept within the Property. No farm animal, including without limitation, chickens, ducks, turkeys, sheep, goats, cattle or horses shall be kept on the Property, except as provided herein. No animal may be kept or maintained on any Lot in any manner or number which is a nuisance or offensive to the neighboring Lots, whether by reason of noise, habits, odors, or otherwise. The Association reserves the right to order the removal of any animals which may be objectionable to residents of other Lots in the subdivision. Enclosures for animals shall be subject to approval by the Committee. Small household pets such as cats, caged birds, aquarium fish,

guinea pigs, shall be allowed at the Lot Owner's discretion so long as the "nuisance" portions of this provision are not violated. All dogs within the Property shall be vaccinated against rabies as required by law.

Should the Declarant record a Supplemental Declaration of Covenants governing the keeping of horses, such animals may be kept on Lots 6-10, 12-14, and 16-18, subject to such restrictions as may be contained in the Supplemental Declaration.

3.13 Home Occupations.

Home occupations are permitted as accessory uses and structures provided that the following standards are met:

- The primary business of the home occupation shall not be the sale of goods unless delivery of the goods shall be made outside the Property;
- The home occupation is located on the same lot as the permitted principal use or structure or on a contiguous Lot in the same ownership;
- The home occupation shall not be of a nature likely to attract visitors in larger numbers than would normally be expected for a residence in the Property;
- Not more than one (1) person, other than members of a family residing on the Lot, shall be regularly engaged in such occupation; and
- No equipment or process shall be used which creates noise, vibration, glare, fumes, odors or electrical interference detectable to the normal senses off the lot, if the occupation is conducted in a residence or outside the dwelling if conducted in an auxiliary structure. In case of electrical interference, no equipment or process shall be used which creates visible or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises.
- The home occupation shall not involve operations or structures not in keeping with the residential character of the Property; and
- There shall be no change in the outside appearance of the building or premises.

3.14 Billboards and Signs.

No billboard or advertising sign will be permitted on any Lot or on any building except for the name plate of the occupant of any residence upon which his professional title may also be added, but no sign or name plate shall exceed one (1) square foot in size. Provided, however, one signboard not more than six (6) square feet in area may be erected on a Lot during the construction of a new single-family dwelling after its completion pending the sale thereof. Thereafter, one sign shall be allowed for the subsequent resale of any house.

3.15 Exterior Lights.

All exterior lights must be located so as not to be directed toward surrounding Lots, Property, or roads. Bright, glaring lights on rooftops and patio walls or elsewhere are prohibited.

3.16 Water Conservation.

All Lot Owners are urged to practice indoor and outdoor water conservation measures. The installation and use of water conserving appliances is encouraged, as is the employment of xeriscape. Plumbing fixtures, such as toilets and shower heads should be installed which use the least water possible, while still accomplishing the purpose for which they are designed. Buffalo grass lawns or lawns using drought resistant grasses is strongly encouraged.

3.17 Wells.

Drilling of private water wells within the Property is prohibited.

3.18 Drainage.

Surface drainage course within Lots are to remain in their natural state, except for diversion approved by the Committee. The owner of each Lot shall perform whatever reasonable measures may be necessary to insure that any additional stormwater runoff created by improvements to his Lot shall be retained on the Lot. In this regard, the Declarant has caused a professional engineer to determine a location on each Lot where a water detention pond may be located. A copy of this engineering plan is available to each Lot owner through the Committee.

3.19 Liquid Waste Disposal.

All liquid waste disposal systems must be designed by a licensed professional engineer. The Owner shall, prior to the commencement of construction, obtain a permit from the New Mexico Environmental Improvement Division and the Construction Industries Division for the installation of the waste disposal system. The Owner shall install the disposal system in accordance with the engineer's design and in compliance with all applicable statutes and regulations.

3.20 Hunting and Firearms.

Hunting and the discharge of firearms is prohibited within the Property.

3.21 Motor Vehicles.

All roads in the Property are private. No mini-bike, motorcycle, off-road vehicle or any unlicensed motor vehicle of any kind shall be driven or permitted on the subdivision roads except for ingress and egress to an Owner's residence. No person who is not licensed to

operate motor vehicles by the State of New Mexico, or other state, shall be permitted to operate any motor vehicle on the roads of the subdivision. No motor vehicle shall be driven or permitted in the subdivision except on the road system or the driveways within the subdivision. The Board of Directors may adopt rules governing the use of roads within the Subdivision, including without limitation setting speed limits, and the imposition of fines for the violation of such rules.

