

PAA-KO COMMUNITIES

CANYON RIDGE ESTATES, PHASE I COMPREHENSIVE DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS

**(THESE COVENANTS & RESTRICTIONS
COVER THE FOLLOWING SUBDIVISIONS):**

**CANYON RIDGE ESTATES, PHASE I, UNIT 1
CANYON RIDGE ESTATES, PHASE I, UNIT 3
CANYON RIDGE ESTATES, PHASE I, UNIT 3**

AND,

**PAA-KO VILLAGE, UNIT 1
PAA-KO VILLAGE, UNIT 2**

**CANYON RIDGE ESTATES, PHASE I,
COMPREHENSIVE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS**

THIS DECLARATION, is made on the date and year below written, by Mountain Ranch Limited Partnership, a New Mexico Limited Partnership, hereinafter referred to as the "Declarant".

RECITALS

1. Declarant is the owner of that certain real property described in Exhibit "A" hereof (the "Property").

2. The purpose of this Declaration is to create and carry out a uniform plan for the improvement, development, sale and use of the Property; to preserve so far as possible the natural beauty of the Property; to guard against the erection of poorly designed or proportioned improvements, or the use of unsuitable materials, to encourage and secure the erection of well designed, attractive improvements which are harmonious with their sites and consistent with existing Improvements; and in general, to enhance the environmental quality and economic value of the Property.

NOW, THEREFORE, Declarant hereby declares that the Property described above shall be held, sold, used, developed, occupied, leased and conveyed subject to the following reservations, easements, restrictions, covenants and conditions and which shall run with the Property and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1.1. "Architectural Control Committee" shall mean the committee created pursuant to Article VI hereof. Such Architectural Control Committee shall hereinafter sometimes be referred to as "ACC" or "Committee".

Section 1.2. "Architectural Control Committee Rules" shall mean such rules as are adopted by the ACC pursuant to Article VI hereof.

Section 1.3. "Association" or "Homeowners Association" shall mean the Canyon Ridge Estates, Phase I, Homeowners Association, Inc., a New Mexico non-profit corporation, which Declarant shall cause to be incorporated.

Section 1.4. "Common Facilities" shall mean and refer to all existing and subsequently provided Improvements upon or with-in the Common Properties, except those as may be expressly excluded herein. Also, in some instances, Common Facilities may consist of Improvements for the use and benefit of all Owners constructed on a portion of one or more Lots or on acreage owned by Declarant (or Declarant and others) which is not a part of the Common Properties. By way of illustration, Common Facilities may include, but not necessarily be limited to, the following: fences, walls, common driveways, landscaping, guardhouses, streets, street lights, utility equipment, sewer pumps and lines, constructed wetlands, private access easements, open space easements, any portions of public roads not accepted for maintenance by the County of Bernalillo, and any medians or other portions of public roads that the County of Bernalillo may contract with the Association for maintenance of, and other similar and appurtenant Improvements. References herein to the "Common Facilities (any Common Facility) in the Subdivision" shall mean and refer to Common Facilities as defined respectively in this Declaration and all Supplemental Declarations.

Section 1.5. "Common Properties" shall mean and refer to all those areas of land within the Property as shown on the Subdivision Plats, except the Lots and the dedicated roadways shown thereon (if and when the dedicated roadways are accepted for maintenance by the County of Bernalillo), including Parks, and any Open Space Easement, together with such other property or rights in property, as the Association may, at any time or from time to time, acquire by purchase, contract, or otherwise, subject, however, to the easements, limitations, restrictions, dedications and reservations applicable thereto by virtue hereof and/or by virtue of the Subdivision Plats, and/or by virtue of prior grants or dedications by Declarant or Declarant's predecessors in title. References herein to "the Common Properties in the Subdivision" shall mean and refer to Common Properties as defined respectively in this Declaration and all Supplemental Declarations.

Section 1.6. "Declarant" shall mean Mountain Ranch Limited Partnership, a New Mexico Limited Partnership, and its successors and assigns.

Section 1.7. "Declaration" shall mean the covenants, conditions, and restrictions herein set forth in this entire document, as the same may be from time to time amended.

Section 1.8. "Development Plan" shall mean the plan for development of a Lot which is required to be submitted to the ACC pursuant to Section 6.12 hereof.

Section 1.9. "Drainage Way" shall be any area designated on the Plat as such (including any Open Space Easement) and in addition shall include any and all arroyos, creeks, streams,

sedimentation basins or bar ditches located, designated or constructed on the Property.

Section 1.10. "Improvement" shall mean the buildings, garages, carports, streets, roads, antennas, driveways, parking areas, fences, walls, hedges, plantings, planted trees and shrubs, lighting and all other Structures or landscaping Improvements of every kind and type affecting the natural condition of the land or the drainage of surface waters on, across or from the land.

Section 1.11. "Lot" shall mean each parcel of land shown as a lot on the recorded Subdivision Plat of the Property and designated thereon by a separate block and lot number, or any subsequent subdivision of a lot.

Section 1.12. "Member(s)" shall mean and refer to all those Owners who are members of the Association as provided in the Declaration, together with all the Owners in the Subdivision who are members of the Association as provided in all Supplemental Declarations.

Section 1.13. "Mountain Ranch" shall mean and refer to that certain real property described as Tracts A, B, C, and D Mountain Ranch as the same are shown and designated on the plat thereof, filed in the office of the County Clerk of Bernalillo County, New Mexico, on January 22, 1981, in Volume 91C, Folio 24.

Section 1.14. "Mountain Ranch Master Plan" shall mean and refer to the Mountain Ranch Master Plan/Sector Development Plan approved by the Bernalillo County Commission on March 14, 1989, providing for 1440 lots, 3 tracts, on a total of 3656 acres, as such Master Plan/Sector Development Plan now exists or may be hereafter supplemented or amended.

Section 1.15. "Open Space Easement" shall mean any area designated as an Open Space Easement on the Subdivision Plat, or any supplemental or amended Subdivision Plat, which shall be subject to the restrictions and conditions set forth in Article X of this Declaration or any Supplemental Declaration and the restrictions and conditions set forth on the Subdivision Plat or any supplemental or amended Subdivision Plat. Open Space Easements are areas designated as such by the Declarant for the purposes of providing visual open space, to mitigate the visual impact of development, to protect areas of sensitivity from development, and to preserve the existence of the ridges and arroyos by limiting the land to passive uses.

Section 1.16. "Owner(s)" shall mean and refer to the record Owner, whether one or more persons, associations or entities, of legal, equitable or beneficial title of or to any Lot. Owner shall include purchaser of a Lot under an executory contract for sale of real property. The foregoing does not include persons or entities

who hold an interest in any Lot or in the Property merely as security for the performance of an obligation. Any reference herein to Owners shall include Owners as defined herein and as defined or included in any Supplemental Declaration. If any Lot is leased, the term Owner (s) shall include lessees, provided the lease is in writing and for a term of at least one year.

Section 1.17. "Park" means any unnumbered parcel in the Subdivision labeled "Park".

Section 1.18. "Private Open Space Easement" shall mean any Open Space Easement within a Lot which shall be subject to the restrictions and conditions set forth in Article X of this Declaration or any Supplemental Declaration.

Section 1.19. "Private Waste Disposal Systems" shall mean any septic tank, tank, septic system, evapotranspiration ("ET") or other approved system for the disposal of sewage or liquid waste from a residential structure including all pipes, fittings, lines and other related equipment or attachments thereto.

Section 1.20. "Property" shall mean and refer to the real property located in Bernalillo County, New Mexico, and more specifically described in Exhibit A to this Declaration, including the aerial and subsurface rights appurtenant thereto, and such additions thereto as may hereafter be annexed by Supplemental Declaration.

Section 1.21. "Residual Parcel" shall mean any area designated as the Residual Parcel on the Subdivision Plat, located adjacent to, but not a part of the Subdivision.

Section 1.22. The "Subdivision" or "Canyon Ridge" shall mean all of Canyon Ridge Estates Subdivision, together with any Entrance Road and any property annexed or added by Supplemental Declaration, as set forth on the Subdivision Plat filed in real property records of the Bernalillo County Clerk.

Section 1.23. "Single-family Residential Use" shall mean the occupation or use of a Structure as a residence or dwelling unit by a single person, a family or a family-sized unit in conformity with this Declaration and the requirements imposed by applicable zoning laws or any other state, county or municipal laws, rules, regulations, codes or ordinances.

Section 1.24. "Structure" shall mean anything erected, constructed, placed, layed or installed in, on, or over real property, the use of which requires a location on or in the ground but not including vegetation, trees, shrubs, or plantings.

Section 1.25. "Subdivision Map or Subdivision Plat" or "Plat Map" or "Plat" or "Final Plat" shall mean the recorded map or plat

of the Canyon Ridge Estates Subdivision, as amended or re-platted from time to time, covering any or all of the Property referred to in this Declaration, and covering any additional real property annexed by Supplemental Declaration.

Section 1.26. "Supplemental Declaration" shall mean any Supplemental Declaration of Covenants, Conditions, and Restrictions bringing or adding additional property within the scheme of this Declaration pursuant to Article II hereof. References herein (whether specific or general) to provisions set forth in "all (any) Supplemental Declaration" shall be deemed to relate to all property covered by this or any Supplemental Declaration.

Section 1.27. "Visible From Neighboring Property" shall mean that with respect to any given object, that such object is or would be visible to a person six (6) feet tall, standing on any part of a neighboring property. A neighboring property shall be any Lot having a common lot line except for the intervention of a street, road, right-of-way or easement.

ARTICLE II

PROPERTY SUBJECT TO RESTRICTION

Section 2.1. General Declaration. Declarant hereby declares that the Property within the Subdivision is and shall be held, conveyed, developed, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part, subject to this Declaration, as amended or modified from time to time. This Declaration is declared and agreed to be in furtherance of a general plan for the subdivision, improvement and sale of the Property and is established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property and every part thereof. All of this Declaration shall run with all of the Property for all purposes and shall be binding upon and inure to the benefit of Declarant, all Owners and their successors in interest.

Section 2.2. Description of Property. The Property subject to this Declaration is all Property described in Section 1.18 hereof, together with any and all Property added or annexed by Supplemental Declaration at a subsequent time.

Section 2.3. Staged Subdivision. Declarant, its successors and assigns, shall have the right, but not the obligation, to bring within the scheme of this Declaration additional properties in Mountain Ranch in future stages of the development (including, without limitation, any Residual Parcel and all or portions of other subdivisions developed by Declarant or affiliated or subsidiary entities) without the consent or approval of Owners of any Lots (other than Declarant) and without the consent or approval

of the Association; provided, however, that such additional properties must be adjacent to the Property (as the Property shall then exist). As additional properties are subdivided, Declarant shall, with respect to said properties, record Supplemental Declaration which may incorporate this Declaration by reference, and which may supplement or modify this Declaration with such additional covenants, restrictions and conditions which may be appropriate for those properties. Upon recordation of such additional plats or maps and the filing of a Supplemental Declaration containing restrictive covenants pursuant thereto, then and thereafter the Owners of all Lots in the Subdivision shall have the rights, privileges and obligations with respect to all Properties in the Subdivision (including such additional properties) in accordance with the provisions of, and to the extent set forth in, this Declaration and each such Supplemental Declaration.

Section 2.4. Other Additions. Upon the approval of the Association, in its sole discretion, the Owner of any other property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association may file of record a Supplemental Declaration of Covenants and Restrictions upon the satisfaction of the conditions specified in Section 2.3 above.

ARTICLE III

LAND USE

Section 3.1. Single-family Residential Use. All Property shall be used, improved and devoted exclusively to Single-family Residential Use, except as may otherwise be explicitly indicated on the recorded Plat. No business or commercial activity frequented by and open to the general public (and in any event no business or commercial activity which takes place out-doors) shall be conducted within the Subdivision, other than parcels specifically designated for alternate use on the plat. Home occupations of the Owner are permissible if conducted in the home or studio and in compliance with any rules and regulations governing home occupations hereafter adopted by the ACC. Nothing contained herein shall be deemed to prevent the leasing of all of a Lot to a single person, family or family-sized unit from time to time by the Owner thereof, subject to all the provisions of this Declaration.

Section 3.2. Development Plan. Each Owner shall be required to submit a detailed Development Plan, pursuant to the Rules of the ACC, and such plan must be approved in writing prior to the commencement of construction of any Improvement. No construction whatsoever, including, without limitation, site preparation, clearing of trees or excavation, shall commence without the prior written approval of the ACC. All construction and development

shall comply strictly with the approved Development Plan. Any person purchasing any portion of the Property subject to this Declaration acknowledges that the breach or violation of this covenant is likely to result in irreparable harm to the rights and interests of other Owners in the Subdivision and that the ACC or the Association, on behalf of such Owners, shall be entitled to injunctive relief, temporary or permanent, in order to prohibit such violation; provided, however, that this provision shall be in addition to any other remedies available hereunder or at law or equity.