Article 4 – Architectural Control

4.1 Approval Required.

Prior to application for a building permit from the appropriate regulatory agency, architectural approval from the Committee shall be required for the construction, exterior modification, or addition to any structure on any Lot, and for the location and design of all site water or waste water systems. The owner of the Lot upon which the construction, modification, or addition is desired shall submit to the Committee documents as set forth herein. Said submission shall be prior to applying for a building permit.

4.2 Building Site Restrictions.

The Declarant may establish building envelopes on each Lot it owns (unsold Lots) wherein structures may be constructed. Should Declarant so restrict any Lot, any structure on such Lot must be constructed in compliance with the site restriction, unless a variance is approved by the Committee and all adjoining Lot Owners.

4.3 Consideration by Committee.

Upon receipt of any submission of architectural or site plans, the Committee shall proceed to examine and consider the same and to act thereon by approving or disapproving the same, in whole or in part, within thirty (30) days after receipt. If the Committee fails to so approve or disapprove within the time specified, the plans submitted shall be deemed finally approved. Except for members of the Committee who are representatives of the Declarant, no member of the Committee shall participate in the consideration of his own application, nor in the consideration of application relating to a Lot contiguous to any Lot owned by such member of the Committee. In such cases, the Committee shall appoint a temporary member for consideration of the application. For purposes of this section, a Lot shall be considered contiguous if separated from the Lot of a Committee member by a road.

4.4 Approval of Plans.

Should the proposed construction, modification, or addition comply with requirements and standards set forth in these covenants, in the opinion of a majority of the members of the Committee, the plans shall be finally approved by written report within the time specified above. The original of said report shall be furnished to the owner making the submission, indicating said final approval, and approval shall be endorsed on the plan submitted by the Owner.

4.5 Disapproval of Plans.

Should the proposed construction, modification, or addition, or any part thereof, violate, be in conflict with, or fail to meet any requirement or standard set forth in these covenants, in the opinion of the majority of the members of the Committee, the plans or the pertinent parts thereof shall be disapproved by written report within the time specified above and specifying all reasons for the disapproval, and the original of said report shall be furnished to the owner making the submission. Said notice shall specify if any portion of the said plans and specifications are finally approved, if any, for construction.

4.6 Appeal of Committee Decision.

Disapproval of plans may be appealed by the Owner at the next annual or special meeting of the members of the Association and reversed, in whole or in part, by a favorable vote of at least two-thirds of the votes cast at said meeting at which a quorum is present.

4.7 Architectural Standards.

In addition to requiring compliance with all the provisions of these covenants, standards for architectural approval are:

4.7.1 There shall be no minimum size for a principal residence. However, no auxiliary structure shall be more than one-half (1/2) the heated area of the main residence of that Lot.

4.7.2 No construction of any auxiliary structure shall commence until substantial exterior completion of the principal residence, provided that the Committee may waive the provisions of this requirement upon a showing of good faith simultaneous or contemporaneous construction of a principal residence and auxiliary structure.

4.7.3 The type of construction and architecture shall be based upon, but need not adhere strictly to, Santa Fe, Northern New Mexico, Pueblo or Territorial style architecture. Moderate modifications of the foregoing styles in reasonable, innovative, and creative ways are permitted and encouraged. The use of flat roofs with parapet walls and construction materials having the appearance of local indigenous, and traditional building materials is encouraged and favored. Other materials may be used where their use will be in accordance with sound architectural practice and will be visually inoffensive in the sole discretion of the Declarant or the Committee, as the case may be. Nonreflective, earth tone finishes are required for all exterior wall surfaces, except under portals. Metal roofs shall be permitted, so long as the material is non-reflective and of a color compatible with its surroundings. Galvanized metal and bright or light shades of blue, red and green are prohibited for roofing materials. The only requirement of the said Declarant or the Committee, in exercising its powers, shall be that it act in good faith for the benefit of all the Owners.

4.7.4 No structure placed on any Lot shall have a height (including parapet walls, but excluding chimneys) in excess of sixteen (16) feet above each and every point of measurement along the perimeter of the structure. This measurement shall be from the undisturbed natural grade of the land at the perimeter, or from the finished grade at the perimeter, whichever is more restrictive in height. The highest point on the structure includes the top of the parapets and clerestories, except the chimneys may exceed the maximum height by not more than two feet. Adding fill dirt to the natural grade in order to increase the height of the grade is prohibited.

4.7.5 If the Northern New Mexico style is chosen, then the minimum allowable roof shall be 7.5:12 (rise/run) and the maximum allowable roof pitch shall be 12:12. The provisions of this paragraph shall not apply to portales.

4.7.6 All extension of utilities shall be underground to all structures at all locations. No electrical or telephone lines shall be maintained above ground except during construction. Any disturbance of natural ground cover and vegetation necessitated by the installation of utility service lines on a Lot shall be restored by the owner of the Lot by replanting.

4.7.7 No exterior floodlights or street lamps shall be installed, operated, or maintained on any Lot in such manner that light therefrom shall directly illuminate lands other than those of the owner thereof.

4.7.8 With respect to auxiliary structures which are commonly and customarily built and used in conjunction with the permitted structures pursuant to the Santa Fe County Land Development Code, as amended, the Committee shall disapprove said structures if they are visually offensive by reason of size, shape, location, use, orientation, exterior surface textures, or some other visible features of the auxiliary structure, and cannot be reasonably screened from view from all the Lots in the property by the use of walls, fences, or vegetation which comply with these covenants.

4.7.9 The construction, modification, or addition shown on the plans submitted must comply with applicable zoning ordinance and regulations, and applicable building and safety regulations and codes.

4.7.10 The construction, modification, or addition shown on the plans submitted shall cause the least disturbance to, and change in the natural topography and vegetation of, the Lot, consistent with the reasonable use and enjoyment of said lot. To that end, construction envelopes shall be designated on submittals to the Committee, and construction activities shall be confined to this area.

4.8 Submittals.

Owners are encouraged to submit preliminary plans to the Committee for review prior to submission of final plans in order to facilitate approval and to avoid misunderstanding and duplication. Two complete sets of building plans and specifications for any structure to be

erected on any Lot shall be submitted to the Committee for written approval before any construction may begin. Included in such plans shall be:

4.8.1 Site plan showing entire Lot, orientation, construction envelope, driveway, utility trenches or excavation, fences, well, septic tank, patio walls and patios, decks, gardens, and location of all structures.

4.8.2 Detailed site plan clearly indicating both natural and finish grades for at least fifty (50) feet surrounding each structure. Contours shall be shown at intervals not greater than two (2) feet. All driveways, paths, garden walls, and other altered exterior areas must be shown. Minimum scale required is 1 inch = 10 feet.

4.8.3 As a requirement of the County of Santa Fe for issuance of a building permit, the Owner of each Lot will be required to construct a storm water retention pond. The purpose of this pond is to capture the storm water run-off caused by the development of the Lot. The size of the pond will be determined by the County of Santa Fe, based on the size of the structure to be built. The site plan shall reflect the size and location of this pond.

4.8.4 Floor plans of all levels with finish floor elevations relative to natural grade indicated. All spaces shall be clearly identified as to use. The minimum scale required is 1/8 inch = 1 foot; a scale of 1/4 inch = 1 foot is preferred.

4.8.5 Four exterior elevations of all structures indicating finish materials and colors. Both natural and finish grades at the perimeter of the structure must be clearly shown. The scale used shall be the same as the floor plan.

4.8.6 Two complete building cross-sections perpendicular to each other, with finish floor elevations relative to natural grade indicated, explaining the relationships of the interior volumes and, therefore, exterior massing, as clearly as possible. The scale used shall be 1/2" = 1 foot.

4.8.7 If any extensive landscaping or planting is contemplated, plans showing the extent and type of irrigation, preferably drought-resistant plant material and drip/trickle irrigation systems.

4.8.8 Plans for all exterior lighting, whether installed at the time of construction or subsequently added.

4.9 Fee for Review of Plans. [See 2004 Resolution of the Board of Directors]

Each applicant for approval of plans shall pay to the Association a fee for the review concurrently with submittal of plans. Initially, this fee shall be Fifty Dollars (\$50.00). The Board may, by resolution, establish a higher or lower fee.

4.10 Variances.

The owner of said lot may apply to the Committee for variance approval when naturally or artificially occurring circumstances or the necessities of reasonable use and enjoyment of a lot within the property require, and the Committee, upon a showing of good cause and necessity therefor, without significant possibility of detriment to other Lots, and by the majority vote, may allow reasonable exceptions or variances with respect to any provision of these covenants and restrictions on such terms and conditions as the Committee shall specify by written report. No such variance shall become effective until thirty (30) days after the Committee mails a copy of its written report to each member of the Association. In the event that one (1) adjacent property owner or any three (3) other members of the Association give written notice to the Board of objection to such variance within said period, the variance shall not become effective if it is disapproved by the vote of at least a majority in interest of the votes cast at the next annual or special meeting of the Association at which a quorum is present. No building, fence, wall or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. *No variance from the height limitation set forth in §4.7.4 shall be granted.*

Article 5 - The Association, Membership and Voting Rights

5.1 Function of the Association.

The Association shall be the entity responsible for management, maintenance, operation and control of the Common Area, including the park and roads. It shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Property as the Board may adopt. The Association shall also be responsible for administering the architectural standards and controls set forth in this Declaration.

5.2 Membership.

Every Owner shall be a Member of the Association. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. All such co-owners shall be jointly and severally obligated to perform the responsibilities of Owners.