Section 3.3 Time for Construction.

(a) Construction of any Structure or Improvement shall be continuous and proceed in an orderly fashion without interruptions and any Structure or Improvement on a Lot shall be completed in a reasonable time, not to exceed twelve (12) months from the commencement of construction.

(b) The foundation for any Structure or Improvement shall be completed as soon as is practically possible after the commencement of construction.

(c) Commencement of construction shall mean the first on-site work for construction, including, but not by way of limitation, clearing of trees, excavation or site preparation for the purpose of foundation.

(d) Materials and equipment necessary for construction, and all debris resulting from clearing or construction, shall be confined to the Lot, and shall not be left on any other Lots, Common Areas or roadways. All such debris shall be conditioned within a suitable form of trash receptacle approved by the ACC prior to the start of any construction.

Section 3.4. Rentals. No portion of a Lot, other than the entire Lot together with the Improvements thereon, may be rented or leased and then only to a single family.

Section 3.5. Re-subdivision. No Lot within the Subdivision shall be further subdivided or separated into smaller Lots or parcels by any Owner, other than Declarant, and no portion of any such Lot or any easement or any other interest (other than a security interest or a rental or lease) therein shall be conveyed or transferred by any Owner. Declarant reserves the right to change Lot lines and re-subdivide the Property at any time and from time to time. Each Owner hereby makes, constitutes and appoints Declarant, with full power of subdivision, as his or its lawful attorney-in-fact, with power to execute, acknowledge, file and record with any governmental authority and appropriate documents for the purpose of effecting the re-subdivision of any Lot or portion thereof, in accordance with the terms of this Declaration. The foregoing power (i) is coupled with an interest, (ii) is

irrevocable, (iii) shall survive the dissolution of or resignation of Declarant, (iv) may be exercised for each Owner individually or by listing all of the Owners and executing any instrument with a single signature as attorney-in-fact for all of them, and (v) shall be binding upon all assignees and successors of each Owner.

ARTICLE IV

RESIDENTIAL STRUCTURES

Section 4.1. Requirements. All single-family residential Structures shall be subject to the following requirements, and each enumerated item must be included in the Development Plan submitted and approved in writing by the ACC prior to the commencement of construction; provided, however, that the following requirements shall not be the sole basis for consideration by the ACC (SEE Section 6.15 of this Declaration). Once approved, no Structure or Improvement may vary from the Development Plan without further approval of the ACC.

(a) Set Backs: All Structures are subject to a fifty (50) foot setback requirement from the front lot line and from any road or street right of way boundary, and a fifty (50) feet setback requirement from any Structure situated on an adjacent lot. A twenty-five (25) foot setback shall also be observed from side and rear lot lines. The ACC shall have the right to impose additional and/or modified setback requirements from all lot lines to preserve lines of sight of neighboring properties.

(b) Minimum Floor Areas: All single-family residential Structures shall have a floor area of not less than one thousand seven hundred (1,700) square feet of heated liveable space, exclusive of portals, porches (open and closed), patios, garages, carports, balconies or decks.

(c) Subdivision Design and Architectural Style: All Structures and Improvements shall be constructed in accordance with Architectural Guidelines published in writing by the ACC (hereafter these guidelines shall be referred to as the "Subdivision Design and Architectural Style").

(d) Height Limitations: The ACC shall have the right to impose limitations on a Lot by Lot basis on the height of any Structure or improvement to preserve lines of sight and views enjoyed by neighboring Lots and to insure adherence to the Subdivision Design and Architectural Style. Notwithstanding, no structure shall exceed a maximum height of 26 feet.

(e) Exterior Color Schemes and Materials: The ACC shall have the right to impose limitations on the exterior color and building materials to be used in all Structures consistent with

Subdivision Design and Architectural Style.

(f) Alternative Private Waste Disposal Systems: Alternative private waste disposal systems shall be constructed or allowed to remain or to be used on any Lot only when approved as to design, capacity, location and construction by all appropriate public health agencies including the State of New Mexico Environmental Improvement Division and approved in writing by the ACC. Alternative Systems shall be in accordance with the Paa-ko Master Plan requirements imposed by Bernalillo County. Such Alternative Private System shall further be approved by the ACC. Lot owners are required to pump septic systems as often as is required but at least once every three years so as to maintain continual operation in an efficient manner. Usage may require a more frequent pumping. Failure by the lot owner to do so will cause the Association to have said septic pumped on behalf of the lot owner and at the sole expense of the lot owner. The ACC shall have the right to require lot owner to participate in any master system in operation, and the rules and regulations pertaining to any such master system will supersede the requirements to pump the septic systems set forth in this paragraph.

(g) Roofing Materials: The ACC shall have the right to impose limitations on roofing materials and colors to be used in any Structure.

(h) Driveway: The ACC shall have the right to impose limitations on driveway design, including materials, aprons, location and point of contact with dedicated roads, streets or other private driveways in the Subdivision. The ACC may require the installation and maintenance of culverts at the point of contact with dedicated roads or wherever a driveway crosses a drainage way.

(i) Garbage Containers: The ACC shall have the right to require each Owner to specify a specific location for trash service, and shall require each Owner to construct a permanent facility of acceptable design and materials at such approved location for the placement of garbage containers for collection purposes.

(j) Solar Heating Collectors, Tanks, Air Conditioners and Swamp Coolers: The ACC shall have the right to approve the location of any active solar equipment, tank, air conditioner or swamp cooler used or proposed in connection with a single-family residential Structure, including propane tanks, tanks for storage of water, and swimming pool filter tanks. All tanks, air, conditioners, and swamp coolers shall be screened so as not to be Visible From Neighboring Property, or from any street, road, easement or right-of-way. Oil or gasoline tanks are prohibited on any Lot.

(k) Exterior Lighting: The ACC shall have the right to approve the location, number, size and design of all proposed exterior lighting. No street lamp or neon arc lamps will be permitted.

Section 4.2. Trees, Shrubs and Landscaping. The ACC shall have the right to approve the removal and/or addition of trees, shrubs, hedges, ground cover and all other landscaping. There shall be no disturbance of trees or other ground cover during construction without the written approval of the ACC.