5.3 Classes of Voting Membership.

The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of Class B Member, if any, and shall be entitled to one (1) vote for each Lot owned.

Class B. The Class B member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

(b) on December 31, 1999.

Article 6. Rights and Obligations of the Association

6.1 Common Area.

The Association, subject to the rights of the Owners set forth in this declaration, shall manage and control the Common Area and all improvements thereon (including, without limitation, furnishing, equipment, and common landscaped areas), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, consistent with this Declaration.

6.2 Personal Property and Real Property for Common Use.

The Association may acquire, hold, and dispose of tangible and intangible personal property and real property. Declarant may convey to the Association improved or unimproved real estate located within the Property. Such property shall be accepted by the Association and thereafter shall be maintained as Common Area by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed. The Declarant shall convey the initial Common Area to the Association prior to the conveyance of any Lot.

6.3 Rules.

The Association, through its Board, may make and enforce reasonable rules and regulations governing the use of the Property, in addition to, further defining or limiting, and, where specifically authorized hereunder, creating exceptions to those covenants and restrictions set forth in this Declaration. Such rules and regulations shall be binding upon all Owners, occupants, invitees, and licensees until and unless repealed or modified in a regular or special meeting by the vote of Voting Members representing two-thirds (2/3) of the total Class "A" votes in the Association and by the Class "B" Member, so long as such membership exists.

6.4 Enforcement.

The Association may impose sanctions for violations of this Declaration, the Bylaws, or rules and regulations in accordance with procedures set forth in the Bylaws, including reasonable monetary fines and suspension of the right to vote and to use any recreational facilities within the Common Area. In addition, the Association may exercise self-help to cure violations, and may suspend any services it provides to the Lot of any Owner who is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association. The Board may seek relief in any court for violations or to abate nuisances.

The Association, by contract or other agreement may enforce county and city ordinances, if applicable, and permit Santa Fe County to enforce applicable ordinances on the Property for the benefit of the Association and its Members.

6.5 Implied Rights; Board Authority.

The Association may exercise any other right or privilege given to it expressly by this Declaration or the Bylaws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the Bylaws, Articles, or by law, all rights and powers of the Association may be exercised by the board without a vote of the membership.

6.6 Indemnification.

The Association shall indemnify every officer, director, and committee member against all expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or actions. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

6.7 Dedication of Common Areas.

The Association may dedicate portions of the Common Areas to Santa Fe County or to any other local, state, or federal governmental entity.

6.8 Recycling Programs.

The Board may establish a recycling program and recycling center within the Property. In such event, all occupants of Lots shall support such program by recycling, to the extent reasonably practical, all materials which the Association's recycling program or center is set up to accommodate.

Article 7 - Assessments

7.1 Creation of Assessments.

The Association is hereby authorized to levy assessments against each Lot for Association expenses as the Board may specifically authorize from time to time. There shall be three types of assessments for Association expenses: (a) Base Assessments to fund Common Expenses for the general benefit of all Lots; (b) Special Assessments as described in §7.5; and (d) Specific Assessments as described in §7.6. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Property is deemed to [the] covenant and agree to pay these assessments.

All assessments, together with interest from the due date of such assessment at a rate determined by the Board (not to exceed the highest rate allowed by New Mexico law), late charges, costs, and reasonable attorney's fees, shall be a charge and continuing lien upon each Lot against which the assessment is made until paid, as more particularly provided in §7.8. Each such assessment, together with interest, late charges, costs, and reasonable attorney's fees, also shall be the personal obligation of the Person who was the Owner of such Lot at the time the assessment arose. Upon a transfer of title to a Lot the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Lot by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

Assessments shall be paid in such manner and on such dates as the Board may establish. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Lot, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

The Association shall, within ten (10) business days, upon written request, furnish to any Owner liable for any type of assessment a certificate in writing signed by an officer of the Association setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

No Owner may exempt himself from liability for assessments, by nonuse of Common Area, abandonment of his Lot, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or

abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses.

7.2 Declarant's Obligation for Assessments.

The Association shall have a lien against all Lots owned by the Declarant to secure the Declarant's obligations under this Article, which lien shall have the same attributes and shall be enforceable in the same manner as the Association's lien against other Lots under this Article. The Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these.

7.3 Computation of Base Assessment.

At least ninety (90) days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year, including a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in §7.4.

The Base Assessment shall be levied equally against all Lots and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Lots subject to assessment under §7.7 on the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to assessment during the fiscal year.