Section 4.3. Windmills, Towers and Antennas. No windmill, antenna or other service for the transmission or reception of television signals, radio signals or other form of electromagnetic radiation visible from any street shall be erected, used or maintained on any Lot, whether attached to a building or Structure or otherwise, without prior approval of the ACC. No radio signals, television signals, or any other form of electromagnetic radiation shall originate from any Lot which may unreasonably interfere with the reception of any television or radio signal on any other Lot. This provision does not apply to any public or private utility company. Satellite Dishes or dishes of any other nature shall not be visible from any street, and shall be adequately screened or painted so as to not be visible. Any dish shall be approved by the ACC prior to its installation.

Section 4.4. Underground Utility Lines. Erection of temporary power or telephone structures incident to the construction of buildings or Structures which have been previously approved in writing by the ACC shall be allowed. The installation method, including, but not limited to, location, type of installation equipment, trenching method and other aspects of installation, for both temporary and permanent utilities shall be included in the Development Plan and approved in writing by the ACC.

Section 4.5. Temporary Structures - Occupancy During Construction. Except as permitted in Section 5.13, no trailer, basement or any incomplete building, tent, shack, garage or barn and no temporary building of any kind shall be used at any time for a residence on the Property within the Subdivision either on a temporary or permanent basis.

Section 4.6. Out-buildings. Acceptable out-buildings include a principal garage or carport and either a studio or workshop. Any proposed out-buildings must be included in the Development Plan and approved in writing by the ACC.

Section 4.7. Signs. Except for a 24" x 36" "For Sale" sign, no sign, billboard, or advertising structure shall be erected or maintained on any Lot or parcel of property within the Subdivision, unless approved in writing by the ACC or otherwise consistent with

signage rules issued by the ACC, and shall be further subject to any municipal codes or ordinances applicable to such signage.

Section 4.8. Improvements and Alterations. No Structures, Improvements, alterations, repairs, excavations or other work which in any way alters the exterior appearance of any Structure within the Subdivision or the appearance of any other Improvements located thereon shall be made or done without the prior written approval of the ACC.

Section 4.9. Solar Equipment. Request for approval of installation of any type of solar equipment shall be included in the Development Plan and approved in writing by the ACC.

Section 4.10. Chemical Fertilizers, Pesticides or Herbicides. No commercial chemical fertilizers, pesticides or herbicides other than those approved by the ACC shall be used on any of the Property. This provision in no way limits the use of those products which are readily available for consumer use and approved by an agency, such as the Food and Drug Administration, for the purpose intended.

Section 4.11. Access to Common Properties. No ramps, paths, walls, private streets or other access shall be constructed from or over a Lot to any Common Property unless the same is approved in writing by the ACC.

Section 4.12. Attachment of Covenant on Resale or Remodel. This Declaration shall attach following the lease or resale of the Property or any Lot and any remodeling or other alteration of any Improvement must be approved by the ACC through the Development Plan process.

Section 4.13. Deviation from Approved Plan. All Development Plans approved in writing by the ACC must be complied with strictly and any deviation, change or alteration to the exterior appearance not in compliance with said Plan must be further approved in writing by the ACC. Violation hereof shall be subject to enforcement in accordance with the provisions of this Declaration.

ARTICLE V

RESTRICTIONS

Section 5.1. Animals - Household Pets. No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained or cared for on the Property. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance, and no

domestic pets will be allowed on the Property other than the Lot of its Owner unless confined to a leash or under voice control. Upon written request of any Owner the ACC shall conclusively determine at its sole discretion, in accordance with its rules, whether an animal is a domestic household pet, whether an animal is being allowed to run at large or whether an animal is a nuisance. The decision of the ACC in such matters is final, conclusive and shall be enforced as other restrictions contained herein. No animal may be stabled, maintained, kept, cared for or boarded for hire or remuneration on the Property and no kennels or breeding operation will be allowed. No animal shall be allowed to run at large and all animals shall be kept within an enclosed area which must be clean, sanitary and reasonably free of refuse, insects and waste at all times.

Section 5.2. Non Disturbance of Natural Vegetation and Maintenance of Lawns and Plantings. No Owner shall cut, tamper, destroy or remove any pinon or juniper tree on any Lot except pursuant to the Development Plan for said Lot approved in writing by the ACC. Each Owner, on his Lot, shall keep all shrubs, trees, grass and planting of every kind which are Visible From Neighboring Property or from a dedicated road, Common Property or Common Facility, properly cultivated, pruned and free of trash and other unsightly material. Declarant, the Association and the ACC shall have the right at any reasonable time to enter upon any Lot to replace, maintain and cultivate shrubs, trees, grass or other plantings located thereon, at cost to Owner.

Section 5.3. Clothes Drying Facilities. Outside clothes lines or other facilities for drying clothes or airing clothes shall not be erected, placed or maintained on any Lot unless they are concealed in such a manner so as not to be Visible From Neighboring Property or from streets or from access roads.

Section 5.4. Hunting/Trapping/Firearms and Explosives. Hunting, trapping and discharge of firearms or other explosives are expressively prohibited within the Subdivision.

Section 5.5. Dumping. Dumping of ashes, trash, rubbish, sawdust, garbage, land fill, solid waste and any type of refuse and other sightly or offensive material is expressively prohibited within the Subdivision.

Section 5.6. Reserved.

Section 5.7. Mineral Exploration. No mining, quarrying, tunneling, excavation or drilling for exploration or removal of any minerals including oil, gas, gravel, rocks, earth or earth substances of any kind shall be permitted within the Subdivision.

Section 5.8. Business Activities. No business or commercial activity frequented by and open to the general public (and in any

event no outdoor business or commercial activity) shall be conducted within any Residential Use are of the Subdivision. Home occupations of the Owner are permissible if conducted in the home or studio and in compliance with any rules and regulations governing home occupations hereafter adopted by the ACC.

Section 5.9. Obnoxious Activities. No nuisance, obnoxious or offensive activities shall be permitted on any Lot, nor shall any rubbish or debris of any kind be placed or permitted to accumulate on or adjacent to any of the Property within the Subdivision, and no odors shall be permitted to arise therefrom, so as to render any such Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provision, no exterior speakers, horns, whistles, bells or any other devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such Property which are audible from neighboring Property.

Section 5.10. Garbage. No garbage or trash shall be placed or kept on any Lot except in covered containers located and constructed in accordance with Section 4.1 (i). In no event shall such containers be maintained so as to be Visible From Neighboring Property. All rubbish, trash, garbage shall be removed from Lots and shall not be allowed to accumulate thereon. No incinerator shall be kept or maintained on any Lot. No garbage, trash, or debris shall be permitted to be buried on any Lot at any time nor shall the burning thereof be permitted.