So long as the Declarant has the right unilaterally to annex additional property pursuant to Article 11, the Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under §7.2 above), which may be either a contribution, an advance against future assessments due from the Declarant, or a loan, in the Declarant's discretion. Any such subsidy and the nature thereof shall be conspicuously disclosed as a line item in the Common Expense budget and shall be made known to the membership. The payment of such subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

The Board shall send a copy of the budget and notice of the amount of the Base Assessment for the following year to each Owner at least sixty (60) days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective

unless disapproved at a meeting by Voting Members representing at least seventy-five percent (75%) of the total Class "A" votes in the Association and by the Class "B" Member, if such exists. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Owners as provided for special meetings in the Bylaws, which petition must be presented to the Board within ten (10) days after delivery of the notice of assessments.

If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

7.4 Reserve Budget

The Board shall annually prepare reserve budgets for general purposes which take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. As part of establishing a reserve budget, the Board shall create a maintenance and repair plan for the roads, which shall require periodic maintenance designed to assure the quality of travel and integrity of the roadways. The Board shall set the assessments in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual Assessments over the budget period.

7.5 Special Assessments.

In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of Owners representing at least fifty-one percent (51%) of the votes allocated to Lots, and the affirmative vote or written consent of the Class "B" Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

7.6 Specific Assessments.

The Board shall have the power to levy Specific Assessments against a particular Lot or Lots constituting less than all Lots within the Property:

7.6.1 To cover costs, including overhead and administrative costs.

7.6.2 To cover costs incurred in bringing the Lot into compliance with the terms of this Declaration, any applicable Supplemental Declaration, the Bylaws or rules or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their licensees, invitees, or guests; provided, the Board shall give the Lot Owner prior written notice and an opportunity for a hearing before levying in Specific Assessments under this subsection 7.6.2.

7.7 Date of Commencement of Assessments.

The obligation to pay assessments shall commence as to each Lot on the first day of the month following: (a) the month in which the Lot is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual Base Assessment levied on each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot.

7.8 Lien for Assessments.

All assessments authorized in this Article shall constitute a lien against the Lot against which they are levied until paid. The lien shall also secure payment of interest, late charges (subject to the limitations of New Mexico law), and costs of collection (including attorney's fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. The Association may enforce such lien, when delinquent, by suit, judgment, and foreclosure.

The Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. While a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its equal *pro rata* share of the assessment that would have been charged such Lot had it not been acquired by the Association. The Association may sue for unpaid Common Expenses and costs without foreclosing or waiving the lien securing the same.

The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, the sale or transfer of any Lot pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgage or other purchaser of a Lot who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Lot due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Lots subject to assessment under §7.7, including such acquirer, its successors and assigns.

7.9 Failure to Assess.

Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

7.10 Capitalization of Association.

Upon acquisition of record title to a Lot by the first Owner thereof other than the Declarant or Declarant's Grantee, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to one-sixth (1/6) the annual Base Assessment per Lot for that year, or \$100.00, whichever is greater. This amount shall be in addition to, not in lieu of, the annual Base Assessment and shall not be considered an advance payment of such assessment. This amount shall be paid to the Association from the closing, for use in covering operating expenses and other expenses incurred by the Association pursuant to the terms of this Declaration and the Bylaws.

7.11 Subsidy for Fire Protection.

Upon the recordation of any document conveying title to a Lot, or upon the execution of a conditional sales contract therefor, the seller thereof shall pay a fee of \$100.00 to the Eldorado Volunteer Fire District. This provision shall terminate and be of no further effect at such time as the Eldorado Volunteer Fire District is empowered to levy and collect assessments against the Property pursuant to New Mexico Law.

7.12 Exempt Property.

The Following property shall be exempt from payment of Base Assessments and Special Assessments:

7.12.1 All Common area.

7.12.2 Any property dedicated to and accepted by any governmental authority or public utility.

7.12.3 Any property held by a conservation trust or similar nonprofit entity as a conservation easement, except to the extent that any such easement lies within the boundaries of a Lot which is subject to assessment under §7.7 (in which case the Lot shall not be exempt from assessment).

In addition, the Declarant shall have the right, but not the obligation, to grant exemptions to certain Persons qualifying for §501(c) status under the Internal Revenue Code so long as such Persons own property subject to this Declaration for purposes listed in §501(c).

Article 8 - Maintenance

8.1 Association's Responsibility.

The Association shall maintain and keep in good repair the Common Area which shall include, but need not be limited to all landscaping and other flora, parks, signage, structures, and improvements, including any private roads, bike and pedestrian pathways or trails situated upon the Common Area and landscaping and other flora within any public

utility easements and conservation easements within the Property (subject to the terms of any easement agreement relating thereto);

There are hereby reserved to the Association easements over the Property as necessary to enable the Association to fulfill such responsibilities. The Association shall maintain the facilities and equipment within the Common Area in continuous operation, except for reasonable periods as necessary to perform required maintenance or repairs, unless seventy-five percent (75%) of the Class "A" votes and the Class "B" Member agree in writing to discontinue such operation.