Section 5.11. Vehicles and Equipment. No bus or truck larger than a one-ton pickup, semi-trailer, tractor, machinery or equipment shall be kept, placed (except during the course of making deliveries for the purpose of loading or unloading), maintained, constructed, reconstructed, or repaired on the Property. No motor vehicle or trailer of any type shall be constructed, reconstructed, or repaired on the Property in such a manner as will be Visible From Neighboring Property. Motor homes, recreational house trailers, horse trailers, truck campers, boats, boat trailers and recreational vehicles of any sort or type which are intended to be kept on the Property by the Owner must be placed in such a manner that they will not be Visible From Neighboring Property or from dedicated roadways, Common Facilities or Common Properties. No motorized vehicle of any kind may be operated in any manner which is dangerous, noisy or which creates a nuisance.

Section 5.12. No Overnight Parking. No vehicle of any kind shall be allowed to park overnight on any roadway within the Subdivision.

Section 5.13. Emergency or Temporary Maintenance Vehicles. The provisions of this Declaration shall not prevent any emergency

vehicle repairs or operation of an emergency vehicle, ambulance, etc., within the Subdivision. The provisions of this Declaration shall also not prevent the operation or temporary use of construction trailers, vans, or other trucks, machinery/equipment, construction shelters or facilities maintained during and used exclusively in connection with the construction of any Improvement approved in writing by the ACC.

Section 5.14. Motorcycles. The use of motorcycles shall be limited to those which have been approved and are legal for street use. Such use shall be limited to the public streets. No off-road use of any motorcycles shall be permitted and all motorcycles operated within the Subdivision shall have mufflers installed in good condition which limits the exhaust noise to no more than eighty (80) decibels, ten (10) feet from the end of the exhaust pipe.

Section 5.15. Continuing Adequacy of Repair or Maintenance. No building or Structure upon the Property within the Subdivision shall be permitted to fall into disrepair, and each such building and Structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. Such duty to repair shall include the maintenance of any exterior Structures and finish which was included in the Development Plan approved by the ACC.

Section 5.16. Service Yards and Storage Yards. Any service yard, storage yard, wood pile or storage pile shall be located so as not to be Visible From Neighboring Property, public roadways, Common Facilities or Common Property. Any Structure of a permanent nature is to be built with regard to these items and must be included in the Development Plan and approved in writing by the ACC.

Section 5.17. Gates, Walls, and Fences. All gates, walls, and fences must be described in the Development Plan and approved by the ACC.

ARTICLE VI

ARCHITECTURAL CONTROL COMMITTEE

Section 6.1. Establishment and Composition. There is hereby established an Architectural Control Committee ("ACC"), which shall consist of three (3) regular members and one (1) alternate member. The following persons are hereby designated as the initial members:

<u>Position</u>	<u>Name</u>	<u>Type</u>	<u>Address</u>
Office No. 1	Dave Wesley	Regular	1717 Louisiana Blvd. NE Suite 205 Albuquerque, NM 87110

Office No. 2	Nick Thompson Regular	1717 Louisiana Blvd. NE Suite 205 Albuquerque, NM 87110
Office No. 3	Roger Cox Regular	1717 Louisiana Blvd. NE Suite 205 Albuquerque, NM 87110
Office No. 4	Kent Moesser Alternate	1717 Louisiana Blvd. NE Suite 205 Albuquerque, NM 87110

Members of the ACC shall serve without salary or pay and none of the members shall be required to be an architect or to meet any other particular qualifications for membership.

Section 6.2. Voting and Status of Alternate Members. Except as otherwise provided herein, a vote or written consent of a majority of the regular members of the ACC at a meeting or otherwise shall constitute the act of the Committee. Except as hereinafter provided, alternate members shall not be entitled to vote. In the event of absence or disability of one (1) or more regular members, the remaining member or members, even though less than a quorum, may designate an alternate member to act or substitute for the absent or disabled regular member for the duration of such absence or disability. The alternate member so designated shall be entitled to vote in place of the regular member for whom he so substitutes. Notwithstanding the foregoing provisions, the ACC is not authorized to act unless at least one (1) regular member is present or, in the event action is taken without a meeting, unless at least one (1) regular member consents in writing thereto.

Section 6.3. Terms of Office. Unless the initial members of the ACC have resigned or been removed, their terms of office shall be for the periods of time beginning as of the date of recordation of this Declaration and ending on the dates indicated below, and until appointment of their respective successors:

Office Nos. 1 and 3	January 1, 1995
Office Nos. 2	January 1, 1994
Office Nos. 4	January 1, 1994

Thereafter, the term of each ACC member appointed shall be for a period of three (3) years and thereafter until the appointment of a successor. Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term. Members who have resigned or whose terms have expired may be reappointed. At such time as the composition of the ACC is added to or altered, a writing referring to and identifying this

Declaration by recording data shall be recorded in the real property records of Bernalillo County, New Mexico, setting forth the name and address of each member of the Committee as it is constituted.

Section 6.4. Appointment and Removal. Except as provided below, the right to appoint and remove all regular members and alternate members of the ACC at any time, with or without cause, shall be, and hereby is, vested solely in Declarant. At such time as Declarant owns less than ten percent (10%) of the Lots (in number) or at such time that Declarant records a waiver of the right herein retained, whichever event occurs first, then the Association shall appoint all regular and alternate members of the ACC in accordance with the Bylaws of the Association.

Section 6.5. Resignations. Any regular member or alternate member of the ACC may resign at any time from the Committee by giving written notice thereof to Declarant or the Association as the situation requires.

Section 6.6. Vacancy. Vacancies on the ACC, however caused, shall be, except as provided in Section 6.4 of this Article, filled by Declarant. A vacancy shall be deemed to exist in case of death, resignation or removal of any regular or alternate member.

Section 6.7. Transfer of Authority to the Association. The duties, rights, powers and authority of the ACC constituted hereby may be assigned at any time, at the sole election of a majority of the regular members of the ACC, to the Homeowners Association, and from and after the date of such assignment, and the acceptance thereof by the Association, the Association shall have full right, authority and powers, and shall be obligated to perform the functions of the ACC as provided herein (and in the Bylaws of the Association).

Section 6.8. Address. The address of the ACC shall be 1717 Louisiana Blvd. NE, Suite 205, Albuquerque, New Mexico 87110 or such other place as may from time to time be designated by the ACC by written instrument recorded in the real estate records of Sandoval County, New Mexico; and the last instrument so recorded shall be deemed the Committee's property address.

Section 6.9. Duties.

(a) General: It shall be the duty of the ACC to receive, consider and act upon all proposals, plans, complaints, requests for determination, Development Plans or other matters submitted pursuant to the terms of this Declaration, and to carry out all other duties imposed on it by this Declaration.

(b) Developmental Plan Submission Fees: The ACC shall require a submission fee of \$150.00 for each proposed Development Plan. This fee shall be considered as a filing requirement of the

Development Plan and such Plan will not be considered unless and until such costs are paid. The submission fee may be amended by ACC Rules. Fees for other services may be set by the ACC.

Section 6.10. Meetings. The ACC shall meet from time to time as necessary to perform its duties hereunder. Subject to provisions of Section 6.2 above, and except as otherwise provided herein, the vote or written consent of a majority of the regular members at a meeting or otherwise shall constitute the act of the Committee. The Committee shall keep and maintain written records of all actions taken by it at such meetings or otherwise.

Section 6.11. Action Without Formal Meeting. The ACC, in accordance with Sections 6.2 and 6.10 hereof, may take action without formal meeting by unanimously consenting in writing on any matter which they might consider at a formal meeting. Such unanimous written consent shall constitute the act of the Committee. For the purposes hereof, unanimous written consent shall mean a writing by the three (3) regular members of the ACC except as the provisions of Section 6.2 may apply.

Section 6.12. Procedure for Submission and Approval of Development Plan.

(a) Submission of a Development Plan shall be in accordance with the Rules promulgated by the ACC, as authorized by Section 6.14 hereof.

(b) If the ACC fails to approve or disapprove any material or Development Plan submitted to it hereunder within thirty (30) days after the date shown on the submittal receipt or fails to give notice of its actions as above required, it shall be conclusively presumed that the Committee has approved such materials as submitted. If the Committee requests additional or amended materials or an amended Development Plan during the initial thirty (30) day period, or approves on condition that certain additional or amended materials be submitted, such period shall automatically be extended to fifteen (15) days following the date upon which such additional or amended materials are required to be delivered to and received by and receipted for by the Committee. Additional fifteen (15) day extensions shall occur if further additional or amended materials are requested or required during any subsequent extension period. If the additional or amended materials are not received on or before the required date, then the Development Plan shall be automatically disapproved.

Section 6.13. Waiver and Estoppel. The approval by the ACC of any Development Plan, specifications or drawings or any materials accompanying it for matters requiring approval of the ACC shall not be deemed to constitute a waiver of or create any right of estoppel against the Committee's right to withhold approval of any similar Development Plan, drawing, specification or matter subsequently submitted for approval.

Section 6.14. ACC Rules. The ACC shall have the authority to adopt, amend, add to, replace and rescind, from time to time, procedural or substantive rules to make more definite and certain, and to carry out the purpose of and intent of the provisions of this Declaration. Any conflict between such rule and any provision of this Declaration shall be resolved in favor of the provision of this Declaration. A copy of such rules, as in effect from time to time shall be provided to any Owner requesting the same in writing; provided that the failure to deliver a copy of any such rules, or the failure of the ACC from time to time to adopt any such rules shall not in any manner inhibit or impair the requirement that a Development Plan be approved by the ACC prior to construction or any other provision of this Declaration.

Section 6.15. Basis for ACC Approval or Disapproval. The Subdivision is intended by Declarant to be a unique and cohesive development composed of homes of the highest quality and elegant appearance. Toward this end, it is intended that the ACC have the greatest degree of discretion possible in reviewing, approving or disapproving Development Plans. Declarant intends that the ACC shall have the right to consider as the basis for any approval or disapproval of a Development Plan, (a) compliance or noncompliance with certain objective standards set out in this declaration or in any rules or guidelines subsequently published or adopted by the ACC, (b) the nature and quality of the building materials and methods of construction to be used, (c) the location of the proposed Improvements on the Lot, (d) the visual impact of the proposed Improvements from the standpoint of style and consistency with other Improvements constructed or approved by the ACC for construction in the Subdivision, (e) the experience and expertise of the general contractor, such other subjective factors as the ACC shall, in its discretion, deem relevant or appropriate.

Section 6.16. Decisions Conclusive. All decisions of the ACC shall be final and conclusive, and no Owner or any other person, association or entity shall have any recourse against the ACC, or any member thereof, for its or such member's approval or refusal to approve all or any portion of a Development Plan or of any materials submitted therewith, or for any other decision rendered under the authority of this Declaration.

Section 6.17. Liability. Neither the Declarant nor the ACC or any member thereof shall be liable to any Owner, or any other person, association, or entity, for any damage, loss or prejudice suffered or claimed on account of: (i) the approval or disapproval of any Development Plan or any materials submitted therewith, whether or not defective; (ii) the construction or performance of any work, whether or not pursuant to an approved Development Plan or any materials submitted therewith; (iii) the development of the Property; (iv) the structural capacity or safety features of the proposed Improvements or Structure; (v) whether or not the location of the proposed Improvements or Structure on the building site is

free from possible hazards from flooding or from any other possible hazards, whether caused by erosion causing sliding conditions; (vi) compliance with governmental laws, ordinances and regulations; (vii) any decision made or action taken or omitted to be taken under the authority of this Declaration; (viii) any act taken or decision made in connection with any Residual Parcel or any other land contiguous to the Subdivision, including, but not limited to any decision to annex or refuse to annex to the Subdivision any Residual Parcel or any other contiguous land or property; (ix) the execution and filing of any estoppel certificate, whether or not the facts therein are correct; provided, however, that with respect to the liability of a member, such member has acted in good faith on the basis of such information as may be possessed by him. Without in any way limiting the generality of any of the foregoing provisions of this Section, the ACC, or any member thereof, may, but is not required, to consult with or determine the view of any other Owner with respect to any Development Plan, or any materials submitted to the ACC.

Section 6.18. Modifications or Waivers. The ACC, upon such terms and conditions, upon the payment of such fees or expenses, and for such procedures as it may prescribe, may, but is not required to, adopt, review and approve or disapprove, in whole or in part, with or without conditions, applications for the modification or waiver of any requirement of Article IV of this Declaration or of the ACC rules applicable to any Improvement or use of, in, on or abutting any Lot. Such applications shall contain such information as the Committee may prescribe and shall affirmatively show that the application of such requirements, under the circumstances, creates unnecessary and undue hardship, and that a modification or waiver will not be detrimental (aesthetically, economically, or otherwise) to the Owner of any other Lot. The Committee may decide the matter upon the application and any materials or written statements accompanying it or may allow oral presentations in support of or in opposition to the application prior to the decision, at its discretion. The Committee shall render a decision in writing, which decision need not contain any reasons, findings, or conclusions for the decision and shall forward one (1) copy to the applicant, and retain one (1) copy in its records. Without limiting the general applications of such section, the provisions of Section 6.15 and Section 6.16. of this Article shall apply to the actions and the decisions of the Committee and its members under this Section.