The Association may maintain other property which it does not own, including, without limitation, publicly owned property, conservation easements held by nonprofit entities, and other property dedicated to public use, if the Board determines that such maintenance is necessary or desirable.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Common Area shall be a Common Expense to be allocated among all Lots in the manner of and as a part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from the Owner(s) of, or other Persons responsible for, certain portions of the Common Area pursuant to this Declaration, other recorded covenants, or agreements with the Owner(s) thereof.

8.2 Owner's Responsibility.

Each Owner shall maintain his or her Lot and all structures, parking areas, and other improvements comprising the Lot in a clean and orderly condition. In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner in accordance with §7.6. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

Article 9 – Insurance and Casualty Losses

9.1 Association Insurance.

The Association, acting through its Board or its duly authorized agent, shall obtain blanket "all-risk" property insurance, if reasonably available, for all insurable improvements on the Common Area. Such property shall include, by way of illustration and not limitation, any insurable improvements on or related to parks, rights-of-way, medians, easements, and walkways which the Association is obliged to maintain. If blanket "all-risk" coverage is not generally available at a reasonable cost, then the Association shall obtain fire and extended coverage, including coverage for vandalism and malicious mischief. The face amount of the policy shall be sufficient to cover the full replacement cost of the insured property. The cost of such insurance shall be a Common Expense to be allocated among all Lots subject to assessment as part of the annual Base Assessment.

The Association also shall obtain a public liability policy on the Common Area, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at a reasonable cost, the public liability policy shall have at least a \$1,000,000.00 combined single limit as respect to bodily injury and property damage and at least a \$3,000,000.00 limit per occurrence and in the aggregate.

Premiums for all insurance on the Common Area shall be Common Expenses and shall be included in the Base Assessment.

The policies may contain a reasonable deductible which shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the required coverage. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with §3.23 of the Bylaws, that the loss is the result of the negligence or willful conduct of one or more Owners or occupants, then the Board may specifically assess the full amount of such deductible against the Lot of such Owner or occupant, pursuant to §7.6.

All insurance coverage obtained by the Association shall:

9.1.1 Be written with a company authorized to do business in New Mexico which holds a Best's rating of A or better and is assigned a financial size category of IX or larger as established by A.M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating which is available.

9.1.2 Be written in the name of the Association as trustee for the benefitted parties. Policies on the Common Area shall be for the benefit of the Association and its Members.

9.1.3 Vest in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

9.1.4 Not be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees.

9.1.5 Have an inflation guard endorsement, if reasonably available. If the policy contains a co-insurance clause, it shall also have an agreed amount endorsement. The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Santa Fe County, New Mexico area.

The Board shall use reasonable efforts to secure insurance policies containing endorsements that:

9.1.6 Waive subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests.

9.1.7 Waive the insurer's rights to repair and reconstruct instead of paying cash.

9.1.8 Preclude cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time cure.

9.1.9 Exclude individual Owners' policies from consideration under any "other insurance" clause.

9.1.10 Require at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal.

The Association also shall obtain, as a Common Expense, a fidelity bond or bonds, if generally available at reasonable cost, covering all persons responsible for handling Association funds. The Board shall determine the amount of fidelity coverage in its best business judgment but, if reasonably available, shall secure coverage equal to not less than one-sixth (1/6) of the annual Base Assessments on all Lots plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification or non-renewal.

9.2 Damage and Destruction.

9.2.1 Immediately after damage or destruction to all or any part of the Property covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

9.2.2 Any damage to or destruction of the Common Area shall be repaired or reconstructed unless at least seventy-five (75%) of the total Class "A" voters in the Association, and the Class "B" Member, if any, decide within sixty (60) days after the loss not to repair or reconstruct.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such sixty (60) day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the

determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

9.2.3 If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and maintained by the Association in a neat and attractive, landscaped condition.

9.3 Disbursement of Proceeds.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagees of any affected Lot.

Article 10 - Condemnation

If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Voting Members representing at least sixty-seven percent (67%) of the total Class "A" votes in the Association and of the Declarant, as long as the Declarant owns any Lot) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice. The award made for such taking shall be payable to the Association.

Article 11 - Annexation or Property

11.1 Annexation Without Approval of Membership.

Until ten (10) years after the recording of this Declaration, Declarant may unilaterally subject to the provisions of this Declaration real property adjoining the Property.