Section 6.19. Governmental Agency Approval. Nothing in this Declaration shall relieve or be interpreted as purporting to relieve any Owner from also securing such approval(s), certificate(s) or permit(s) of any governmental agency or entity with jurisdiction as may be required by law as a condition to the commencement, construction, maintenance, addition, change or alteration to or of any Improvement, and the Committee may require that a copy of such approval(s), certificate(s) or permit(s) be

provided to the Committee as a final condition to approval of a Development Plan, or as additional insurance to the Committee that the Improvements and uses of an approved Development Plan meet governmental requirements, or for both such purposes.

Section 6.20. Certificate of Compliance of a Structure or an Improvement. Upon completion of a Structure or Improvement approved by the ACC and upon written request by the Owner of the Lot, the ACC shall issue a Certificate of Compliance in a form suitable for recordation. The Certificate shall identify the Lot and Structure or Improvement, the use or uses to be conducted thereon and the plans and specifications on file with the ACC pursuant to which the Structure was erected or Improvement was made and shall specify that the Structure or Improvement complies with the approved plans and specifications. The Certificate shall not be construed to certify the acceptability, sufficiency or approval by the ACC of the actual construction of the Structure or Improvement or of the workmanship or materials thereof. The Owner is hereby notified and shall again be so notified upon issuance of the Certificate, that the Certificate in no way warrants, except as set forth above, the sufficiency, acceptability or approval by the ACC of the construction, workmanship, materials or equipment of the Structure or Improvement. Preparation and recordation of such a Certificate shall be at the expense of the Owner of the improved Lot.

ARTICLE VII

HOMEOWNERS ASSOCIATION

Section 7.1. The Association. Declarant shall cause the formation and incorporation of the Association as a non-profit corporation organized and existing under the New Mexico Non-Profit Corporation Act, charged with the duties and invested with the powers prescribed by law and set forth in the Articles of Incorporation, Bylaws, and this Declaration. Neither the Articles of Incorporation nor the Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

Section 7.2. Membership. Each Owner (whether one or more persons or entities) of a Lot shall, upon and by virtue of becoming such Owners, automatically become a member of the Association and shall remain a member thereof until his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Membership in the Association shall be appurtenant to and shall automatically follow the legal ownership of each Lot and may not be separated from such ownership. Whenever the legal ownership of any Lot passes from one person to another, by whatever means, it shall not be necessary that any instrument provide by transfer of membership in the Association, and no

certificate of membership will be issued.

Section 7.3. Voting. Subject to the provisions of Section 7.5., all members of the Association in good standing shall be entitled to one (1) vote for each Lot owned at any meeting of members of the Association or with respect to any matter submitted to a vote of the members of the Association. If more than one person holds an interest in any Lot, all such persons shall be members of the Association. The vote for such multiply-owned Lot shall be exercised as the Owners among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. The Articles of Incorporation and Bylaws of the Association may provide more specific rights with respect to voting by members.

Section 7.4. Board of Directors and Officers. The affairs of the Association shall be conducted by a Board of Directors and such officers as the Directors may elect or appoint, in accordance with the Articles of Incorporation and the Bylaws, as the same may be amended from time to time.

Section 7.5. Control of the Association. Until the first to occur of (a) conveyance by Declarant of ninety percent (90%) in number, of all lots allowed by the Mountain Ranch Master Plan (being 1440 lots as of the date of this Declaration), or (b) a written relinquishment by Declarant of Declarants rights under this Section 7.5 or (c) January 1, 2023, Declarant shall have the exclusive right to elect the members of the Board of Directors of the Association, and the members shall thereafter and otherwise, have the right to elect the members of the Board of Directors and to vote on all other matters properly put before the members, all in accordance with the Articles of Incorporation and Bylaws of the Association.

Section 7.6. Powers and Duties of the Association. The Association shall have such rights, powers and duties as set forth in the Articles of Incorporation and Bylaws, as the same may be amended from time to time.

Section 7.7. Personal Liability. No member of the Board of Directors or any Committee of the Association or any of the Officers of the Association shall be personally liable to any Owner or any other party including the Association for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board of Directors or any other representative or employees of the Association; provided, however, that such person has, upon the basis of such information as may be possessed by him, acted in good faith, without willful or intentional misconduct.

ARTICLE VIII**ASSESSMENTS**

Section 8.1. Maintenance Fund. All funds collected by the Association from the regular maintenance charges provided for in this Article, together with all funds collected by the Association from the regular annual maintenance charges imposed on the Lots in the Subdivision by all Supplemental Declarations, shall constitute and be known as the "Maintenance Fund". The Maintenance Fund shall be held, used, and expended by the Association for the common benefit of all Members to promote the health, safety, recreation, and welfare of the Members, including, without limitation: (1) maintenance and construction of publicly dedicated, but privately maintained roadways, if any, bridges, culverts and related improvements; (2) the installation, construction, erection, and relocation of improvements related to the enhancement and beautification of the Common Properties and Facilities in the Subdivision, including any Park and any Open Space Easement, and any other areas provided by this Declaration or any Supplemental Declaration to be developed or maintained by the Association, such as shrubbery, trees, walkways and street lights, and the construction, repair, maintenance and replacement of properties, services, improvements and facilities devoted to such purposes and related to the use and enjoyment of the Subdivision by the Members; (3) payment of utility charges in connection with the operation of Common Properties of use of Common Properties; (4) payment of charges for security guards, private fire protection, road maintenance, garbage collection and other services contracted for by the Association; (5) charges for liability and property insurance and other insurance related to the Common Facilities, Common Properties and their use and operation; (6) accounting and legal fees, including legal fees incurred by the Association while enforcing the provisions of this Declaration; and (7) reasonable reserves for the foregoing.