Such annexation shall be accomplished by filing a Supplemental Declaration in the land records of Santa Fe County, New Mexico, describing the property to be annexed and specifically subjecting it to the terms of this Declaration. Such Supplemental Declaration shall not require the consent of Owners, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

11.2 Annexation with Approval of Membership.

The Association may subject any real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of a majority of the Class "A" votes of the Association represented at a meeting duly called for such purpose, and the consent of the Declarant so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with §11.1.

Such annexation shall be accomplished by filing a Supplemental Declaration in the land records of Santa Fe County, New Mexico, describing the property to be annexed and specifically subjecting it to the terms of this Declaration. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the annexed property. Any such annexation shall be effective upon filing unless otherwise provided therein.

11.3 Additional Covenants and Basements.

The Declarant may unilaterally subject any portion of the property added to this Declaration by Supplemental Declaration to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrent with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, if other than the Declarant.

11.4 Amendment.

This Article shall not be amended without the prior written consent of Declarant so long as the Declarant owns any Lot.

Article 12 - Easements

12.1 Easements of Encroachment.

There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall any easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, an Owner, occupant, or the Association.

12.2 Easement for Utilities, Etc.

There are hereby reserved unto Declarant, so long as the Declarant owns any Lot, the Association, and the designees of each (which may include, without limitation, Santa Fe County, New Mexico and any utility) access and maintenance easements upon, across, over, and under all of the Property to the extent reasonably necessary for the purpose of replacing, repairing, and maintaining cable television systems, master television antenna systems, security and similar systems, roads, walkways, bicycle pathways, trails, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone and electricity, and for the purpose of installing

any of the foregoing on property which it owns or within easements designated for such purposes on recorded plats of the Property. This easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing dwelling on a Lot, and any damage to a Lot resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

Declarant specifically grants to the local water supplier and electric company easements across the Property for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the dwelling on any Lot, nor shall any utilities be installed or relocated on the Property, except as approved by the Board or Declarant.

12.3 Easements to Serve Additional Property.

The Declarant hereby reserves for itself and its duly authorized agents, representatives, employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of any property annexed pursuant to Article 11. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof is not made subject to this Declaration, the Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of maintenance of any access roadway serving such property.

12.4 Cross-Easements for Drainage.

Every Lot and the Common Area shall be burdened with easements for natural drainage of storm water runoff from other portions of the Property; provided, no Person shall alter the natural drainage on any Lot so as to materially increase the drainage of storm water onto adjacent portions of the Property without the consent of the Owner of the affected property.

12.5 Right Entry.

The Association shall have the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons, to perform maintenance pursuant to Article 8 hereof, and to inspect for the purpose of ensuring compliance with this Declaration, any Supplemental Declaration, Bylaws, and rules, which right may be exercised by the Association, through any member of the Board, officer, agent, employee, and manager, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during

reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Lot to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any single family detached dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

Article 13 - Mortgages Provisions

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

13.1 Notices of Action.

An Eligible Mortgages will be entitled to timely written notice of:

13.1.1 Any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Mortgagee.

13.1.2 Any delinquency in the payment of assessments or charges owed by a Lot subject to the Mortgage of such Eligible Mortgagee, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Declaration or Bylaws relating to such Lot or the Owner or Occupant which is not cured within sixty (60) days.

13.1.3 Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

13.1.4 Any proposed action which would require the consent of a specified percentage of Eligible Holders.

13.2 Other Provisions for First Lien Holders.

To the extent possible under New Mexico law:

13.2.1 Any restoration or repair of the Property after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Declaration and the original plans and specifications unless the approval is obtained of the Eligible Mortgagees holding first Mortgages on Lots to which at least 51% of the votes of Lots subject to Mortgages held by such Eligible Mortgagees are allocated.

13.2.2 Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible

Mortgagees holding mortgages on Lots to which at least 51% of the votes of Lots subject to Mortgages held by such Eligible Mortgagees are allocated.

13.3 Amendments to Documents.

The following provisions do not apply to amendments to the constituent documents or termination of the Association made as a result of destruction, damage, or condemnation pursuant to §13.2.1 and 13.2.2, or to the addition of land in accordance with Article 11.

13.3.1 The consent of Voting Members representing at least sixty-seven percent (67%) of the Class "A" votes and of the Declarant, so long as it owns any land subject to this Declaration, and the approval of the Eligible Holders of first Mortgages on Lots to which at least sixty-seven percent (67%) of the votes of Lots subject to a Mortgage appertain, shall be required to terminate the Association.