In the event Declarant shall designate Common Facilities for the use and benefit of all the Owners in the Subdivision which are situated on property owned by Declarant (or affiliated or subsidiary entities) but which then has not been brought within the scheme of this Declaration under the authority provided in Article III hereof, the Association shall have the right and authority to allocate and expend such amounts from the Maintenance Fund for construction, repair, maintenance, upkeep, beautification, improvement or replacement of such Common Facilities as its Board of Directors shall determine, in its sole discretion. Further, if all or any such Common Facilities situated on property then not subject to the scheme of this Declaration also are for the use and benefit of persons or entities other than the Owners in the Subdivision, the Association shall have the right and the authority to enter into agreements with other persons or entities enjoying the use and benefit of such Common Facilities (or their designee),

in such instances on such terms as its Board of Directors may deem appropriate and acceptable, obligating the Association to contribute, from the Maintenance Fund, a rateable portion of the amounts necessary from time to time to provide for the construction, repair, maintenance, upkeep, beautification, improvement or replacement of such Common Facilities, and providing for other agreements relative to the use and enjoyment of such Common Facilities (including limitations on the extent of the use and enjoyment thereof) by the various persons and entities entitled thereto.

The Association may, in its sole discretion, give one or more of the purposes set forth in this Section 8.1 preference over other purposes, and it is agreed that all expenses incurred and expenditures and decisions made by the Association in good faith shall be binding and conclusive on all Members.

In the event Declarant shall operate any Common Facility in the Subdivision, or such Common Facility shall be operated by others on behalf of Declarant under agreement authorized hereby, and the actual proceeds realized by Declarant from such operation shall be less than the actual costs incurred by Declarant in connection with operating and maintaining any such Common Facility, Declarant shall be entitled to be reimbursed from the Maintenance Fund for all costs actually incurred by Declarant in maintaining and operating such Common Facility in excess of the actual proceeds realized by Declarant from such operation, as such costs are incurred, to the extent that the balance of the Maintenance Fund from time to time existing exceeds the amount then designated by the Board of Directors of the Association in good faith to be the minimum amount necessary to accomplish the maintenance functions of the Association. Further, Declarant shall be entitled to be reimbursed from the Maintenance Fund for all ad valorem taxes and other assessments in the nature of property taxes, real or personal, and any sales, gross receipts or other taxes, fairly allocable to the Common Properties and Facilities and accrued subsequent to the recordation hereof, and prior to the date on which title to such Common Properties and Facilities is conveyed to the Association by Declarant, which have been actually paid by Declarant.

Section 8.2. Covenant for Assessments. Each and every Lot in the Property is hereby severally subjected to and impressed with an initial regular annual maintenance charge or assessment in the amount, until amended by the Board of Directors of the Association, of One Hundred and No/100 Dollars (\$100.00) per year per Lot (herein sometimes referred to as the "full maintenance charge") which charge shall commence on a date determined by the Association and be due and payable in advance on said date and in advance on the first day of January of each year thereafter, and which shall run with the land, and shall be subject to increase and decrease in accordance with the Articles of Incorporation and Bylaws of the

Association. Any lot purchased other than in January will be prorated from the date of purchase through December of that year.

Each Owner of a Lot, by his claim or assertion of ownership or by accepting a deed to any such Lot, whether or not it shall be so expressed in such deed, is hereby conclusively deemed to covenant and agree, as a covenant running with the land, to pay to the Association, its successors or assigns, each and all of the charges and assessments against his Lot and/or assessed against him by virtue of his ownership thereof, as the same shall become due and payable, without demand. The charges and assessments herein provided for shall be a charge and a continuing lien upon each Lot, together with all improvements thereon, as hereinafter more particularly stated. Each assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of the Lot at the time the obligation to pay such assessment accrued, and no Member shall avoid personal liability for the payment of any assessment by waiver of the use or enjoyment of the Common Properties or Facilities, or any part hereto, or by abandonment of his Lot or his interest therein.

Section 8.3. Special Maintenance Charge. The Board of Directors of the Association may levy a special assessment or a special maintenance charge to cover any expenses of the Association that for any reason cannot be satisfied by the annual maintenance charge or assessment. The Board of Directors shall send written notice of each special assessment to every Owner subject thereto at least thirty (30) days in advance of the due date.

Section 8.4. Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Lot or Owner for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the assessment shall thereupon be sent to every Owner subject thereto. The Association shall, upon demand at any time, furnish to any Owner liable to said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8.5. Liens to Secure Assessment. The regular maintenance charges or assessments, any applicable special maintenance charge, as herein provided for, and any other charge or assessment or cost of performance provided for in this Declaration shall constitute and be secured by a separate and valid and subsisting lien, hereby created and fixed, and which shall exist upon and against each Lot and all improvements thereon, for the

benefit, as appropriate, of the Association, be made a party to any court proceeding to enforce any lien hereinafter deemed to be superior, the lien hereby created shall be subordinate and inferior to:

(a) all liens for taxes or special assessments levied by City, County and State government, or any political subdivision or special district thereof, and

(b) all liens securing amounts due or to become due under any Real Estate Contract or Contract of Sale, any mortgage or deed of trust filed for record, prior to the date payment of any such charges or assessments become due and payable.

Any judicial foreclosure of any such superior lien under any mortgage, deed of trust, or other security instrument in which the Association has been made a party, shall cut off and extinguish the liens securing maintenance charges or assessments which became due and payable prior to such foreclosure date, but no such foreclosure shall free any Lot from the liens securing assessments thereafter becoming due and payable, nor shall the liability of any Member personally obligated to pay maintenance charges or assessments which become due prior to such foreclosure, be extinguished by any foreclosure.

Section 8.6. Effect of Non-Payment of Assessment. If any charge or assessment due the Association is not paid within thirty (30) days from due date thereof, the same shall bear interest from the due date until paid at eighteen percent (18%) per annum, and, if placed in the hands of an attorney for collection or if suit is brought thereon or if collected through probate or other judicial proceedings, there shall be paid to the Association all reasonable attorney's fees and costs of collection incurred by the Association. The Association, as a common expense of all Members, may institute and maintain an action at law or in equity against any defaulting Member to enforce collection and/or for foreclosure of the liens against his Lot. All such actions may be instituted and brought in the name of the Association, as appropriate, and may be maintained and prosecuted in a like manner as an action to foreclose the lien of a mortgage or deed of trust on real property.

Section 8.7. Collection and Enforcement. Each Member, by his assertion of title or claim of ownership or by his acceptance of a deed to a Lot, whether or not it shall be so recited in such deed, shall be conclusively deemed to have expressly vested in the Association, and in its officers and agents, the right, power and authority to take all action which the Association shall deem proper for the collection of assessments and/or for the enforcement and foreclosure of the liens securing the same.