13.3.2 The consent of Voting Members representing at least sixty-seven percent (67%) of the Class "A" votes and of the Declarant, so long it owns any land subject to this Declaration, and the approval of Eligible Mortgagees holding mortgages on Lots to which at least fifty-one percent (51%) of the votes of Lots subject to a Mortgage appertain, shall be required materially to amend any provisions of the Declaration, Bylaws, or Articles of Incorporation, or to add any material provisions thereto which establish, provide for, govern, or regulate any of the following:

- voting;
- assessments, assessment liens, or subordination of such liens;
- reserves for maintenance, repair, and replacement of the Common Area;
- insurance or fidelity bonds;
- rights to use the Common Area;
- responsibility for maintenance and repair of the Property;
- expansion or contraction of the Property or the addition, annexation, or withdrawal of Property to or from the Association;
- boundaries of any Lot;
- leasing of Lots;
- imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer, or otherwise convey his or her Lot;
- any provisions included in the Declaration, Bylaws, or Articles of Incorporation which are for the express benefit of holders, guarantors, or insurers of first Mortgages on Lots.

13.4 No Priority.

No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the Eligible Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

13.5 Notice to Association.

Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

13.6 Amendment by Board.

Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of its respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may record an amendment to this Article to reflect such changes.

13.7 Applicability of Articles 13, 14.

Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or New Mexico law for any of the acts set out in this Article.

13.8 Failure of Mortgagee to Respond.

Any Mortgagee who receives a written request from the Board to respond to our consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

Article 14 – Declarant's Rights

Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the Bylaws may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration or the Bylaws. No such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the land records of Santa Fe County, New Mexico.

So long as construction and initial sales of Lots shall continue, the Declarant may maintain and carry on upon portions of the Common Area such activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the construction upon or sale of such Lots, including, but not limited to, business offices, signs, model homes, and sales offices. The Declarant shall have easements for access to and use of such facilities.

This Article may not be amended without the written consent of the Declarant. The rights contained in this Article shall terminate upon the earlier of (a) forty (40) years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

Article 15 - General Provisions

15.1 Term.

This Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, *in perpetuity*.

15.2 Amendment.

15.2.1 By Declarant. Until termination of the Declarant Control Period, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, the Declarant may unilaterally amend this Declaration if such amendment is (i) necessary to bring any provision into compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots; or (iii) required by an institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable it to make, purchase, insure or guarantee mortgage loans on the Lots; or (iv) otherwise necessary to satisfy the requirements of any governmental agency. However, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent thereto in writing. So long as the Declarant still owns any Lot, it may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse affect upon any right of any Owner.

15.2.2 By Owners. Thereafter and otherwise, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of seventy-five percent (75%) of the total Class "A" votes in the Association, including seventy-five percent (75%) of the Class "A" votes held by Members other than the Declarant, and the consent of the Declarant, so long the Declarant has an option to subject additional property to this Declaration pursuant to §11.2.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

15.2.3 Validity and Effective Date of Amendments. Amendments to this Declaration shall become effective upon recordation in the land records of Santa Fe County, New Mexico, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority so to consent, and no

contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right or privilege of the Declarant without the written consent of the Declarant or the assignee of such right or privilege.

No amendment which modifies the provisions of §8.1 of these covenants shall be effective unless the approval of the County Development Review Committee shall be endorsed thereon.

15.3 Severability.

Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

15.4 Litigation.

No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five percent (75%) of the Owners. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article 7; (c) proceedings involving challenges to *ad valorem* taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

15.5 Compliance.

Every Owner and occupant of any Lot shall comply with this Declaration, the Bylaws, and the rules of the Association. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, by the Association or, in a proper case, by any aggrieved Lot Owner(s).

15.6 Notice of Sale or Transfer of Title.

Any Owner desiring to sell or otherwise transfer title to his or her Lot shall give the Board at least seven (7) days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

15.7 Enforcement.

The Association, or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In the event of litigation, the prevailing party shall be awarded costs and reasonable attorney's fees.

Dated this 4th day of May, 1994.

Declarant: East Ranch Partners, a New Mexico
General Partnership
Margo Cutler, Managing Partner

Owners of Lot 18
David Burling
Hannah Burling

Owners of Lot 17
Walter Duran
Monica Duran

State of New Mexico
County of Santa Fe

The foregoing instrument was acknowledged before me this 9th day of May, 1994, by
Margo Cutler, Managing Partner of East Ranch Partners, a New Mexico General Partnership,
for and on behalf of said partnership.

Notary Public [notary stamp]
My Commission Expires: 2-3-96

State of New Mexico

County of Santa Fe

The foregoing instrument was acknowledged before me this 10th day of May, 1994, by
David Burling and Hannah Burling.

Notary Public [notary stamp]
My Commission Expires: 2-3-96

State of New Mexico

County of Santa Fe

The foregoing instrument was acknowledged before me this 11th day of May, 1994, by
Walter Duran and Monica Duran.

Notary Public [notary stamp]
My Commission Expires: 2-3-96

[Santa Fe County, New Mexico, County Clerk notary stamp]